

SUPREME COURT OF QUEENSLAND

CITATION: *Dickson v Cubela & Ors* [2018] QSC 34

PARTIES: **JASON BRETT DICKSON**
(plaintiff/respondent)
v
DAMIR ZVONKO CUBELA
(first defendant)
DANIEL GRIER
(second defendant)
HARRISON JOHN CARNES
(third defendant)
JANE MACLUCAS
(fourth defendant)
**QPS OFFICERS AT THE FORTITUDE VALLEY
POLICE BEAT**
(fifth defendant)
**QPS OFFICERS AT BRISBANE POLICE
HEADQUARTERS**
(sixth defendant)
CRIME AND CORRUPTION COMMISSION
(seventh defendant/applicant)
**DEPARTMENT OF JUSTICE AND ATTORNEY-
GENERAL**
(eighth defendant)
STATE OF QUEENSLAND
(ninth defendant)

FILE NO: SC No 8130 of 2017

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING
COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 1 March 2018

DELIVERED AT: Brisbane

HEARING DATE: 28 February 2018

JUDGE: Crow J

ORDER: **Judgment for the seventh defendant against the plaintiff
on all of the plaintiff's claim against the seventh defendant.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND
TERRITORY COURTS – ENDING PROCEEDINGS
EARLY – SUMMARY DISPOSAL – SUMMARY
JUDGMENT FOR DEFENDANT OR RESPONDENT:
STAY OR DISMISSAL OF PROCEEDINGS – where the

seventh defendant seeks summary judgment in respect of the parts of the plaintiff's claim against the seventh defendant – where the seventh defendant argues the plaintiff's claim discloses no cause of action against the seventh defendant – where the plaintiff is seeking damages for personal injury but has not complied with the *Personal Injuries Proceedings Act 2002* – whether the plaintiff has no real prospect of succeeding on that part of their statement of claim

Crime and Corruption Act 2001 (Qld)
Personal Injuries Proceedings Act 2002 (Qld)
Uniform Civil Procedure Rules 1999 (Qld), r 293

Aklia Holdings Pty Ltd v The Carter Group Pty Ltd (in liq)
 [2017] QSC 75, considered
Downs v Williams (1971) 126 CLR 61; [1971] HCA 45, cited
Heil v Suncoast Fitness [2000] 2 Qd R 23; [\[1998\] QCA 419](#),
 cited
O'Connor v SP Bray Ltd (1937) 56 CLR 464; [1937]
 HCA 18, cited
Rogers v Brambles Australia Ltd [\[1996\] QCA 437](#), cited
Young v Crime and Corruption Commission [2018] QSC 12,
 considered

COUNSEL: Mr B I McMillan for the seventh defendant/applicant
 The plaintiff/respondent appeared on his own behalf

SOLICITORS: Crime and Corruption Commission for the seventh
 defendant/applicant
 The plaintiff/respondent appeared on his own behalf

Background

- [1] By a statement of claim issued out of the Supreme Court on 9 August 2017 the plaintiff brings a claim in damages against nine defendants. The claim relates to an alleged assault upon the plaintiff which occurred on 9 August 2014 and subsequent events. In his reply of 11 October 2017, the plaintiff says that he accepts that the fifth, sixth and eighth defendants are not entities known to law and he accepts they are therefore not capable of being sued and are “not appropriate defendants in the proceedings, and I will amend the originating claim accordingly”.
- [2] In his statement of claim the plaintiff alleges an assault was perpetrated upon him on 9 August 2014 by the first four defendants as police officers and brings his claim against the ninth defendant, the State of Queensland, on the basis of any cause of action alleged against the first four defendants. The admission by the plaintiff in his reply of 11 October 2017 that he has no cause of action against the fifth, sixth and eighth defendants was a concession not afforded to the seventh defendant, the Crime and Corruption Commission.
- [3] On 13 February 2018 the seventh defendant filed an application for summary judgment pursuant to *UCPR* r 293.
- [4] *UCPR* r 293 provides:

“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.”

[5] In *Aklia Holdings Pty Ltd v The Carter Group Pty Ltd (in liq)*¹, Bond J said:

“[17] The approach which would be taken in relation to a defendant’s application for summary judgment (which also applies to an application advanced by a person in the position of defendant to a counterclaim) was concisely summarised by Mullins J in *Edington v Board of Trustees of the State Public Sector Superannuation Scheme* [2012] QSC 211 at [54] in these terms:

‘Under r 293(2) of the UCPR, the two conditions of which the court must be satisfied before it can give judgment for a defendant is that the plaintiff has no real prospect of succeeding on its claim and there is no need for a trial of the claim. Although r 293 (and its counterpart r 292) are modern procedural rules for applying for summary judgment in the context of the philosophy of the UCPR found in r 5, authoritative statements about exercising caution in terminating a proceeding summarily remain applicable: *Spencer v Commonwealth* (2010) 241 CLR 118 at [24] and [60], *LCR Mining Group Pty Ltd v Ocean Tyres Pty Ltd* [2011] QCA 105 at [29], and *Neumann Contractors Pty Ltd v Traspunt No 5 Pty Ltd* [2011] 2 Qd R 114 at [80]–[81]. Although the provision considered in *Spencer* was that applying in the Federal Court where the test for summary judgment is “no reasonable prospect,” rather than “no real prospect,” the comments in the judgments in *Spencer* about the exercise of caution in dismissing an action summarily were intended to apply generally in respect of the procedure of summary judgment.’

[18] And, in relation to the power to strike out, I observed in *Lee v Abedian* [2016] QSC 92 at [38] – [39] that (footnotes inserted) –

¹ [2017] QSC 75 at [17] and [18].

‘... the power to strike out is to be used sparingly and only in clear cases: *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125 at 129 to 130. The power cannot be exercised “once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it”: *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91 per Dixon J.’

However ... the Court will not shrink from striking out a pleading which is defective because it does not disclose a reasonable cause of action, has a tendency to prejudice or delay a fair trial, contains allegations which are unnecessary [*A v Ipec Australia Ltd* [1973] VR 39 at 43 per Menhennitt J; *Callide Power Management Pty Ltd v Callide Coalfields (Sales) Pty Ltd* [2014] QSC 205 at [27] to [30] per Jackson J.], scandalous, vexatious or embarrassing [*Robert Bax & Associates v Cavenham Pty Ltd* [2011] QCA 53 at [16] per White JA (with whom McMurdo P and Fraser JA agreed)], or which is otherwise an abuse of the processes of the Court [See, generally, *Radisich v McDonald* (2010) 198 IR 244 at 251; [2010] FCA 762 at [20] and *AED Oil Ltd v Back* [2009] VSC 158 at [7] to [9] per Judd J.]”

- [6] On the hearing of the application on 28 February 2018, the plaintiff provided the Court with a series of documents which have been marked Exhibit 1. I have read and considered each of the documents which relate to the assault and its aftermath. In particular, I note that the plaintiff was charged with six offences arising out of the events of 9 August 2014, however, each of those six charges was dismissed on 9 April 2015. The documents thereafter relate to the plaintiff’s complaint to the Ethical Standards Commission of the Queensland Police Service and to the Crime and Corruption Commission. The materials include the plaintiff’s submissions to and correspondence with the Chairperson of the Crime and Corruption Commission, Mr A J MacSporrán QC, as well as the written response of the Crime and Corruption Commission of 7 September 2016. The plaintiff has also provided the Court with extracts from the *Crime and Corruption Act 2001* and a photocopy of the Charter of Service of the Crime and Corruption Commission.
- [7] The plaintiff submits that this material assists him in his continuation of his claim against the Crime and Corruption Commission. The plaintiff submits that he has pled a case against the seventh defendant based upon the causes of action of breach of statutory duty and negligence. However, by his 17 page statement of claim, the plaintiff does not articulate any claim for any breach of statutory duty nor negligence. The plaintiff’s statement of claim does not comply with the rules of pleading. By paragraphs 18, 43 and 57 to 60 (inclusive), the plaintiff alleges that the seventh defendant “is complicit in the crimes”, has “aided and abetted” and prevented “prosecution of these criminal offenders” and has “failed to conduct any proper investigation and/or investigation at all into these crimes.”
- [8] The materials and particulars alleged in the statement of claim and the oral submissions advanced by the plaintiff, do not support any known cause of action.

- [9] With respect to the cause of action of breach of statutory duty, the classic statement of breach of statutory duty is contained in the judgment of Dixon J (as he then was) in *O'Connor v S P Bray Ltd*:²

“Whatever wider rule may ultimately be deduced, I think it may be said that a provision prescribing a specific precaution for the safety of others in a matter where the person upon whom the duty is laid is under a general rule of negligence bound to exercise due care, the duty will give rise to a co-relative private right, unless from the nature of the provision or from the scope of the legislation of which it forms a part a contrary intention appears. The effect of such a provision is to define specifically what must be done in furtherance of the general duty to protect the safety of those affected by the operations carried on.”

- [10] The cause of action of breach of statutory duty has been further considered in numerous cases including *Downs v Williams*,³ *Rogers v Brambles Australia Ltd*⁴ and *Heil v Suncoast Fitness*.⁵
- [11] It may be immediately observed that a perusal of the *Crime and Corruption Act 2001* and the *Criminal Code* do not give rise to any right of action which may form the basis of a cause of action known as a breach of statutory duty. Furthermore, there are no allegations of fact in the pleading which are capable of constituting the cause of action known to the law as negligence.
- [12] This case has some parallels to that considered by Martin J in *Young v Crime and Corruption Commission*⁶ where his Honour said at paragraphs 4 and 17:

“[4] The pleading is based on a series of misapprehensions by the plaintiff as to the relationship between him and the Crime and Corruption Commission, the effect and purpose of the *Crime and Corruption Act 2001*, and the effect and purpose of the *Criminal Code 1899*. Layered upon that is a misunderstanding of the law relating to fiduciary relationships and negligence. Complicating that further is the plaintiff’s misunderstanding of the relief which might be available in this Court if a cause of action were to be demonstrated.

...

- [17] It sometimes occurs on applications such as this that the Court will allow a misguided plaintiff an opportunity to put into a sensible form the claim which the plaintiff has. This is not a case where the error is one of the expression of the cause of action. On the material before me, I can see no basis for any of the claims made by the plaintiff and it would be inappropriate to expose the defendant to a further claim based upon the assertions which are contained in the current pleading. The statement of claim discloses no reasonable

² (1937) 56 CLR 464 at 478.

³ (1971) 126 CLR 61.

⁴ [1996] QCA 437.

⁵ [2000] 2 Qd R 23.

⁶ [2018] QSC 12.

cause or causes of action. It seeks relief that cannot be claimed and is, in the manner in which it is pleaded, vexatious. It is a rambling abuse of the process of this Court.”

- [13] A further impediment in the present case is that the plaintiff seeks damages for personal injury without purporting to comply with the *Personal Injuries Proceedings Act 2002*. By paragraph 3 of his reply of 11 October 2017, the plaintiff has asserted:

“The plaintiff was unaware of the requirements under the *Personal Injuries Proceedings Act 2002*, and was most certainly unaware of the requirements associated with the timeframes specified under that act in relation to a notice of claim and relating to s 9(1).”

- [14] In summary, as against the seventh defendant, the plaintiff has not purported to comply with the provisions of the *Personal Injuries Proceedings Act 2002* and he has brought a claim against the seventh defendant which discloses no cause of action. In the circumstances I am satisfied that the plaintiff has no real prospects of succeeding on any part of his claim against the seventh defendant. I am satisfied that there is no need for a trial of the plaintiff’s claim against the seventh defendant and accordingly I give judgment for the seventh defendant against the plaintiff on all of the plaintiff’s claim against the seventh defendant.