MAGISTRATES COURTS OF QUEENSLAND

CITATION:	*South Burnett Regional Council v Warren Chung Leung Seeto v Sharon Yen Kan Seeto* [2023] QMC 15
PARTIES:	**SOUTH BURNETT REGIONAL COUNCIL** (Plaintiff) **v** **Warren Chung Leung Seeto** (1st Defendant) **v** **Sharon Yen Kang Seeto** (2nd Defendant)
FILE NO/S:	53094/23
DIVISION:	CIVIL
PROCEEDING:	APPLICATION
ORIGINATING COURT:	Brisbane
DELIVERED ON:	22/09/2023
DELIVERED AT:	Brisbane
HEARING DATE:	22/09/23
MAGISTRATE:	Pinder J
ORDER:	**1 The defendants' application is dismissed.** **2 I direct the parties to file any written submissions as to cost orders sought (to be no more than 5 typed A4 pages) within 7 days**
CATCHWORDS:	Summary judgement – strikeout application *Magistrates Court Act 1921* (Qld) s 4 *Uniform Civil Procedure Rules 1999* (Qld) – rules, r 293, r 171 *Deputy Commissioner of Taxation v Salcedo* [2005] QCA 227 *Queensland Building Services Authority v Orenshaw & Anor* [2012] QSC 241 *Jessop v Lawyers Private Mortgages Ltd & Ors* [2006] QSC 3

Royalene Pty Ltd v Registrar of Titles & Mistilis [2007] QSC 059

Robert Bax & Associates v Cavenham Pty Ltd [2011] QCA 53

Butler v Crowley & Galvin Solicitors [1999] QSC 6

COUNSEL:	Plaintiff- Mr C Maschoudis
	1st and 2nd defendanst appearing pro se
SOLICITORS:	Plaintiff – Recoveries & Reconstruction legal
	Defendants - Nil

[1] The plaintiff bring suit claiming $1,077.28 as a debt in respect of local government rates and charges levied by the plaintiff in respect of land, being a property at 141 Sutherland Drive Taromeo Queensland.

[2] On the face of the claim and statement of claim commencing the proceedings by the plaintiff, the nature of the claim would appear uncontroversial. The plaintiff, as a local council with power to levy rates and charges pursuant to the local *Government Act 2009 (QLD)* **(LGA)** seeks to recover as a debt unpaid rates and charges.

The Application:

[3] The first and second defendants' who style themselves as counter plaintiffs (apply for the following relief);

1. *Summary judgment.*
2. *The strike out of paragraphs 6, 7, 10, 12 – 16, and 18-20 of the Statement to Claim.*

[4] The application also seeks what appears to be declaratory relief as follows.

1. An order the plaintiff (styled as counter defendants') cease and desist from soliciting funds.
2. An administrative decision in harmony with the certificates of protest.
3. The proceedings be summarily dismissed or in the alternative adjourned *sin die*.
4. An order the plaintiffs provide a final statement of account showing a zero balance.

Jurisdiction:

[5] The jurisdiction of the Magistrates Court is provided by the *Magistrates Court Act 1921.*

[6] Section 4 of the *Magistrates Court Act 1921* provides as follows.

Jurisdiction of Magistrates Courts

(1) Subject to this Act—

(a) every personal action in which the amount, value or damage sought to be recovered is not more than the prescribed limit, whether on a balance of account or after an admitted set-off or otherwise, including any claim for detention of goods or chattels; and

(b) every action brought to recover a sum of not more than the prescribed limit, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will; and (c) every action in which a person has an equitable claim or demand against another person in respect of which— (i) the only relief sought is— (A) the recovery of a sum of money or of damages, whether liquidated or unliquidated; or (B) the delivery of possession of goods or chattels in relation to a right, security interest, encumbrance, charge or lien; and (ii) the amount, value or damage claimed is not more than the prescribed limit; may be commenced in a Magistrates Court, and all Magistrates Courts shall within their respective districts have power and authority to hear and determine in a summary way all such actions.

[7] The Magistrates Court has no power to grant the relief sought in the application by the first and second defendants' in so far as to declaratory relief is sought in paragraphs 2, 4, 6, 7, and 10 of the application.

[8] **There being no jurisdiction to grant the relief sought by the defendants', the application in respect of that relief must fail and be dismissed.**

Summary Judgement:

[9] The defendants seek summary judgment as against the plaintiff.

[10] *Rule 293* of the *Uniform Civil Procedure Rules* **(UCPR)** provides in respect of summary judgement for the defendant as follows.

293 Summary judgment for defendant

(1) A defendant may, at any time after filing a notice of intention to defend, apply to the court under this part for judgment against a plaintiff.

(2) If the court is satisfied— (a) the plaintiff has no real prospect of succeeding on all or a part of the plaintiff's claim; and (b) there is no need for a trial of the claim or the part of the claim.

the court may give judgment for the defendant against the plaintiff for all or the part of the plaintiff's claim and may make any other order the court considers appropriate.

The Relevant Legal Principles:

[11] In determining applications for summary judgement (pursuant to Rule 292 and Rule 293) this court is bound by the statements of principal contained in *Deputy Commissioner of Taxation v Salcedo*[1] where it was held:

> *"Summary judgement will not be obtained as a matter of course and the Judge determining such an application is essentially called upon to determine whether the respondent to the application has established some real prospect at succeeding at trial, if that is established then the matter must go to trial."*

[12] At paragraph 44 of the judgement Atkinson J stated:

> *"In the case of an application by the Plaintiff, the court must consider if it is satisfied that:*
>
> *a) The Defendant has no real prospect of successfully defending all or part of the Plaintiff's claim; and,*
> *b) There is no need for a trial of the claim or part of the claim.*
>
> *"If the court is satisfied of those circumstances, then it has the discretion to give judgement for the Plaintiff and make any other order that it considers appropriate. Similar criteria apply to an application by a defendant pursuant to rule 293."*

[13] Her Honour continued at paragraph 47 and further held:

---

[1] [2005] QCA 227

> *"... the court must consider whether there exists a real, as opposed to fanciful, prospect of success. If there is no real prospect that a party will be successful in all or part of a claim and there is no need for a trial, then ordinarily the other party is entitled to judgement."*

[14] In *Queensland Building Services Authority v Orenshaw & Anor*[2] Henry J said in respect of the relevant test:

> *"The words 'no real prospect of proceeding' mean what they say. They are to be applied in conjunction with required satisfaction that there is no need for a trial, so as to ensure before any summary intervention that there is a high degree of certainty about what the ultimate outcome of the proceeding would be if it were allowed to go to trial in the ordinary way."*

[15] Whilst those authorities require the court to apply the rule giving the words their usual and ordinary meanings and without further amplification, their practical application to particular circumstances was considered comprehensively by Chesterman J in *Jessop v Lawyers Private Mortgages Ltd & Ors*[3].

[16] His Honour at paragraphs 18 and 19 of the decision considered the earlier authorities and the proposition that the wording of the rule ought to be given its "plain and unambiguous meaning". His Honour adopted a convenient and practical approach to the application of the rule and held at paragraph 20:

> *"If summary judgement is not to work on an injustice it must be limited to those cases where it can be seen that a plaintiff or defendant, as the case may be, could not succeed at a trial of the action. It is only where a trial can be seen to be pointless that judgement should be entered summarily. Whatever form of words one uses the reality must be that it will only be just to deprive a party of its right to prosecute its claim or defence at trial where it can be seen that the claim or defence cannot succeed. If it might succeed, if there is a possibility of success, it cannot be just (though it might be expeditious) to enter summary judgement."*

[17] His Honour continued at paragraph 21:

> *"In practical terms I suspect the rule means (as the old rules meant) that summary judgement should not be given where the facts upon which the parties respective rights depend are disputed, or where the respondent to the application for summary judgement adduces evidence as to the existence of facts, which if proved, would establish a defence or right to relief. In other words it is only where all the facts are known and/or are establish beyond controversy that the court should embark upon determining whether to give summary judgement. Where relevant facts are converted, or where it appears*

---

[2] [2012] QSC 241
[3] [2006] QSC 3

that facts may exist which would affect a right of action or defence, there should be a trial to determine the facts…"

[18] In approaching the disposition of the present application I proceed adopting the test enunciated by Chesterman J at paragraph 23 of *Jessop v Lawyers Private Mortgages Ltd & Ors*[5] that is, I approach the defendant's application on the basis that I should give judgement only if satisfied that there are uncontroverted facts proved by the material read in the application which show an entitlement in law to the relief claimed by the defendant, and that there is no evidence to suggest the existence of additional facts which, if proved would controvert those facts.

Summary Judgment Application – Contest:

[19] In application for summary judgement brought by a defendant pursuant to *rule 293 (UCPR)* the first is question is whether the plaintiff has no real prospect of succeeding on all or part of the plaintiff's claim.

[20] The applicant first and second defendants must satisfy the court of that first limb of the test under *rule 293* before consideration of the second limb.

[21] The first and second defendants' have filled a conditional defence which relevantly.

- Admits the allegations contained in paragraphs 1, 2-5, 8-9, and 11-17 of the statement of claim.

[22] The defendants deny all allegations contained in paragraphs 6, 7, 10, 12-16, and 18-20 of the statement of claim.

[23] The affect of the defence is that the defendants seek to put an issue on the pleadings that.

- The plaintiff has power to levy rates and charges.
- The land the subject of the claim, is not within the plaintiff jurisdiction.
- The plaintiff has lawfully levied council rates and charges;
- That any rates and charged levied are unpaid.

[24] The defence does not comply with the requirements of *rule 166 (UCPR)* as whilst the defendants' have purported to deny the allegations in the statement of claim, the defence does not comply with the obligations of *rule 166(4).*

[25] The denial is not accompanied by a direct explanation for the belief that the allegation is untrue.

[26] The defendants in support of the application have filled an affidavit by the second defendant *Sharon Yen Kang Seeto.*

[27] The affidavit purports to annex a number of documents which are quiet frankly simply bizarre.

[28] The defendant's have sought in their dealing with the plaintiff to respond in various forms including a final notice of default, a certificate of protest, default and dishonour, a notice of temporary appointment as fiduciary executed by *Ms Seeto* as administrator executor, a notice of tender of payment and finally and mostly bizarrely a *"money order"* endorsed in handwriting by *Ms Seeto* on the final reminder notice for payment issues by the plaintiff.

[29] The first and second defendants would appear to be those within a peculiar class of litigant who do not accept that the laws of Queensland passed by the Queensland Parliament apply to them and that through some "*magical"* restorations or productions of documents which have no lawful of basis, they can escape any liability in debt or otherwise.

[30] The application for summary judgment by the defendants' is clearly wholly unmeritorious.

[31] The applicant defendant's material does not remotely rise to demonstrating as required by *rule 293* that the plaintiff has no real prospects in succeeding on all or parts of it's claims.

[32] **The application for summary judgment fails and must be dismissed.**

The Application to Strike Out Pleadings

The Relevant Rule – Strike Out:

[33] *Rule 171* of the (*UCPR)* provides.

171 Striking out pleadings.

(1) This rule applies if a pleading or part of a pleading—

(a) discloses no reasonable cause of action or defence; or

(b) has a tendency to prejudice or delay the fair trial of the proceeding; or

(c) is unnecessary or scandalous; or

(d) is frivolous or vexatious; or

(e) is otherwise an abuse of the process of the court.

(2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.

(3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading

Discussion Strike Out Application:

[34] In *Royalene Pty Ltd v Registrar of Titles & Mistilis* [2007] QSC 059 the court said in respect of r. 171 at paragraph 6

> The focus of argument was principally on UCPR 171(1)(a) which is concerned with pleadings that disclose no reasonable cause of action or defence. UCPR 171(3) provides that on the hearing of an application to strike out part of a pleading, the court is not limited to receiving evidence about the pleading. Even to the extent that that may involve a relaxation of the approach that applied under the former rules, there is still good reason to regard the applicable principle to be that the discretion to strike out should only be exercised where the defence raised is obviously untenable. Conversely it should not be exercised except in clear cases. (*General Steel Industries Inc v Commissioner for Railways (NSW) (*1964) 112 CLR 125, 130; *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62, 84 and 91). That is especially so where the case is pleaded as a circumstantial one and the inference to be drawn from evidence critical to determining liability is not common ground and the evidence is untested.

[35] The discretion to be exercised pursuant to r. 171 was considered again by the court in *Salvatore Coco v Ord Minette Ltd* [2012] QCS 324 where the court said commencing at paragraph 17 as follows.

> [17] The application to strike out the entirety of the statement of claim calls up whether the defects, which I have just mentioned, are sufficient to warrant an order in the exercise of discretion that the whole pleading be struck out. The discretion is informed by a number of relevant principles and factors. I do not propose to essay the law for the purposes of deciding this application. However, it is an important function of pleadings that they limit the scope of and inform the issues which must be litigated at the trial so that the trial can proceed in the most efficient way. In a case of this kind, the overriding duty of a party in UCPR 5

> does not lessen the importance of accurate pleadings – if anything it increases them.
>
> [18] Secondly, the exercise of discretion under UCPR 171 varies according to which of the relevant paragraphs of that rule is in play. For example, if the court determines that a statement of claim discloses no reasonable cause of action it is determining that the facts pleaded are not capable in law of giving rise to the relief sought. Cases such as General Steel Industries Inc v Commissioner for Railways (NSW)[23] show that even lengthy argument may be necessary to dispose of what is ultimately a question of law. This is not an application of that kind.
>
> [19] On the other hand, where the problem is one of inadequate or inaccurate pleading which has a tendency to prejudice or delay a fair trial, or the pleading contains unnecessary or scandalous allegations or frivolous or vexatious allegations or is otherwise an abuse of the process of the court, there tends to be a more general discretion. Nevertheless, the case law recognises that a pleading may be so defective notwithstanding earnest attempts by the pleader that ―it will be an act of mercy to strike it out.[24] That is so, even though it is for the party pleading to formulate its case and the court's role is primarily to consider whether a reasonable cause of action is disclosed, and to facilitate the just and expeditious resolution of the real issues rather than to dictate to a party a rigid manner in which a case should be pleaded. In summary, the courts are slow to interfere and ordinarily act only where there is some substantial objection or some real embarrassment.

[36] Similarly, the Court of Appeal decision of *Robert Bax & Associates v Cavenham Pty Ltd* [2011] QCA 53 when the Court said in respect of the rule at paragraph 16.

> Rule 171 closely resembles the language of former O 22 r 32 Rules of the Supreme Court 1991 (Qld) which enabled a judge to strike out or amend any matter in the pleading which tended "to prejudice, embarrass, or delay, the fair trial of the action". The word "embarrass" has not been retained. Nonetheless any pleading which is difficult to follow or objectively ambiguous or creates difficulty for the opposite party insofar as the pleading contains inconsistencies, is liable to strike out because it can be said to have a tendency to prejudice or delay the fair trial of the proceeding rather than "embarrass" the opposite party.

[37] Those considerations of r. 171 follow the principles enunciated in the decision in *Butler v Crowley & Galvin Solicitors* [1999] QSC 6 where the Honourable Justice Muir said commencing at paragraph 4

> [4] In my view, it would be unjust to permit a trial of action on the basis of the allegations in the statement of claim. The defendant could not hope to identify with any reasonable precision the case it is called on the meet. It would also be put in the position of having to prepare to meet innumerable allegations which are irrelevant to allegations of breach of duty and loss of damage… the duration of any trial of the action and, in consequence, its cost, would be unnecessarily increased and the prospects of due determination of relevant issues decreased. The defendant would be prejudiced by being unable to sensibly formulate an offer of settlement…"

[38] Similarly with the misconceived and unmeritorious application for summary judgment by the defendants' the application to strike out the nominated paragraphs of the statement of claim is wholly without merit.

[39] The first and second defendant do not identify in their material how, on the face of otherwise properly pleaded claim by the plaintiff, the alleged offending in paragraphs and in the statement of claim fall within any of the requirements of *rule 171.*

[40] Again, it would appear from the nature of the purported defence and the defendants' affidavits material that the defendants simply contend that the laws of Queensland do not apply to them and that the legislation passed by the Queensland Parliament and in particular, the *Local Government Act (2009)* does not operate as against them.

[41] **The application for strike out is completely unmeritorious and must fail and be dismissed.**

Disposition:

[42] The first and second defendants' have brought what are properly described as *"bizarre"* allegations in both the purported conditional defence and the interlocutory application seeking a summary judgment and or strike out. The application in its entirety must fail and is dismissed.

[43] I order that the defendant's application be dismissed.

Costs

[44] I direct the parties to file written submissions as to costs orders sought (to be no more than 5 typed A4 pages) within in 7 days.