SUPREME COURT OF QUEENSLAND

CITATION:	*Young v Crime and Corruption Commission* [2018] QCA 190
PARTIES:	**GREGORY RAYMOND YOUNG** (applicant) **v** **CRIME AND CORRUPTION COMMISSION** (respondent)
FILE NO/S:	Appeal No 1461 of 2018 SC No 12210 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	Miscellaneous Application – Civil
ORIGINATING COURT:	Supreme Court at Brisbane – [2018] QSC 12
DELIVERED ON:	17 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	3 May 2018
JUDGE:	Morrison JA
ORDERS:	**1. Leave is granted to the applicant to file a Further Notice of Appeal, limited to the following grounds:** **The learned primary judge erred:** **(i) by denying the appellant natural justice or procedural fairness by the refusal of his request for an adjournment;** **(ii) by giving inadequate reasons for not granting the adjournment;** **(iii) by striking out the Claim and Amended Statement of Claim as the pleading complied with the UCPR; and** **(iv) by giving inadequate reasons for concluding that the pleading did not comply with the UCPR and should be struck out.** **2. The applicant is to pay the costs of the application.**
CATCHWORDS:	QUEENSLAND CIVIL PRACTICE – UNIFORM CIVIL PROCEDURE RULES 1999 – APPELLATE PROCEEDINGS CH 18 – PROCEDURAL – RULE 747 CONTENT OF NOTICE OF APPEAL – where the applicant instituted proceedings against the Crime and Corruption Commission, which then applied to set aside the Claim and Amended

Statement of Claim – that application was successful and the Claim and Statement of Claim was struck out – where the applicant appealed from that decision – where due to the contents of that Notice of Appeal it came before the President of the Court of Appeal – where his Honour found that the Notice of Appeal did not articulate any rational ground of appeal – where the applicant seeks the leave of the Court to file another Amended Notice of Appeal – whether the applicant's draft Notice of Appeal could be articulated in a way that could be permitted to go forward to the Court of Appeal

Uniform Civil Procedure Rules 1999 (Qld), r 747(1)(b)

Young v Crime and Corruption Commission [2018] QCA 55, related

COUNSEL: The applicant appeared on his own behalf
B I McMillan for the respondent

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

[1] **MORRISON JA:** Mr Young instituted proceedings against the Crime and Corruption Commission (**CCC**), which applied to set aside the Claim and Amended Statement of Claim. That application was successful, with the Claim and Statement of Claim being struck out on 9 February 2008.[1]

[2] On 12 February 2018 Mr Young appealed from that decision. A Further Amended Notice of Appeal was filed on 7 March 2018. Because of its contents it came before Sofronoff P on 28 March 2018. His Honour found that the Further Amended Notice of Appeal did not articulate any rational ground of appeal, and the accompanying Outline of Argument failed to comply with the relevant Practice Directions. His Honour's view of the Further Amended Notice of Appeal was expressed relatively briefly:

> "Rule 747(1)(b) of the UCPR requires that a notice of appeal must state briefly and specifically the grounds of appeal. This notice does not comply with that rule; worse, its contents are entirely irrational and incomprehensible and demonstrate that the proposed appeal, at least in its current form, would be vexatious. Litigation is burdensome and not only by reason of the time and money that must be spent. The Courts cannot permit litigants to prosecute claims or appeals which are self-evidently groundless."[2]

[3] Sofronoff P directed that Mr Young only be entitled to file another Amended Notice of Appeal if leave of the Court was granted to do so. The present application[3] seeks that leave.

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1 *Young v Crime and Corruption Commission* [2018] QSC 12.

2 *Young v Crime and Corruption Commission* [2018] QCA 55 at 3.

3 Mr Young filed an amended application on 30 April 2018, including an attached "2nd Affidavit", which set out his draft Amended Notice of Appeal in Exhibit GY-1 to that affidavit.

[4] On the application Mr Young filed two volumes of material totalling over 460 pages. The mainstay of that material was a 40 page affidavit exhibiting 22 different exhibits, which included a number of affidavits including two styled by Mr Young as Affidavit #15 and Affidavit #17, which he said contained his "preliminary response" and his "considered response" to the CCC's outline of submissions, filed in support of its strike out application. Those two affidavits were said to embody Mr Young's response and the points that he wished to make to the Court of Appeal. It is enough to understand the difficulty in working through those affidavits to know that Affidavit #15 was 55 pages long with 54 pages of exhibits, and Affidavit #17 was 65 pages long with exhibits not finalised at the time it was put aside.[4] He maintained that Affidavit #17 was in the course of being finalised at the time of the strike-out application and because he could not use it, he was denied natural justice.

[5] At the hearing of this application Mr Young relied upon a 10 page Outline of Argument which, itself, promised to draw on Affidavit #17 as a way of justifying the Further Amended Statement of Claim.

[6] In the course of the hearing Mr Young agreed that a sensible way to proceed was to take his latest draft notice of appeal[5] and subject it to some analysis to see whether any points could be articulated in a way that could be permitted to go forward to the Court of Appeal.

Grounds Analysed

[7] The first ground was headed "UCPR Rule 668(3)(b) – matters arising – different order". This referred to a matter which arose after the decision of the learned primary judge. Apparently Mr Young had prepared an Amended Statement of Claim which, in his own words, "struck out everything except the bare essential minimum … one of the core actions being negligence".[6] After debate Mr Young agreed that the point was inutile and could be set aside.[7]

[8] The second ground was headed "Denials of natural justice – set aside decision 'Ex-debito-justitiae'". The course of argument revealed that this ground concerned Mr Young's contention that the learned primary judge did not permit him to rely upon Affidavit #17, by not granting an adjournment to allow that affidavit to be finalised.[8]

[9] Under the heading were five paragraphs in the draft notice of appeal. On analysis in the course of argument it transpired that the nub of this ground was that the learned primary judge was wrong to deny Mr Young an adjournment so that he could complete Affidavit #17, which was to contain his full response.[9] Mr Young's complaint was that the consequence of refusing the adjournment was that he was forced to fight the application on Affidavit #15 alone.

[10] Within the five paragraphs identified for ground 2 Mr Young used the phrase "there were no adequate judicial explanations or reasons given". As explained in the course of argument on the application that was his way of saying that the learned

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4 Namely, when he received the CCC's Outline of Submissions.
5 Exhibit GY-1.
6 Application transcript T1-6 l 32.
7 T1-7.
8 That debate occurred at T1-4 to T1-8 of the hearing before the learned primary judge.
9 T1-9 to T1-11.

primary judge did not explain why he did something.[10] In other words, the reasons were inadequate.

[11] Ground 3 was entitled "Denials of procedural fairness – re-open proceedings VS12210/17". The course of argument identified that the real complaint here was that the learned primary judge did not set a program for the hearing of the strike-out application which would have enabled Mr Young to finalise and use Affidavit #17.[11] Mr Young accepted that this was really a variation on ground 2, which complained that he did not receive procedural fairness because he was not permitted to rely on Affidavit #17. As argument continued, the essence of the point was that during argument before the learned primary judge, Mr Young proposed a program to deal with the continuing proceedings but that was refused.[12] Ultimately Mr Young accepted that it was the same point as ground 2.[13]

[12] Ground 4 bore the title "Alleged 'negligence misunderstanding' – no judicial explanations?". Under that were two paragraphs which asserted there was "no judicial explanation or reasons given" as to particular aspects of the case. One of them was why paragraphs 108 to 112(b) of the Amended Statement of Claim did not properly plead a particular cause of action.

[13] The same phrase, "no judicial explanations", was then used on grounds 5-8 of the draft Notice of Appeal. In almost every case, the lack of judicial explanation or reasons was applicable to why particular paragraphs of the Amended Statement of Claim did not properly plead a cause of action.

[14] In the course of argument Mr Young was taken to all of those grounds. Ultimately Mr Young accepted that there were two parts to the argument he wished to make under that set of grounds: (i) the learned primary judge did not explain in his reasons why he regarded the particular paragraphs of the Amended Statement of Claim as inadequate; and (ii) he erred in those findings because the pleading was, in fact, adequate.[14]

[15] The two exceptions to that approach were specific paragraphs of the pleading that consisted of what might be called grounds 4(d), 5(f) and 8(l).

[16] Grounds 4(d) and 5(f) complained that there were "no judicial explanation or reasons given" as to Mr Young's misapprehension or misunderstandings about points of law. It became apparent that grounds 4(d) and 5(f) were essentially the same point as those in related grounds, simply not referrable to a particular paragraph of the pleading.

[17] Ground 8(l) complained that there were "no judicial explanation or reasons given" as to why a group of paragraphs from the Amended Statement of Claim did not comply with Rules 149 and 150 of the UCPR. Once again Mr Young accepted that that was really an illumination of the point that inadequate reasons were given as to why particular paragraphs of the Amended Statement of Claim did not comply with the Rules.

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10 T1-12 ll 12-26.
11 Application T1-13.
12 Application T1-15.
13 Application T1-17.
14 Application T1-18.

Respondent's position

[18] Mr McMillan, appearing for the respondent, submitted that leave should not be granted until a draft notice of appeal containing intelligible grounds was actually presented. Secondly, he submitted that because leave to file the notice was a matter of discretion, the Court should have regard to the prospects of those grounds before granting leave. He submitted there were no prospects that the grounds would succeed.

Discussion

[19] The course of debate over the draft notice of appeal resulted in four discrete grounds being identified as the ones which Mr Young would seek to advance in his notice of appeal, if leave were granted. They are that the learned primary judge:

(a) denied the appellant natural justice or procedural fairness by the refusal of his request for an adjournment;

(b) gave inadequate reasons for not granting the adjournment;

(c) erred by striking out the Claim and Amended Statement of Claim as the pleading complied with the UCPR; and

(d) gave inadequate reasons for concluding that the pleading did not comply with the UCPR and should be struck out.

[20] It is true that Mr Young's expression of those grounds in the draft amended notice of appeal, the subject of the application, and in his outline, was by no means succinct or intelligible. However, to some degree at least, that is because he is a self-represented litigant, with limitations on his capacity to express his points either shortly or in a way familiar to lawyers. However, in my view, that should not stand in the way of his entitlement to bring an appeal, if his grounds can be expressed in intelligible form. That is what was intended by the President when he made the order he did.

[21] Further, I reject the contention that in deciding this particular application it is necessary or desirable that I explore the prospects of those grounds. The reasons given by the President for making the order under which Mr Young now applies, in my view, were not intended to do more than see if a comprehensible or intelligible notice of appeal could be produced, and one which complied with Rule 747(1)(b) of the UCPR. The order went no further than the filing of a compliant notice of appeal. It did not extend to the outline that would eventually follow such a document, nor to the ultimate prospect of the grounds.

Conclusion

[22] For these reasons I would grant leave to file another notice of appeal, but only to reflect the terms outlined in paragraph [19] above.

[23] The orders are:

1. Leave is granted to the applicant to file a Further Notice of Appeal, limited to the following grounds:

   The learned primary judge erred:

(i) by denying the appellant natural justice or procedural fairness by the refusal of his request for an adjournment;

(ii) by giving inadequate reasons for not granting the adjournment;

(iii) by striking out the Claim and Amended Statement of Claim as the pleading complied with the UCPR; and

(iv) by giving inadequate reasons for concluding that the pleading did not comply with the UCPR and should be struck out.

2. The applicant is to pay the costs of the application.