

Exemplary Damages

Lee v Kennedy and Adams v Kennedy (NSW Court of Appeal, Unreported, 26 June 2000)

The Court of Appeal in two recent decisions of *Lee v Kennedy* and *Adams v Kennedy* awarded the Plaintiffs exemplary damages in the sum of \$120,000 and \$100,000 respectively in their actions against police officers and the State of NSW for their wrongful arrests.

The facts

Both cases arose out of the same incident. The Plaintiffs lived together in a de facto relationship. Three police officers went to their premises in order to arrest Mr. Adams. He resisted and a melee broke out which involved Ms. Lee. Both Adams and Lee were arrested by the police.

The Plaintiffs commenced proceedings against the three police officers and the State of NSW (the State being vicariously liable for the conduct of the three officers) alleging trespass to land, trespass to the person and false imprisonment. They claimed aggravated and exemplary damages.

The trial judge found the Defendants guilty of trespass to the person. There was never any issue in the proceedings that the State of NSW was vicariously liable for the conduct of the police officers. Adams was awarded \$50,000 general damages and \$10,000

for reduced earning capacity. No exemplary damages were awarded. Lee was awarded \$25,000 for general damages and \$15,000 for "aggravated or exemplary damages".

The Appeal decision

The Plaintiffs appealed. The Court of Appeal found that the Plaintiffs were entitled to succeed in their claims for false imprisonment and trespass to property. However it is the amount awarded for exemplary damages which should be of most interest.

Justice Priestley in the *Adams* appeal, after commenting that there is little guidance from reported decisions on what appropriate amounts of exemplary damages in the present case would be, said:

"That figure should indicate my view that the conduct of the defendants was reprehensible and mark the court's disapproval of it. The amount should also be such as to bring home to those officials of the State who are responsible for the overseeing of the police force that police officers must be trained and disciplined so that abuses of the kind that occurred in the present case do not happen. In my assessment the appropriate assessment should be fixed at the aggregate sum of \$100,000."

In the *Lee* appeal the Court of Appeal held that an amount of \$15,000 was completely inadequate.

The trial judge had described the treatment of Lee by the police as a disgraceful episode. After trying to aid her husband in prying a police officer off

him, she had left the melee to make a telephone call for assistance. Two of the defendants followed her and dragged and wrestled her out of the house. One officer had her in a headlock. Her clothing was torn in the process so that her undergarments and body were exposed. She remained like this in the police van and at the police station until later in the evening when she was able to cover herself up with a jumper her solicitor brought her.

Justice Priestley, with whom Sheller and Beazley JJ agreed, referred with approval to the remarks of Justice Sheller during the course of the appeal when His Honour said:

"[this was] an extraordinarily serious breach of, if you like, fundamental rights. If this power to award exemplary damages is to mean anything, it must mean that the damages are imposed in a way which brings home to these particular defendants, including this State, that this conduct is not accepted and that it shouldn't happen again...somebody has to sit up and say that this simply has to stop, that the taxpayers shouldn't be paying for this sort of behaviour."

The decisions are significant in that it shows a willingness of the Court to award substantial compensation for exemplary damages. It also sends a warning to Governments that if they cannot control members of the Police Force then they should expect to pay a heavy price. It must be remembered that the State of NSW was only vicariously liable. An application for special leave to appeal to the High Court has been filed. ■