

# SUPREME COURT OF QUEENSLAND

CITATION: *Sparkman's Electrical Pty Ltd & Ors v Habershon & Anor*  
(No 2) [2017] QSC 164

PARTIES: **SPARKMAN'S ELECTRICAL PTY LTD ACN 060 161**  
**828**  
(Plaintiff/Respondent)

And

**JOHN ANTHONY JEREMY**  
(Plaintiff/Respondent)

And

**KYLIE GAYE JEREMY**  
(Plaintiff/Respondent)

v

**JOHN BARRIE HABERSHON**  
(Defendant/Applicant)

And

**COMPLETE TECHNICAL SERVICES GROUP PTY**  
**LTD ACN 125 403 965**  
(Defendant/Applicant)

FILE NO/S: S50 of 2014

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court at Rockhampton

DELIVERED ON: 3 August 2017

DELIVERED AT: Rockhampton

HEARING DATE: On the papers – last submission received on 2 August 2017

JUDGE: McMeekin J

ORDER: **1. Direct that :**

**(a) The plaintiffs file and serve such amended Claim and Statement of Claim as they may be advised by 4pm on 11 August 2017.**

**(b) That if the plaintiffs fail to file and serve such an amended Claim and Statement of Claim the proceedings be struck out;**

**(c) That upon the filing of such amended Claim**

**and Statement of Claim the proceedings be remitted to the District Court of Queensland.**

- 2. That the further costs incurred be each parties' costs in the cause.**
- 3. That the parties have liberty to apply.**

**CATCHWORDS:** PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COURT SUPERVISIONS – DIRECTIONS – where the defendants' application to strike out the proceedings for want of prosecution was formerly dismissed – where the parties were ordered to confer with a view to agreeing on the appropriate further directions – where the parties have been unable to agree – whether the matter should remain in the Supreme Court – whether matter should be remitted to the District Court.

**COUNSEL:** K C Kelso for the applicant

S J Deaves for the respondent

**SOLICITORS:** Brandon & Gullo Lawyers for the applicant

Chris Trevor & Associates for the respondent

- [1] **McMeekin J:** On 26 July I ordered that the defendants' application to strike out the proceedings for want of prosecution be dismissed. I directed the parties to confer with a view to agreeing on appropriate further directions as to the conduct of the proceedings in light of the reasons then delivered. The parties have been unable to agree. Their respective submissions have now been filed.
- [2] The plaintiffs have indicated that they intend to amend their statement of claim. No draft is yet available. One proposed amendment will be to reduce the amount claimed to \$200,000 – approaching the Magistrates' Court jurisdiction. The directions sought by the plaintiffs are that they file and serve an amended Statement of Claim by 4pm on 11 August 2017, file and serve an application to transfer the matter to the District Court by the same time, and if required file and serve an application to amend the Claim by the same time.
- [3] The defendants seek that the matter remain in the Supreme Court and that directions be given for the filing of necessary pleadings that will have the matter ready for trial in late November.
- [4] The assumption presumably underlying the defendants' submission is that the matter can be heard more quickly in the Supreme Court than in the District Court. No evidence is advanced to support that contention and I am confident that it is wrong.

- [5] Upon enquiry the Registrar advises that there are no matters pending on the civil list in the District Court at Rockhampton. As a result there are no civil sittings planned. However his Honour Judge Burnett has proved very flexible in the past in accommodating matters as soon as the parties are ready.
- [6] There would need to be compelling reasons to justify a matter involving \$200,000 being heard in the Supreme Court. There is nothing particularly complex about the matter, factually or legally. The point made by the defendants is that there has been great delay in the past but that does not bear on the issue.
- [7] I see no need for a further application to remit the matter to the District Court. That will simply waste time and money. The parties are before the Court, the power to remit is undoubted, and it is evident that the matter should be remitted, assuming that the Claim is amended as indicated. It is appropriate that there be no further delays. To ensure that I will impose a guillotine order. Upon remittal I will have no power to give further directions as to the conduct of the proceedings. I doubt that further direction will be required. If the parties comply with the rules then the matter will be ready for trial promptly.
- [8] I direct that:
- (a) The plaintiffs file and serve such amended Claim and Statement of Claim as they may be advised by 4pm on 11 August 2017.
  - (b) That if the plaintiffs fail to file and serve such an amended Claim and Statement of Claim the proceedings be struck out;
  - (c) That upon the filing of such amended Claim and Statement of Claim the proceedings be remitted to the District Court of Queensland.
- [9] The parties' costs should be their costs in the cause. There should be liberty to apply.