



**Common Law Division
Supreme Court
New South Wales**

Case Name: Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority t/as Seqwater (No 4)

Medium Neutral Citation: [2015] NSWSC 1352

Hearing Date(s): 14 September 2015

Date of Orders: 14 September 2015

Date of Decision: 14 September 2015

Jurisdiction: Common law

Before: Beech-Jones J

Decision: Hearing date vacated.

Catchwords: CLASS ACTION – Hearing date vacated – no question of principle.

Legislation Cited:

Cases Cited: - *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater* [2014] NSWSC 1565
- *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 3)* [2015] NSWSC 838

Texts Cited:

Category: Interlocutory

Parties: Rodriguez & Sons Pty Ltd – Plaintiff
Queensland Bulk Water Supply Authority (t/as Seqwater) – First Defendant
Sun Water Limited – Second Defendant
State of Queensland – Third Defendant

Representation: Counsel:
R.A. Yezerski, Ms N. Oreb – Plaintiff
B. O'Donnell QC – First Defendant
D.L. Williams SC, H.S.A. Neal – Second Defendant

J.M. Horton QC, E. Morzone – Third Defendant

Solicitors:

Maurice Blackburn Pty Ltd – Plaintiff

King & Wood Mallesons – First Defendant

Norton Rose Fulbright – Second Defendant

Crown Solicitor – Third Defendant

File Number(s): 2014/200854

Publication Restriction:

JUDGMENT *(revised from ex tempore)*

- 1 In late last year in *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater* [2014] NSWSC 1565 (“*Rodriguez (No 1)*”), Garling J dealt with a number of pleading issues that had arisen in relation to this class action. His Honour also fixed the hearing of these proceedings to commence on 18 July 2016. At that time his Honour was not able to identify the common questions that would be litigated at that hearing as the proceeding had only commenced some months previously.
- 2 As I understand it the purpose in fixing that hearing was to focus the parties' attention upon the need to deal with the case expeditiously notwithstanding its significant size and scope.
- 3 In *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 3)* [2015] NSWSC 838 (“*Rodriguez (No 3)*”), I outlined a number of matters concerning the plaintiff's proposed reliance on certain hydrolic expert evidence and the significance of it to these proceedings at [43] to [47].
- 4 In particular, I noted that the plaintiffs had indicated that they had retained an expert who constructed a model that incorporates detailed topological mapping of the greater Brisbane area, as well as information concerning certain water flow into that area during the period December 2010 to January 2011 apparently from all sources. The plaintiffs had indicated that the model

was said to be capable of taking as an input hypothetical outflows from the Wivenhoe Dam system and reconstructing what the level of flooding would have been for every 10 square metres in the Brisbane area.

5 From that very brief description it is evident that the model is a matter of considerable complexity. It is also a matter of considerable importance to the proceedings because it addresses what could be colloquially described as the “back half” of the plaintiffs' case, namely, had the relevant dam system been operated in the manner contended for by the plaintiffs what would have been the level of flooding in the greater Brisbane area?

6 The plaintiff has experienced delays in serving the model and the expert evidence that accompanies it.

7 By the time of *Rodriguez (No 3)* it became clear to me that there is no way that the hearing of July 2016 could be met if the issues that are sought to be addressed by that model are to be litigated at that time. As a matter of fairness, the defendants could not reasonably expect to be in a position to meet that part of the case. In *Rodriguez (No 3)* at [47], I raised the possibility that questions of duty and breach could be separated from causation so as to allow the hearing in July 2016 to proceed at least in respect of some of the common issues.

8 Since that time there have been further delays in the service of the hydrological model. Further, all the parties, with the benefit of very experienced legal advice, have been able to consider their position in relation to the proposal that I tentatively raised. One of the defendants indicated, perhaps politely, that they saw some benefits in that proposal. However the balance of the parties on both sides of the ledger have made it clear they are not interested in pursuing that proposal.

9 In these circumstances, I do not think that the Court has any choice other than to vacate the hearing which had been listed in July 2016. To reiterate, there is simply no way, having regard to the current timetable involving service of

the model, that the defendants could be reasonably expected to meet a case which involves reliance on it. To adhere to the hearing date from this point onwards in the hope of driving the parties to prepare the case even quicker than they are would, in my view, involve a wastage of considerable costs by the parties and needlessly tie up the Court's resources.

10 Accordingly, I will vacate the hearing listed in July 2016.

11 In terms of allocating a further hearing date, the current timetable involves steps being taken throughout 2016 to have the matter ready for hearing in 2017. The parties will return before me in November of this year. At that time certain issues concerning opt out notices and perhaps the composition of a class will be agitated.

12 Also, by that time the defendants will have received the plaintiff's material concerning the hydrological model and thus be in at least some position to give a preliminary indication as to when a hearing date is feasible.

13 In those circumstances, I will not allocate a hearing date today. I can indicate to the parties that I expect to do so in November.
