

SUPREME COURT OF QUEENSLAND

CITATION: *Giffin v Telstra Corporation Limited & Anor* [2018] QCA 335

PARTIES: **LEE GIFFIN**
(applicant)
v
TELSTRA CORPORATION LIMITED
ACN 051 775 556
(first respondent)
SENSIS PTY LTD
ACN 007 423 912
(second respondent)

FILE NO/S: Appeal No 10387 of 2018
SC No 11741 of 2017

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time/General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2018] QSC 111 (Atkinson J)

DELIVERED ON: 4 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 28 November 2018

JUDGE: Sofronoff P

ORDERS: **1. The application for an extension of time is refused.**
2. The applicant pay the respondents’ costs on the standard basis.

CATCHWORDS APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – where the applicant seeks an extension of time within which to appeal an order striking out his Claim and Amended Statement of Claim – where the applicant’s Claim failed to state briefly the nature of the claim made or the relief sought – where the learned primary judge exercised the discretion under r 371 of the *Uniform Civil Procedure Rules* to strike out the Claim – where the learned primary judge also struck out the Amended Statement of Claim – whether any error can be demonstrated on the part of the primary judge, such that there is a prospect of success in the appeal warranting the grant of an extension of time

COUNSEL: The applicant appeared on his own behalf
M Ziebell (*sol*) for the first respondent
C Blurton (*sol*) for the second respondent

SOLICITORS: The applicant appeared on his own behalf
King & Wood Mallesons for the first respondent
Holman Webb for the second respondent

- [1] **SOFRONOFF P:** This is an application for an extension of time within which to appeal against an order of Atkinson J striking out Mr Giffin's claim and statement of claim in proceeding 11741 of 2017.
- [2] The materials on the court file show that Mr Giffin says that he has suffered substantial losses to his business as a result of the acts of Telstra Corporation Limited and its associated company Sensis Pty Ltd. That material suggests that he wishes to sue these companies to recover those losses arising out of the following matters. These matters are a summary of facts that I have gleaned from the court file.
- [3] In about 1999 Mr Giffin began to conduct a spare parts business at Lot 1 Dickson Road Caboolture under the business name 'Japanese 4x4 Spares and Repairs'. His phone number was then 54990673. In about 2002 he moved his business premises to 20 Reynolds Court in Burpengary. His phone number changed to 38880877. While conducting business at that location he was able to buy a home at 546 Morayfield Road in Burpengary. He relocated his business to 1 Reynolds Court near his existing premises because the new location was more prominent. His business phone number remained the same.
- [4] He then moved his business to 38 Kayleigh Road, Maroochydore. His phone number changed from 38880877 to 54438686. Mr Giffin arranged for calls to his previous number, 38880877, to be diverted to the new number.
- [5] During this period, Mr Giffin subscribed to and paid for a service by which Sensis Pty Ltd agreed to advertise his business and phone number in the Yellow Pages on the internet. Mr Giffin paid the price for these services faithfully by direct debit.
- [6] Finally, Mr Giffin moved his business to his home property. Some time after this final move, a neighbour notified Mr Giffin that the online Yellow Pages showed his business located at Lot 1 Dickson Road, Caboolture, a place he had vacated almost 10 years previously. The advertisement also located him at the 20 Reynolds Court address that had similarly not been used by Mr Giffin for many years. The number listed for the premises at Dickson Road was 54990673, a number Mr Giffin had abandoned long ago. When rung, it was answered by a carpet sales company. The number listed in the online Yellow Pages for the Reynolds Court address was 38880877, similarly an abandoned number but one in respect of which Mr Giffin had requested a call diversion service. When rung, this number was answered by a local veterinarian. The printed version of Yellow Pages, according to Mr Giffin, places his business at the 38880877 location in Reynolds Court.
- [7] Mr Giffin says he had noticed a falling off in his business to a substantial degree. When he discovered these errors in advertising, he concluded that the reason for the turndown in sales was due to the misleading advertisements. He obtained a calculation of his losses from an accountant who, instructed about Mr Giffin's gross sales before and after these changes in advertising and about Mr Giffin's profit margin, calculated that Mr Giffin had lost in the order of \$1.5 million.
- [8] Mr Giffin took his complaint to Sensis Pty Ltd and, in due course, received a modest offer of compensation. Sensis Pty Ltd put forward a number of reasons why

it would not be liable to compensate Mr Giffin at all and, certainly, for his loss of business.

- [9] Mr Giffin then issued proceedings in the Supreme Court. Being unable to secure the services of a lawyer, Mr Giffin drafted a Claim and a Statement of Claim. The only defendant named in the claim was Telstra.
- [10] That company instructed lawyers to act for it and, in due course, Telstra made an application to strike out Mr Giffin's Claim and Statement of Claim on various grounds. In essence, however, Telstra's complaint was that neither document revealed the nature of the claim. Bond J struck out the Statement of Claim but not the Claim. He gave Mr Giffin leave to replead. Mr Giffin filed an Amended Statement of Claim. Telstra applied to strike out the Amended Statement of Claim and the Claim as well.
- [11] Atkinson J, who heard the application, struck out the Claim on the basis that it did not reveal the nature of the claim against Telstra. The document states that:
- “The plaintiff claims: WRONG LISTED”
- [12] As Atkinson J observed, the Claim failed to state the nature of the claim made or the relief sought. Rule 22(2)(a) of the *Uniform Civil Procedure Rules 1999 (Qld)* ('UCPR') requires a Claim to state briefly the nature of the claim made or the relief sought. This document did neither of these things and, consequently, there arose a discretion to strike it out. Atkinson J instructed herself about the appropriate rule, r 371 of the UCPR, and the principle that a defendant has to demonstrate a 'high degree of certainty' about the ultimate outcome of a proceeding before the discretion would be exercised. Her Honour was satisfied to the requisite degree and I apprehend no error of fact or law that could justify an interference with her Honour's exercise of discretion. In exercising her discretion, her Honour had regard to the fact that the content of the Claim did not show whether there was a term of a contract that was said to have been breached or whether the Claim had some other basis, such as in negligence or in a statute such as the *Competition and Consumer Act 2010 (Cth)*.
- [13] Strictly speaking, therefore, as her Honour noted, it was not necessary for her to consider whether to strike out the Amended Statement of Claim but her Honour went on to consider that application. The content of the Amended Statement of Claim was constituted by an annexation of a large volume of documents, from which I have drawn the factual summary above.
- [14] Such a document does not serve to inform a defendant about the factual and legal case that has to be met. It is true that a perusal of the material reveals the history that I have related. Some of the annexed documents show that staff of Sensis or of Telstra were aware of part of that history at any rate.
- [15] It is understandable that Mr Giffin has had great difficulty in formulating his claim in a satisfactory way. He is not a lawyer and has no lawyer to help him. Writing is not his field of expertise. Nevertheless, it is not possible to allow litigation in this Court to move forward until, by some means, Mr Giffin's legal claim, if he has a legal claim, is summarised in a sufficient way. The striking out of both documents means that this legal proceeding is at an end; it does not mean that Mr Giffin cannot start fresh proceedings if he is able, by some means, to prepare valid pleadings.

- [16] The Claim and the Amended Statement of Claim do not comply with the minimal requirements of the rules and it follows that there are no prospects of success in this appeal. The application for an extension of time is refused. I order that the applicant pay the respondents' costs on a standard basis.