SUPREME COURT OF QUEENSLAND

CITATION:	*Port Ballidu Pty Ltd v Mullins Lawyers* [2017] QSC 91
PARTIES:	**PORT BALLIDU PTY LTD ACN 010 820 185** (plaintiff) **v** **MULLINS LAWYERS** (third defendant)
FILE NO/S:	No 7459 of 2015
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	26 May 2017
DELIVERED AT:	Brisbane
HEARING DATE:	11 November 2016
JUDGE:	Dalton J
ORDER:	**1. Directions as to pleadings.** **2. Application otherwise dismissed.** **3. Costs in the cause.**
CATCHWORDS:	ADVOCATE'S IMMUNITY – OUT OF COURT WORK – OMISSION – SOLICITORS – ISSUES RAISED BY DEFENCE *Attwells & Anor v Jackson Lalic Lawyers Pty Ltd* [2016] HCA 16 *Day v Rogers* [2011] NSWCA 124 *D'Orta-Ekenaike v Victoria Legal Aid & Anor* (2005) 223 CLR 1 *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 *Giannarelli v Wraith* (1988) 165 CLR 543 *Arthur JS Hall & Co v Simons* [2002] 1 AC 615 *Lai v Chamberlains* [2005] 3 NZLR 291 *Rees v Sinclair* [1974] 1 NZLR 180 *Rondel v Worsley* [1967] 1 QB 443 *Saif Ali & Anor v Sydney Mitchell & Co* [1980] AC 198 *Symonds v Vass* [2009] NSWCA 139 *Wardley Australia Ltd v State of Western Australia* (1992) CLR 514

COUNSEL:	T Pincus for the third defendant/applicant D Savage QC with I Erskine for plaintiff/respondent
SOLICITORS:	Bartley Cohen Law for the third defendant/applicant Creagh Weightman Lawyers for the plaintiff/respondent

[1] On 17 May 2010 White J gave judgment in BS 11916 of 2007.[1] The plaintiff was a company, J Wright Enterprises Pty Ltd, and the defendant was the company which is the plaintiff in this proceeding. The subject of the 2007 litigation was a loan which J Wright Enterprises advanced to Port Ballidu. That loan was secured by a mortgage. White J found that the director who caused Port Ballidu to enter into the loan was acting without authority and that J Wright Enterprises was on notice as to this, largely, although not entirely, through its solicitor, a Mr Grant from Frews Lawyers. Nonetheless, the plaintiff succeeded at trial, for while White J found that conduct by Mr Grant in registering the mortgage which secured the loan was "sufficient to constitute statutory fraud", it was not a fraud which could be sheeted home to J Wright Enterprises and thus defeat the indefeasibility conferred by registration. J Wright Enterprises was thus let into possession of the mortgaged property – at Manning Street, South Brisbane – and it was sold. There was no appeal from this judgment.

[2] The current proceeding brought by Port Ballidu named Mr Grant and Frews Lawyers as first and second defendants. Against them it was alleged that they were knowingly concerned in the fraud perpetrated on Port Ballidu by its director and were thus liable to Port Ballidu for the loss of the Manning Street property. In a decision given in February this year Applegarth J gave summary judgment in favour of Grant and Frews on the basis that the action against them was time-barred.[2] There has been an appeal from that decision, which has not yet been determined.

[3] The remaining defendant in this proceeding is the firm of lawyers which acted for Port Ballidu in the 2007 proceedings. It applies to strike out the proceeding against it on the basis that the claim cannot succeed because it is protected by advocate's immunity.

[4] The pleading against the third defendant is that it was retained from late January 2008 to act on Port Ballidu's behalf in defence of the 2007 proceedings. The current proceedings plead the fact of the 2010 judgment and plead the main findings of fact which underpin it. The pleading goes on to allege that the errant director of Port Ballidu was subject to fiduciary duties to Port Ballidu and was in breach of them in signing the loan agreement with J Wright Enterprises, and in giving Grant and Frews documents which would enable them to register the mortgage security in support of the loan. It is pleaded that Grant and Frews aided and abetted this breach of duty by registering an unregistered power of attorney in favour of the errant director; endorsing the unregistered mortgage so that it appeared to be executed pursuant to that power of attorney; lodging the mortgage for registration, and paying the proceeds of the loan to various people who had no obvious connection with the business of Port Ballidu. It is said that in acting this way, Grant, and by him Frews, acted either with actual knowledge of the errant director's purpose or

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1 Reasons at [2010] QSC 213.
2 [2017] QSC 19.

wilfully in circumstances which would have put an honest person on enquiry. It is further pleaded that the conduct of O'Rourke was in trade and commerce and in breach of s 52 of the *Trade Practices Act*. It is said that Frews and Grant are liable as persons involved because they aided and abetted or were otherwise knowingly concerned – s 75B of the *Trade Practices Act*.

[5] The next section of the pleading alleges that the third defendant: never provided advice to Port Ballidu in respect of the actual or potential liability of Grant and Frews by reason of their involvement in the errant director's breach of duties and failed to advise Port Ballidu to join Grant and Frews in circumstances where the mortgage might be held to be enforceable. It is pleaded that Port Ballidu requested the third defendant to provide advice as to the potential liability of Grant and Frews. It is pleaded that a solicitor acting reasonably would not have failed to give advice to join Grant and Frews, and that had advice been given, the plaintiff would have instructed that they be joined. In the circumstances it is pleaded that the third defendant breached its contractual and general law duties to Port Ballidu and that in consequence Port Ballidu suffered loss and damage. That loss and damage is pleaded to be:

(a) the cost of this separate proceeding, rather than (implicitly) the cost savings associated with suing Grant and Frews in the 2007 proceeding,[3] and

(b) the loss of Port Ballidu's equity in the Manning Street property because, had Grant and Frews been joined in the 2007 proceeding, Port Ballidu would have obtained a money judgment against them sufficient to discharge the mortgage over the Manning Street property. That is, the property would not have been sold by J Wright Enterprises as mortgagee in possession, but instead Port Ballidu would have discharged the mortgage with the fruits of judgment obtained against Frews and Grant.

[6] The High Court decision in *Attwells & Anor v Jackson Lalic Lawyers Pty Ltd*[4] makes it clear that Australian law does contain a rule that advocates are immune from suit. The rule is as stated in *D'Orta-Ekenaike v Victoria Legal Aid & Anor*.[5] It is:

> "… at common law, an advocate cannot be sued by his or her client for negligence in the conduct of a case, or in work out of court which is intimately connected with the conduct of a case in court …"[6]

[7] The decisions of the High Court in *Giannarelli v Wraith,*[7] *D'Orta* (above) and *Attwells* (above) cite with approval and rely upon the English decisions of *Rondel v Worsley*[8] and *Saif Ali & Anor v Sydney Mitchell & Co*[9] as well as the New Zealand decision of *Rees v Sinclair.*[10]

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3 This is a conceptually different claim from the "wasted costs" type of claim, eg, at [66] *D'Orta,* because it does not (through a claim related to the costs order) impugn the 2007 judgment.
4 [2016] HCA 16.
5 *Attwells,* above, [3].
6 *D'Orta*, (2005) 223 CLR 1, [1] and see [25] and [86].
7 (1988) 165 CLR 543.
8 [1967] 1 QB 443.
9 [1980] AC 198.
10 [1974] 1 NZLR 180.

[8] The law, and the policy rationale for it, has evolved through the course of those decisions. But it is important to the decision I come to in this case that the Australian High Court has approved *Saif Ali* in particular.[11] It is also important I think to acknowledge that the statement of the current rule owes much to the decision of McCarthy P in *Rees v Sinclair,* both via *Saif Ali*[12] and directly in the Australian decisions.[13] The crucial part of McCarthy P's judgment is:

> "Each piece of before-trial work should … be tested against the one rule; that the protection exists only where the particular work is so intimately connected with the conduct of the cause in court that it can fairly be said to be a preliminary decision affecting the way that cause is to be conducted when it comes to a hearing. The protection should not be given any wider application than is absolutely necessary in the interests of the administration of justice …"[14]

[9] McCarthy P wrote the above statement at a time when advocate's immunity was largely justified on the basis that an advocate's role was peculiar in that he or she owed a duty to the Court as well as to the client, and that tactical decisions during the course of a trial were peculiarly fraught. This thinking justified an immunity for work in Court and the question the Courts grappled with, and which McCarthy P was addressing, was how far that immunity should extend to out-of-Court work.

[10] The High Court now recognises firmer policy foundations for the rule of advocate's immunity as part of a set of rules with a common purpose to prevent collateral attack of judicial decisions;[15] rules requiring the finality of litigation and that controversies be quelled,[16] and that the Court's role in pronouncing judgments, central to its function as a part of Government, is to pronounce judgments which either declare lawfulness or make lawful specific conduct.[17] Other rules which achieve these same policy ends are acknowledged and discussed in the cases.[18]

[11] In understanding and applying any legal rule an understanding of its purpose, and the policy rationale for it, is helpful. In applying a rule as broad and unsettled as the rule granting advocate's immunity, even more so. However, thinking about the policy behind a rule cannot become so dominant that the Court applies its understanding of the policy rather than the rule itself. The rule is as stated at [6] above; there is no more general, malleable and wide-ranging rule that litigation which involves re-litigation of issues already determined is prohibited. There are rules which prohibit such litigation in various circumstances.[19] But the only rule which the applicant relies upon here is the rule that, where a proceeding alleges negligence against an advocate based on conduct which is intimately connected with the conduct of a case in Court, the defendant has a defence so strong and so complete that the proceedings ought to be terminated without a hearing in

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11 See *Giannarelli* at pp 555, 559, 560, 596, *D'Orta* [25] and *Attwells* [31].
12 See *Saif Ali* at pp 215, 216, 224, 236.
13 See *Giannarelli* at pp 560, 571, 577*, D'Orta* [151] and *Attwells* [2].
14 *Rees v Sinclair* (above) at p 187.
15 *Giannarelli* pp 555, 594; *Attwells* [38], [41], [52].
16 *D'Orta* [32]-[33]; *Giannarelli* p 558; *Attwells* [34] and [52].
17 *D'Orta* [25], [45]; *Attwells* [35].
18 Eg, *D'Orta* [34]ff; *Saif Ali* pp 222-233.
19 See the citations at footnote 18 for some examples.

accordance with the provisions in *General Steel Industries Inc v Commissioner for Railways (NSW)*.[20]

[12] The test is not whether in any particular case the litigation will call into question the correctness of an extant judicial determination. If illustrations of this point are needed, one need look no further than the facts in *Giannarelli* and *D'Orta.* In both cases, by the time proceedings against the advocate were commenced, the appeal process had brought about the result, *inter partes,* that the plaintiff sought to contend was correct.[21] In this case, the plaintiff does not seek to call into question the 2010 decision of White J. To the contrary, its claim assumes that decision was correct, or at least within a range of decisions which might reasonably have been foreseen. It says that because the result ought to have been recognised as a likely result by the third defendant, the third defendant ought to have advised Port Ballidu to take action against Grant and Frews. Thus, while the plaintiff here can rightly claim that its litigation does not seek to impugn the 2010 judgment of White J, that of itself is not an answer to the application: nor did the plaintiffs in *Giannarelli* or *D'Orta* contend that the result reached *inter partes* (via the appeal process in those cases) was incorrect. Whether the applicant's point is a good one depends upon the application of the terms of the rule itself, not my understanding of the policy behind it as though the policy were a freestanding rule.

[13] The third defendant is a firm of solicitors. That does not matter for the application of the rule. At least from the time of *Rondel v Worsley*, the Courts have recognised that if the conduct complained of is intimately connected with the conduct of the case in Court it does not matter whether the conduct is on the part of a barrister or solicitor.[22] Further, it is clear that the rule applies in cases of omission to act as well as to negligent acts.[23]

[14] As noted above, the terms of the modern rule owe much to the dicta of McCarthy P in *Rees v Sinclair,* and that dicta was in the particular historical context noted above, ie., an understanding that the reason for the rule was the nature of a barrister's work in Court. Now that is no longer recognised as the reason for the rule, an obvious question arises as to whether it is logical to continue to insist on an intimate connection between the work complained of and the conduct of the matter in Court. Yet the High Court in *Attwells,* far from abandoning this requirement, emphasised it:

> "The authoritative test for the application of the immunity stated in *D'Orta* and *Giannarelli* is not satisfied where the work of the advocate leads to an agreement between parties to litigation to settle their dispute. No doubt an advice to cease litigating which leads to a settlement is connected in a general sense to the litigation which is compromised by the agreement. <u>But the intimate connection required to attract the immunity is a functional connection between the advocate's work and the judge's decision. As Mason CJ said in *Giannarelli*, the required connection is between the work in question and the manner in which the case is conducted in court</u>." – [5]; (my underlining)

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[20] (1964) 112 CLR 125.
[21] *Giannarelli* pp 553-554; *D'Orta*, [8] and cf *Attwells,* [51].
[22] *Rondel v Worsley* pp 232, 243-44, 265-267, 284-285; *Saif Ali* pp 215, 227; *Giannarelli* pp 559, 570.
[23] See *Day v Rogers* [2011] NSWCA 124, [122] and the cases cited there.

A similar statement is made at [37] of *Attwells*. Having rejected the submission that the decisions in *D'Orta* and *Giannarelli* ought to be reconsidered and the immunity abolished, the majority went on to say:

> "At the same time, however, this review of the reasons of the plurality in *D'Orta*, and the identification of the public policy on which the immunity is based, serve to show that the scope of the immunity for which *D'Orta* and *Giannarelli* stand is confined to conduct of the advocate which contributes to a judicial determination."

[15] A mere historical connection between the impugned work and the outcome of the case is not sufficient. There must be an intimate or functional connection – [46]-[49] of *Attwells.* *Attwells* dealt with advice to settle proceedings. The High Court said:

> "Just as it is true to say that advice to settle is 'connected' to the case in the sense that the advice will, if accepted, lead to the end of the case, so it is true to say that advice not to settle a case is 'connected' to the case in the sense that the advice will, if accepted, lead to the continuation of the case. But to say either of these things is to speak of a merely historical connection between events. That is to fail to observe the functional nature of the intimate connection required by the public policy which sustains the immunity." – [49].

[16] That observation by the majority in *Attwells* is important to my decision in this case. A decision to commence proceedings or to settle proceedings has massive consequences: the proceeding either goes forward, or does not go forward in Court. Similarly a decision to join a party or not join a party will have a significant impact on the shape of the proceeding that goes to the Court. But it seems to me that the dicta extracted immediately above, and indeed the following paragraph of *Attwells,* shows that this is not enough. At paragraph [50] the majority in *Attwells* said:

> "The insufficiency of a mere historical connection between an advocate's work and a litigious event may be illustrated by reference to negligent advice to commence proceedings which are doomed to fail. No one suggests that the immunity is available in such a case. Likewise, advice to cease litigating or to continue litigating does not itself affect the judicial determination of a case."

[17] Here the criticism of the third defendant is that it did not commence a case against Grant and Frews. It is true that there was extant litigation preceding the omission which is criticised, but in my view that does not make a difference in principle between this and the notional cases discussed at paragraph [50] of *Attwells*. Further, the case of *Saif Ali* is against the applicant.

[18] Because of the rapid evolution of the law in this area, I think it is well to be careful of reliance on cases which pre-dated the modern Australian approach to the rule, and *Saif Ali* is such a case. However, as noted above, *Saif Ali* was referred to with evident approval in *D'Orta, Giannarelli* and *Attwells,* and it was the first of the modern cases where the Court's policy against collateral attack was recognised as an important basis underpinning

the immunity – see Lord Wilberforce at p 212E and Lord Diplock at p 222ff.[24] Both Lords Wilberforce and Diplock were in the majority in *Saif Ali;* both thought that the failure to advise the joinder of a party to extant litigation fell outside the immunity rule, and both expressed that conclusion in vehement terms. Lord Wilberforce expressed the view that it "falls well outside the immunity area"[25] and Lord Diplock said, "It manifestly falls outside the limited extension of the immunity which I have just referred to."[26]

[19] Lord Diplock's judgment in particular illustrates why this conclusion is connected to the public policy against collateral attack – see pp 222-223 of his judgment. He explains that an action for negligence against a barrister for the way in which he or she has conducted a case in Court will be founded on a supposition that the decision of the Court was wrong, ie., will involve a collateral attack. But the allegation in that case (failing to advise who was to be a party to the action and settling pleadings accordingly) did not attract operation of the rule for it did not involve an allegation that the judicial determination was wrong, rather an allegation that a cause which ought to have been tried was not.

[20] That is the contention by the plaintiff here, ie., the cause against Grant and Frews ought to have been tried but was not because of a negligent failure to advise. It is said that this would have made a difference, not to the legal determination of the rights of mortgagee and mortgagor, but to the practical application of those rights, for the mortgagee in possession, while having the right to sell, was unlikely to have exercised it in circumstances where Port Ballidu had funds (from Grant and Frews) to satisfy the mortgage debt.

[21] In my view, there is no intimate or functional connection between the negligence alleged by the plaintiff in this matter and the conduct of the 2007 case in Court. Assuming the plaintiff can make out the case pleaded (as is necessary on an application such as this), the negligence determined who were the parties to the action, and thus in a significant way the shape of the case which was determined by the Court. But it did not in any functional or intimate way determine the way the case made in Port Ballidu's defence of J Wright Enterprises' action was conducted in the Court. It was anterior and separate to that.

Issues Raised by Defence

[22] I turn now to another feature of the present case which is, I think, conceptually distinct from what has gone before and conceptually distinct from considerations raised in the cases which I have reviewed above.

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[24] Significantly Lord Diplock was the only Law Lord in *Saif Ali* who emphasised the policy reason for the rule as being based on the law's policy against collateral attack, see p 222ff of his judgment. In that respect, he was ahead of his time, that emphasis not being taken up by the High Court until the decision in *D'Orta*. Some might think Lord Diplock was even further ahead of his time having regard to his comments at p 223 that he regretted that no "more radical submission" was advanced in *Saif Ali,* ie., that the immunity of the advocate should be abolished – see now that abolition having taken place in both England – *Arthur JS Hall & Co v Simons* [2002] 1 AC 615 and New Zealand, *Lai v Chamberlains* [2005] 3 NZLR 291.

[25] p 216.

[26] p 224.

[23] Paragraph 15 of the third amended statement of claim deals with the 2010 judgment of Justice White. Its structure is as follows:

> "15. The Court:
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> (a) made findings of fact *inter alia* and the fact is that:
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> (i) …
>
> (ii) Port Ballidu was not liable under the loan agreement;
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> …
>
> (v) Grant (and by him, Frews) admitted writing on the mortgage the capacity in which O'Rourke executed that instrument absent which it would not have been registered;
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> …
>
> (xi) Grant (and by him, Frews) committed statutory fraud but not a fraud that could be sheeted home to J Wright; and
>
> (b) held that (*inter alia*):
>
> …
>
> (iii) Port Ballidu was not liable to J Wright under the loan agreement;
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> (iv) Port Ballidu was liable to J Wright by reason of the indefeasibility of the registered mortgage;
>
> (v) J Wright could recover possession of the Manning Street property under the registered mortgage."

[24] In response the third defendant pleads:

> "15. As to paragraph 15 of the statement of claim, the third defendant:
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> (a) admits that, in the judgment, the court made findings as alleged in subparagraph (a) thereof and held as alleged in subparagraph (b) thereof;
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> …
>
> (d) says that the court should have held, and erred in not holding, *inter alia* that:
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> (i) Grant's fraud could be sheeted home to J Wright;
>
> (ii) pursuant to subsection 184(3)(b) of the [*Land Titles Act*], J Wright was not entitled to the benefits of indefeasibility with respect to the mortgage;
>
> (iii) Port Ballidu was entitled to a declaration that it was not bound by the mortgage and to an order pursuant to section 187 of the [*Land Titles Act*] cancelling the registration of the mortgage or otherwise to an order setting it aside;

(iv) in any event, that the mortgage did not secure any debt owing by Port Ballidu to J Wright as secured moneys within the meaning of the mortgage;

(v) J Wright's claim should be dismissed and Port Ballidu should have judgment on its counterclaim."

[25] It can be seen that by reason of paragraph 15 of the defence, the proceeding, as the pleadings currently stand, will involve re-litigation of the outcome of the 2007 proceedings not by way of appeal, and not by the parties to the 2007 proceedings or their privies. The submission for the third defendant was that, in consequence, I should find that hearing the proceeding would infract the rule that advocates are immune from suit and that I should summarily dismiss the proceeding.

[26] I reject this submission. First, I think that it mistakes the policy behind the immunity rule for the rule itself – see above. Second, to return focus to the rule itself, the immunity rule is a defence which may legitimately be advanced by an advocate in certain circumstances. The question I am dealing with on this application is whether the defence of advocate's immunity is such a clear and complete defence to the claim pleaded by Port Ballidu that Port Ballidu should not be allowed to have its proceeding tried. A consideration of other issues raised by the defence has no proper part in that exercise. Indeed, if the plea at paragraph 15 of the defence raises matters which infringe a legal rule (other than the advocate's immunity rule) based on the undesirability of collateral attack, I am inclined to think that is a problem for the defendant, rather than the plaintiff. Although, in this application no such rule was identified and no such argument was made.

[27] The application to strike out is dismissed.

[28] I would add that if I am wrong in thinking the position taken by the defendant at paragraph 15 of the defence has no place in a consideration of whether or not the defence of advocate's immunity is available, I consider that the controversy here should be dealt with after a hearing rather than summarily.[27] If the point raised by paragraph 15 of the defence fails (ie., if the 2010 judgment is correct), there is no other reason why the defendant is entitled to advocate's immunity. A decision as to immunity should not be made before that point is decided. I am certain that neither counsel nor solicitors acting for the third defendant, or indeed the third defendant itself, would raise such a point as is raised at paragraph 15 of the defence without due consideration and good grounds. If, however, such points were to be raised irresponsibly, and so as to deprive a plaintiff of its cause of action, that would be undesirable.[28]

Miscellaneous Pleading Complaints

[29] It was said that paragraph 27(c) of the third amended statement of claim ought to be struck out because it alleges that one consequence of the failure to join Grant and Frews in the 2007 litigation was that the plaintiff lost its right of recourse against them. It is true that

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[27] Cf cases such as *Wardley Australia Ltd v State of Western Australia* (1992) CLR 514, 533 in a limitations context, and dicta such as that of Giles JA in *Symonds v Vass* [2009] NSWCA 139, [42].

[28] Cf *Giannarelli* pp 557, 575, *Attwells* [41].

this does not sit happily with the current proceeding brought against Grant and Frews as well as the third defendant. It may have more substance now in circumstances where judgment has been given against Port Ballidu and in favour of Grant and Frews by Justice Applegarth. Although, one can imagine causation points being raised as to the loss of those rights. In any case, as noted above, Port Ballidu has appealed Justice Applegarth's 2017 decision. Whatever the outcome of that appeal, it seems to me that paragraph 27(c) may need some attention. Rather than strike the paragraph out, I direct that the plaintiff amend it to address the third defendant's current complaint and that that amendment be made within 14 days after the disposition by the Court of Appeal of the appeal from Applegarth J.

[30] The second complaint is similar in concept. Port Ballidu claims loss against Mullins on the basis that it cannot recover loss arising from the sale of the Manning Street property from Grant and Frews. Absent complications arising from the judgment given by Justice Applegarth in February 2017, minor adjustments to make it plain that the loss claimed was in the alternative as between Grant and Frews on one hand, and the third defendant on the other, would have been necessary. As just discussed, the position is a little more complicated because of that judgment and the appeal against it. I direct in similar terms to that foreshadowed at [29] above.

[31] Thirdly it is said that the paragraph which pleads the additional costs of bringing this proceeding (rather than, impliedly, proceeding more economically if only one proceeding had been necessary) should be struck out because it lacks particularity. The plea "estimates" these costs to be in the order of $300,000 and promises an expert report on this subject. I do not think this has a tendency to prejudice or delay the fair trial of this proceeding. I refuse to make any order in relation to that paragraph.

Costs

[32] This matter first came before me on 11 November 2016. It was clear after argument that Port Ballidu acknowledged some changes ought be made to the pleading and it was considered desirable that they be made, and that any additional submissions necessary be made in writing, in order that my decision be more effective than it otherwise would be. This was done. Port Ballidu filed the third amended statement of claim subsequently to that hearing. That pleading omits one allegation which the third defendant contended was a very clear case where the defence of advocate's immunity would be available. As well, Port Ballidu made amendments to some other parts of its pleading (primarily those paragraphs which dealt with loss) which made its case clearer. They might be described as amendments tidying up the pleading.

[33] In these circumstances the third defendant asks for its costs of this application on the grounds that it has been partially successful. It has. However, so has Port Ballidu on the advocate's immunity point, the subject of this judgment. I think in the circumstances I will make an order that the costs of and incidental to this application be costs in the cause.