Summary of Judgment

Nicos Andrianakis v Uber Technologies Inc (No 1)
[2019] VSC 850

20 December 2019

In May 2019, Nicos Andrianakis, a Victorian taxi driver, commenced a group proceeding under Part 4A of the *Supreme Court Act 1986* against seven corporate entities within the Uber Group of companies – two Australian and five foreign. Mr Andrianakis claims damages on his own behalf and on behalf of taxi drivers and operators of other similar passenger services in Victoria, NSW, Queensland and WA. He claims that he and the group members suffered financial loss when the Uber defendants launched the UberX ridesharing service in 2014 in the four Australian states. His claim is based up on the tort of conspiracy by unlawful means.

Today, the Hon. Justice Macaulay announced that he intends to dismiss the foreign defendants' application to set aside the service of the Supreme Court writ upon them on the ground that service out of Australia was not, in this particular case, authorised by the Court's rules. Orders to that effect will not be made until the plaintiff files a further amended statement of claim (see below). The judge also dismissed applications by the Australian defendants that the proceeding should either not continue as a group proceeding at all or, at least, should only proceed on behalf of group members in Victoria.

The Australian defendants had also applied to strike out Mr Andrianakis' statement of claim on the ground that, as currently pleaded, it did not set out an arguable case; alternatively, it did not clearly and adequately inform them of the nature of the case brought against them. The judge rejected all arguments except one. His Honour ruled that the statement of claim did not set out clearly enough the assertion that the Uber defendants intended to cause financial harm to Mr Andrianakis and the group members, a constituent element of the cause of action alleged against them. Rather than strike out the statement of claim, however, the judge directed Mr Andrianakis to file an amended pleading. The judge considered that if Mr Andrianakis pleaded the intention element as it was spelt out in submissions made to the court on the hearing of the application, such amended claim would likely constitute a sufficiently arguable case and provide adequate information to the defendants of the case put against them.

Finally, the Australian defendants had sought security for their costs from Mr Andrianakis in the event that they were ultimately successful in the proceeding. There was no dispute that some amount of security should be given for the first phase of the proceeding, up to the date when the Uber defendants file their defences to the claim. The only dispute was about the amount. Holding that it was fair, in the circumstances, that the Australian defendants should only provide security for 2/7ths of the costs incurred in common with the other foreign Uber entities, the judge fixed the amount of security in the sum of $115,000.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the court's reasons or to be used in any later consideration of the court's reasons. The only authoritative pronouncement of the court's reasons and conclusions is that contained in the published reasons for judgment.