SUPREME COURT OF QUEENSLAND

CITATION:	*Alan Neville Willi & Anor v Gordon Banks and Ors; Alan Neville Willi & Anor v Brodsky & Anor* [2018] QSC 284
PARTIES:	**ALAN NEVILLE WILLI** (first plaintiff) and **ANN ROBYN WILLI** (second plaintiff) **v** **GORDON BANKS** (first defendant) and **STEPHEN MANTHEY** (second defendant) and **NEILSON STANTON & PARKINSON SOLICITORS** (third defendant) **and** **ALAN NEVILLE WILLI** (first plaintiff) and **ANN ROBYN WILLI** (second plaintiff) **v** **DMITRY BRODSKY** (first defendant) and **FIONA KATE HEALY** (second defendant)
FILE NO/S:	No 6842 of 2018 and No 7041 of 2018
DIVISION:	Supreme Court Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	4 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 28 August 2018

JUDGE: Justice Ryan

ORDER: **In proceeding 6842/18, it is ordered that –**

1. **the plaintiff's claim and statement of claim be struck out;**
2. **the plaintiffs pay the defendant legal representatives costs of the claim, including this application.**

In proceeding 7041/18, it is ordered that –

1. **the plaintiffs' claim and statement of claim be struck out;**
2. **the plaintiffs, and each of them, by themselves, their servants and their agents, be restrained from making any further applications, or taking any further steps, including the issuing of any new proceedings in any Queensland Court, against the defendants or their legal representatives arising out of, or concerning the allegations made in this proceeding, without the prior leave of a judge of the Trial Division of the Supreme Court of Queensland;**
3. **the plaintiffs pay the defendants' costs of this claim, including the costs of this application, on an indemnity basis.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – GENERALLY – where the plaintiffs brought an assortment of claims against both the defendant legal representatives, and the defendants – where the defendant legal representatives and the defendants brought actions to strike out the claims and statements of claim – whether the claims and statements of claim disclosed any viable or reasonable cause of action – whether the claims or statements of claim ought to be struck out for any other reason

COUNSEL: A R Nicholas for the Applicant (Banks & others)
S B Gerber for the Applicant (Brodsky & another)
Mr and Mrs Willi (in person) for the Respondent (in both matters)

SOLICITORS: Carter Newell for the Applicant (Banks & others)
Cartwrights Lawyers for the Applicant (Brodsky & another)

Overview

[1] Alan and Ann Willi, and Dmitry Brodsky and Fiona Healy are neighbours.

[2] Mr Brodsky and Ms Healy's property (Lot 5) is burdened by a right of way easement in favour of Mr and Mrs Willi's property (Lot 4). The easement provides the only access to Lot 4 from the public road system. It bisects Lot 5, dividing it into upper and lower halves. Ms Brodsky and Ms Healy must cross the easement to get from the upper half of Lot 5 (where their residence is) to the lower half of Lot 5, which is a wooded gully.

[3] Mr Brodsky and Ms Healy purchased Lot 5 in 2007. The Willis purchased Lot 4 sometime before 2008.

[4] In 2008, without consulting or notifying Mr Brodsky or Ms Healy, Mr and Mrs Willi commissioned the Cooloola Shire Council to construct a sealed road over the easement, from its commencement on Oak Court, to the entrance gate to Lot 4, and up the hill to the Willis' residence.

[5] Mr Brodsky and Ms Healy moved a Queenslander onto Lot 5 in 2011. They and their children moved into the house in December 2011. Issues concerning the easement arose almost as soon as they moved in.

[6] In May 2013, Mr Brodsky and his father-in-law constructed a cross-over on the easement to improve access to the lower part of Lot 5. On 18 July 2013, the Willis employed contractors to remove the cross-over, without Mr Brodsky or Ms Healy's consent.

[7] The relationship between the Willis and their neighbours further deteriorated. At some time after 18 July 2013 and before 30 July 2013, there was an unpleasant confrontation between Mr Brodsky and the Willis during which Mrs Willi assaulted Mr Brodsky.[1] On 27 August 2013, Mrs Willi assaulted Ms Healy. After a trial in the Gympie Magistrates Court, Mrs Willi was convicted of common assault.

[8] Mr Brodsky and Ms Healy brought a claim against the Willis in the Magistrates Court, seeking restitutionary damages for trespass in the sum of $2,450 – the cost of restoring the cross-over. The Willis brought cross claims, including one which sought equitable relief, requiring the removal of the proceedings to the District Court.

[9] The matter was heard by his Honour Judge Robertson, in the District Court at Maroochydore, in October 2017.[2]

[10] On 29 January 2018, His Honour delivered judgment in favour of Mr Brodsky and Ms Healy. The Willis were ordered to pay them –

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1 As found by Robertson DCJ in *Brodsky & Anor v Willi* [2018] QDC 1 at [63].

2 With final submissions in December 2017: *Brodsky & Anor v Willi* [2018] QDC 1.

- $2,450, by way of restitutionary damages for trespass;
- $20,000 in aggravated damages; and
- $25,000 in exemplary damages.

[11] His Honour dismissed the Willis counterclaim in which they sought damages of $53,790 and declarations relating to their easement rights. His Honour ordered the Willis to pay interest (on the damages awarded) of $6,206.88 and Mr Brodsky and Ms Healy's costs, on an indemnity basis.

[12] In ordering aggravated and exemplary damages, his Honour found that the Willis acted with "contumelious disregard for the plaintiffs' rights". His Honour found that the Willis intimidated the plaintiffs and denied and misrepresented their rights under the easement "with a view to vexing and causing inconvenience" to them.[3]

[13] His Honour made factual findings to the effect that the Willis had behaved "despicably".[4] His Honour had a "poor view" of their credibility and reliability.[5] His Honour found them to have been "the aggressors from the start"[6] as well as "nasty and unreasonable".[7]

[14] His Honour described the Willis' attitude as aggressive and intimidating: They had made false allegations about Mr Brodsky and Ms Healy (including to the police and, in the case of Ms Healy, about her parenting) and engaged in "insulting and disparaging behaviour towards both of them leading up to the wrongful removal of the cross-over".[8]

[15] On the other hand, his Honour formed a favourable impression of Mr Brodsky and Ms Healy: They presented as "reliable and thoughtful witnesses" who appeared to be "genuinely and significantly adversely affected by the behaviour of [the Willis], which [had] fractured their dreams of enjoying their property with their children to the fullest potential".[9]

[16] Mr Gordon Banks was the solicitor who acted for Mr Brodsky and Ms Healy in the matter. He was employed at the law firm Neilsen Stanton and Parkinson. Mr Stephen Manthey is a partner of that law firm.[10]

[17] On behalf of Mr Brodsky and Ms Healy, Mr Banks filed an enforcement hearing summons on 2 May 2018. The detail of the progress of that summons is set out in the affidavit of Gregory

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3 *Brodsky & Anor v Willi* [2018] QDC 1 at [91].

4 Ibid at [4].

5 Ibid at [14].

6 Ibid at [9].

7 Ibid at [10].

8 Ibid at [91].

9 Ibid at [16].

10 Mr Gerber (who appeared in the present matter) was counsel.

Stirling, sworn 28 August 2018. In brief, Mr Willi failed to produce the financial documents he was required to produce and the Registrar was ordered to apply to the Court for Mr Willi to be punished for contempt.

[18] The Willis are very aggrieved by his Honour's decision and the findings made by his Honour about them. They have appealed against his Honour's decision (albeit out of time).

[19] They consider the enforcement proceedings premature (because of the appeal) as well as improperly intrusive and an invasion of their privacy. Their application to stay the enforcement proceedings was dismissed on 13 July 2018.

[20] In addition to the appeal (and while the application for the stay was pending) the plaintiffs brought two claims in this court: one against Mr Banks, Mr Manthey and the law firm (the **defendant legal representatives**); and the other against Mr Brodsky and Ms Healy (the **defendants**).

[21] Against the defendant legal representatives, the Willis (the **plaintiffs**) claim damages in the amount of $1,500,000 for an assortment of "claims" including defamation; unprofessional conduct; and stalking. They also claim exemplary and aggravated damages.

[22] Against the defendants, the plaintiffs claim damages in the amount of $950,000, for an assortment of "claims" including defamation; "fabricated assault charge"; and "Lying in Court under Oath in 3 Court Cases". They also claim aggravated damages, exemplary damages and seek costs on an indemnity basis.

[23] The defendant legal representatives and the defendants brought actions to strike out the plaintiffs' claims and statement of claims which I heard consecutively on 28 August 2018.

[24] Because the plaintiffs' claims arise out of the same events and the arguments in both applications required consideration of similar principles, I have dealt with both applications in this single judgment.

[25] In each case, I found the claim and statement of claim seriously defective in fundamental respects including because it disclosed no viable or reasonable cause of action.

[26] Indeed, I found this to be a case such as the one described by Barwick CJ in *General Steel Industries Inc. v Commissioner for Railways (NSW),*[11] namely one which is (citations omitted) –

> … so plain and obvious that the court can say at once that the statement of claim, even if proved, cannot succeed; or 'so manifest on the view of the pleadings, merely reading through them, that it is a case that does not admit of reasonable argument': 'so to speak apparent at a glance';

or, as similarly described in *Markan v Queensland Police Service* –[12]

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[11] (1964) 112 CLR 125 at 129.

[12] [2015] QCA 22 at [4].

> … so obviously untenable that it could not possibly succeed … manifestly groundless … so manifestly faulty that it does not admit of argument and … it does not disclose a case.

[27] The defendants also sought an order which would prevent the plaintiffs from further applications arising out of, or concerning, the allegations made by the plaintiffs in their claims, without the leave of the Court.

[28] The plaintiffs told the Court that they would continue to appeal decisions of the Court until they were satisfied that justice, as they saw it, had been done. They told the Court that they would not pay any costs order. Having regard to the nature of the allegations made in the claims, and the plaintiffs' unreasonable approach to litigation and civil process, I considered it appropriate to make such an order.

[29] For the reasons which follow, I make the following orders:

[30] In the case of the defendant legal representatives, that:

1. the plaintiffs' claim and statement of claim be struck out;

2. the plaintiffs' pay the defendant legal representatives costs of the claim, including this application.

[31] In the case of the defendants –

1. the plaintiffs' claim and statement of claim be struck out;

2. the plaintiffs, and each of them, by themselves, their servants and their agents, be restrained from making any further applications, or taking any further steps, including the issuing of any new proceedings in any Queensland Court, against the defendants or their legal representatives arising out of, or concerning the allegations made in this proceeding, without the prior leave of a judge of the Trial Division of the Supreme Court of Queensland;

3. the plaintiffs pay the defendants' costs of this claim, including the costs of this application, on an indemnity basis.

[32] I will deal with the matters in the order in which they were argued before me.

The claim against the defendant legal representatives

[33] The claim and statement of claim is reproduced below.

> **THE PLAINTIFFS' CLAIM:**
>
> 1. $1,500,000.00 being:-
>
> (a) Damages for defamation, professional misconduct, unprofessional conduct, harassment and stalking.
>
> (b) Exemplary damages

(c) Aggravated damages

STATEMENT OF CLAIM:

1. The Plaintiffs are persons of good character who have worked hard all their lives.

2. The Defendants are Solicitors.

3. The Plaintiffs were the Defendants in a District Court Civil Trial heard at Maroochydore from 16 to 18 October 2017.

4. Prior to the Hearing there was considerable correspondence and contact between Solicitors acting for the Plaintiffs and the First Defendant and the Second Defendant on behalf of the 3rd Defendant.

5. On 08 May 2015 the Third Defendant (per the Second Defendant) alleged in a letter to the Plaintiffs' Solicitors Messrs Jones and Co, "Mrs Willi has assaulted both Plaintiffs". This was completely untrue and was typical of many similar allegations made thereafter as detailed herein. This untrue allegation was copied to, two other firms of Solicitors who were acting for parties involved in the case. Therefore, this allegation was widely publicised.

6. On 03 August 2015 the Third Defendant (per the First Defendant) alleged in a letter to the Plaintiff's Solicitors, "given your clients previously displayed malice…….". Further in the same letter the Third Defendant (per the First Defendant) alleged "the acts of your client constitute the tort of intimidation. We are of the view that the acts of your client maybe considered to constitute the offence of stalking and / or threat pursuant to Section 359 of the Criminal Code". This is another example of provocative correspondence received by the Plaintiffs' Solicitors from the Third Defendant which did nothing to resolve any of the issues between the parties.

7. On 22 February 2017 the Third Defendant (per the First Defendant) alleged in a letter to the Plaintiffs' Solicitors, "the campaign has included malicious prosecution, assault and stalking. It appears that your clients seek to change the Easement. Please advise what they have in mind. Issues to be mediated should include your clients fraudulent Counterclaims and Easement document.

   Your clients continuing behaviour indicates resolution by mediation less than probable. In the circumstances mediation involving expense far in excess of value involved is not agreed".

   Prior to an during the District Court Trial the Plaintiffs through their Solicitors offered to attend Mediation on a number of occasions.

8. In a letter to the First Defendant dated 24 February 2017, the Plaintiffs' Solicitors Messrs Tucker and Cowen referred to the allegations made by the

First Defendant, namely "your clients fraudulent Counter Claims and Easement Document" and stated as follows:-

"These are serious allegations to be made in correspondence to a fellow practitioner, but we are not aware of any circumstances founding such allegations".

This allegation is typical of many allegations made by the Defendants impugning our character gratuitously without basis. The Plaintiffs understand that in any Civil Proceedings the Solicitors acting for the parties have a duty to attempt to resolve the issues between the parties and not to inflame the situation with the use of derogatory language when referring to the opposing party in the litigation.

9. The Defendants (Mr Banks) issued an Enforcement Summons on behalf of their clients, out of the District Court Maroochydore against the First Plaintiff. An initial Hearing was conducted before a Registrar at Maroochydore on 22 June 2018. At the Hearing the First Defendant was permitted to ask the First Plaintiff questions relating to the Assets of the Plaintiffs.

The First Defendant asked numerous questions relating to issues which appeared to have nothing to do with the issue involved. These questions were asked aggressively and the Registrar who conducted the Hearing can verify the impropriety of these questions.

For example, the First Defendant asked the First Plaintiff questions relating to:-

(i) Date and place of Birth

(ii) The School he attended

(iii) Details relating to the sale of his business in 2010 (well before any litigation commenced between the parties in the District Court case).

(iv) What he did with the money from the sale of the business.

This is yet another example of unnecessary harassment and stalking of the Plaintiffs which goes well beyond their duty to represent their clients.

10. The Plaintiffs are at a loss to understand why the Defendants (allegedly on behalf of their clients) are pursuing Enforcement Action in relation to the Judgement when they are well aware that the Plaintiffs have filed an Appeal with the Court of Appeal, Queensland in relation to the Judgement and further the Plaintiffs have applied for a Stay of all proceedings pursuant to the Judgement pending the Hearing of the Appeal.

This is a further example of a course of conduct by the Defendants which amounts to harassment and stalking.

11. The Plaintiffs have suffered health and stress problems and are both attending medical practitioners (including Specialists) as a direct result of the harassment and stalking by the Defendants.

[34] The claim and statement of claim were filed on 26 June 2018.

The response of the defendant legal representatives to the claim and statement of claim

[35] Evidence produced by the defendant legal representatives revealed several requests by their lawyers to the plaintiffs that the plaintiffs address the significant issues with their pleadings.[13]

[36] On 5 July 2018, lawyers for the applicants/defendant legal representatives wrote to the plaintiffs setting out issues with the service of the claim and statement of claim and the content of the documents. The lawyers made a strong recommendation to the plaintiffs that they obtain independent legal advice about the matters raised in the letter. The lawyers informed the plaintiffs that their statement of claim was liable to be struck out – it offended many of the rules of pleading contained in the *UCPR*; it disclosed no reasonable cause of action; it purported to claim damages for matters which were not compensable at law and it was frivolous and vexatious.

[37] Further, the lawyers for the defendant legal representatives informed the plaintiffs that, insofar as the crux of their claim appeared to be an allegation that they had been defamed in legal correspondence, defences of absolute or qualified privilege applied.

[38] The plaintiffs were invited to discontinue the proceedings within seven days – in which case there would be no costs claim against them. The strong recommendation that the plaintiffs obtain independent legal advice was repeated and it was indicated that the defendant legal representatives were prepared to allow the plaintiffs more time to obtain advice or make a decision.

[39] The plaintiffs were told that were the defendant legal representatives to succeed in an application to strike out the claim and statement of claim, the defendant legal representatives would apply for costs against the plaintiffs on an indemnity basis.

[40] The plaintiffs replied by letter dated 12 July 2018, dismissive of all of the matters raised by the defendant legal representatives.

[41] On 24 July 2018, the lawyers for the defendant legal representatives wrote to the plaintiffs, in pursuance of rule 444 of the *UCPR*, outlining clearly the several flaws – technical and of substance – in the plaintiffs' claim and statement of claim. The lawyers identified for the plaintiffs the limitation period for defamation as well as other deficiencies in the way in which the defamation claim had been pleaded.

[42] The letter invited the plaintiffs to discontinue within 14 days, or to serve a statement of claim which appropriately pleaded a cause of action. The plaintiffs were again informed of the risk to them of a costs order on an indemnity basis.

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[13] Affidavit of Gregory William Stirling, sworn 6 August 2018, and filed 7 August 2018, and exhibits.

[43] On 26 July 2018, the lawyers for the defendant legal representatives asked the plaintiffs not to take any steps adverse to their clients without providing seven days written notice of their intention to do so. By reply the same day, the plaintiffs indicated that they would be proceeding and that "an amendment" would be "made and filed tomorrow".

[44] By letter dated 31 July 2018, the plaintiffs described the comments made about service as "petty". They contended that the lawyers' references to "irrelevant minor technicalities" tended to increase costs "without achieving anything meaningful or substantial". They stated their "opinion" that their claim and statement of claim were valid and that disclosed "a reasonable cause of action".

[45] The plaintiffs' letter explained that the harassment and stalking asserted in the statement of claim related to Mr Banks questioning of Mr Willi at the enforcement summons hearing. It alleged that Mr Brodsky had "illegally and improperly" accessed their bank accounts while he (Mr Brodsky) was a bank employee and that, with knowledge that the information from the bank accounts had been improperly obtained, Mr Banks continued to "harass and stalk" Mr Willi. The letter continued –

> Later correspondence from the Financial Ombudsman and National Australia Bank have stated that GJ Banks is to be sued and put under Oath to tell the truth on how much information he has received and how far back. This is a direct violation of our privacy.

[46] The plaintiffs asserted that the time for filing a notice of intention to defend had expired, and that they would be filing an application for judgment by default.

[47] The notice of intention to defend was filed on 31 July 2018, under cover of an e-mail which informed the plaintiffs that the defendant legal representatives would be applying to strike out their statement of claim. The defence itself included an assertion that the allegations were inadequately particularised and liable to be struck out.

[48] The application to strike out the claim and statement of claim was filed on 7 August 2018.

The plaintiffs' "reply"

[49] On 14 August 2018, the plaintiffs filed a document entitled "Reply of the Plaintiffs to the Defence of the Defendants".

[50] That document, among other things, –

- refers to statements in correspondence from the defendant legal representatives in 2015, 2016 and 2017 and demands the production of documents to "prove" the facts asserted in those statements. It seems that, by this means, the plaintiffs are attempting to challenge the findings of his Honour Judge Robertson on the basis that there was no *documentary* proof of certain matters;
- contains a "statement of claim" in negligence;
- alleges that Mr Banks stalked and violated the privacy of the plaintiffs by his 2018 correspondence;

- alleges that the defendant legal representatives are guilty of –
  - criminal conspiracy;
  - interference with the plaintiffs' easement rights;
  - conspiracy to obstruct, pervert and defeat the course of justice;
  - failing as practitioners; and
  - not acting with due diligence, competence and honestly.
- alleges that Mr Manthey committed –
  - the torts of "intimidation and stalking";
  - a crime under section 131 of the Criminal Code: Conspiracy to bring false accusation;
  - criminal defamation;
  - perjury; and
  - fabrication of evidence;
- alleges that Mr Banks acted with "dishonestly and harassment and more so when we strongly believe Mr Banks succumb (sic) to the temptation by fraudulent means (sic) when we were facing bankruptcy. Having gone back into first plaintiff (Alan) history when he was 12 years old and also into when we sold our business in 2010, inheritance money and how we spent the money which was irrelevant to the case".

The defendant legal representatives' application

[51] The defendant legal representatives applied for orders striking out the claim and statement of claim, in pursuance of rules 16 and 171 of the *Uniform Civil Procedure Rules* (*UCPR*), and pursuant to the inherent jurisdiction of the court.

[52] They submitted that the pleadings were manifestly defective in form and substance. They disclosed no viable cause of action. The claim said to be based on defamation was statute barred. The defects were so fundamental that the pleadings should be struck out in their entirety.

The plaintiffs' materials

[53] The plaintiffs' outline of argument was not responsive to the defendant legal representatives' written outline – rather, it repeated many of the allegations made by the plaintiffs elsewhere and asserted that the plaintiffs' claims were justified by facts. It also asserted that the plaintiffs had been "physically and mentally hurt" and that "[their] way of life in a peaceful and safe living (sic)" had been taken away. I was not assisted by it in determining this strike out application and will make no further reference to it.

[54] The joint affidavit of the plaintiffs exhibited correspondence and other documents (including pleadings) which concerned the matter determined by his Honour Judge Robertson. None of the exhibits had any relevance to the strike out application but I note that they included, as exhibit S, a copy of an article in the Noosa News about the outcome of the trial.

The plaintiffs' claim against the defendants

[55] The plaintiffs' claim against the defendants is as follows –

1 Defamation and Damages for Defamation

2 False Allegations and Accusations

3 Stalking

4 Violation of our Privacy

5 Trespassing

6 Signs

7 Illegal Works

8 Neighbour Nuisance

(i) Blocking our exit

(ii) Filling in the gully (The Drain)

(iii) Blocking the gully (The Drain)

(iv) Sitting on the bonnet of 4 x 4 deregistered vehicle

(v) Stopping our Contractor from leaving and straddling the excavator blade

(vi) Throwing our bins outside and into the council gully

(vii) Interference with our personal equipment

(viii) Their children ongoing screaming and yelling all hours

(ix) Their children shining torches into our house

9 Provocation and Harassment

10 Fabricated assault charge

11 Assaults

12 Police

13 Interference with our underground Telstra and Energex cables

14 Direction Order

15 Wilful damage and substantial interference to the embankment

16 Lying in Court under Oath in 3 Court Cases.

[56] The plaintiffs seek damages in the amount of $950,000; exemplary damages; aggravated damages and "Indemnity Cost".

[57] The statement of claim makes the following assertions –

- the defendants defamed the plaintiffs to their (the defendants') solicitors who then made defamatory comments in correspondence to the solicitors of the firm and the contractor engaged by the plaintiffs to remove the cross-over. [The firm and the contractor were originally parties to the Magistrate Court proceedings, but the claims against them were compromised and were discontinued];[14]
- Noosa News defamed the plaintiffs;
- the plaintiffs' neighbours turned on them and sent text messages which the plaintiffs reported to the police;
- Mr Brodsky made false allegations to the police and in court;
- Ms Healy made false allegations to the police and in court including about her use and her children's and their friends' use of the easement;
- the defendants conspired to bring multiple false accusations against the plaintiffs;
- the defendants stalked the plaintiffs by bringing proceedings against them – which violated the defendants' privacy – and by taking photographs of them;
- Mr Banks also took photographs of the plaintiffs' property (while he was with Mr Brodsky and/or Mr Gerber of counsel);
- Mr Brodsky accessed the plaintiffs' bank accounts – thereby violating their privacy;
- the defendants trespassed upon the plaintiffs' property including by not providing a skip for rubbish during the construction of their house, which rubbish went onto the plaintiffs' property;
- the defendants erected signs on the easement which had a "great impact on all services who were to come to the Plaintiffs' home"; the signs stopped the plaintiffs from maintaining their driveway and gully;
- as to nuisance, in addition to the matters recited in the claim, the defendants' children hurt an animal (and the plaintiffs reported them to the RSPCA); laughed in front of the plaintiffs' CCTV cameras and left debris on the plaintiffs' easement;
- the defendants provoked the plaintiffs to punch them;
- the defendants harassed the plaintiffs' contractors; used their friends to intimidate and harass the plaintiffs; and used their neighbours to block the plaintiffs' exit from their property;
- the assault of which Mrs Willi was convicted did not happen – the magistrate who convicted her made errors in fact and law and believed "the liars";

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[14] Ibid at [6].

- Mr Brodsky assaulted Mr Willi by letting his car roll towards him; later he "skidded his tyres" crossing the gully;
- the defendants threw the plaintiffs' bins into the gully;
- a vehicle blocked the plaintiffs' exit from their property on 29 January 2017;
- Mr Brodsky drove his tractor at Mr Willi, who was in his car, and the plaintiffs will tender evidence of this incident as "new evidence";
- the plaintiffs did not make a nuisance of themselves to the police, as asserted by Mr Gerber, counsel for the defendants – Sergeant Terry Kennedy told the plaintiffs to send him copies of any letters they sent to the defendants and told the plaintiffs to carry a recorder with them at all times;
- Sgt Kennedy recommended mediation, which the defendants refused;
- Sgt Kennedy has all of the letters concerning the defendants' harassment of the plaintiffs' contractors and their "out of control" children who incited the plaintiffs' dog to bite their (the defendants') son;
- Mr Brodsky has created a health and safety issue by his interference with Telstra and Energex cables;
- the 'EPA' gave a "Direction Order" to the defendants for violating noise restriction times by mowing at night, after 7 pm without lights and in the morning from 6.15 am;
- the plaintiffs live in fear because they do not know where Mr Brodsky is at any time when they come home;
- the defendants lied when they said they used the access easement 15 times per year; and
- photos will be produced showing Mr Brodsky cutting the embankment and laughing about it – just after the fabricated assault charge.

[58] Under the heading "Illegal Works to the gully (the Drain)", the plaintiffs seem to be complaining about the quality of the work done by Mr Brodsky and his father-in-law in installing the cross-over on 22 May 2013. The plaintiffs also complain about certain of the actions of the defendants which were canvassed in evidence before his Honour Judge Robertson which his Honour found to have been actions taken by the defendants in an attempt to assert and protect their property rights.

[59] Under the heading "Lying in Court under Oath in 3 Court Cases" the plaintiffs assert (errors as per original) –

> This case will be 3 Court Hearings into one where the proof of evidence and legally established facts will be presented.
>
> The Defendants will be asked to provide all material evidence – photos, police photos and reports, dates and times where and when these false allegations and

accusation were stated by the Defendants, Mr Gordon Banks Solicitor and Mr Simon Gerber Barrister of the following.

(a) Stalking

(b) Defamation

(c) Further assaults

(d) Trespassing

(e) Nuisance

(f) Malicious Prosecution

(h) Neighbours from Hell

(i) Aggravated and Exemplary damages:

The Defendants will have to prove that they (the Defendants) suffered loss or damage as a result of the wrong committed. The Defendants have to prove what they claim happened actually did happen. Document such as medical bills and receipts will have to be produced.

The Defendants failed in supplying – proof of evidence or legally established facts to the exact circumstances in which the loss or damage was suffered; and the basis on which the amount of claimed has been worked out or estimated.

Obtained quote/s for $2,450 and $3,025.00 both from Danny – Pomona Plant Hire Pty Ltd. The authenticity of these 2 quotes in in question.

Will dispute the amount you received from Bebrok Excavation Pty Ltd and Carl Leask [the contractor]. They paid $2,450.00 for restitutionary damages.

[60] The plaintiffs claim the following relief –

Cost to be paid for 2 solicitors comes to $463,735.14.

Cost to be award for defamation damages for having the Plaintiffs name published on record and in the Noosa News.

Costs to be awarded for serious invasion of privacy and the harm which is caused by the invasion of privacy is irreversible.

Indemnity Costs to be awarded

Aggravated Damages to be awarded

Exemplary Damages to be awarded

Costs to be awarded to the second Plaintiff from the second Defendant for lying in Court under Oath for a fabricated assault charge

[61] The claim and statement of claim were filed on 2 July 2018.

The response of the defendants to the plaintiffs' claim and statement of claim

[62] The defendants filed a defence, taking the several allegations one by one.

[63] The defendants denied the allegations; and asserted that they were nonsensical, scandalous, frivolous, vexatious and liable to be struck out in pursuance of rule 171 of the *UCPR*. Also, the defendants stated that they were unable to properly plead to the allegations because no, or no proper, particulars of them were provided.

[64] In addition, with respect to paragraphs 14 and 15 of the statement of claim, which concerned the signs and the alleged illegal works, the defendants asserted that those matters were part of the subject matter of the plaintiffs' defence and counter claim in the matter determined by his Honour Judge Robertson and that the plaintiffs were therefore estopped from litigating or re-litigating those matters. The same point was taken with respect to the allegations, in paragraph 17 of the statement of claim, concerning "Neighbour Nuisance"; and the allegations, in paragraphs 18 – 25 of the statement of claim, concerning alleged provocation, harassment, assaults etc.

The defendants' application

[65] The defendants seek orders including orders striking out the plaintiffs' claim and statement of claim and an order that has the effect of restraining the plaintiffs from bringing any further applications concerning these allegations without the prior leave of a judge of the Trial Division of the Supreme Court of Queensland.

The plaintiffs' material

[66] The plaintiffs filed no material in the application brought by the defendants.

Law and legal principles

[67] A defendant is entitled to know the case it must meet at trial and, to that end, the pleadings must state that case with reasonable clarity. The pleadings function to identify the issues to be determined by the court.

[68] Under rule 16 of the *Uniform Civil Procedure Rules* 1999 (*UCPR*), the court may set aside an originating process or stay a proceeding.

[69] In considering whether to exercise this power, the court is guided by rule 5 – indeed, rule 5 provides guidance for the application of every rule in the *UCPR*:

> **5 Philosophy – overriding obligations of parties and court**
>
> (1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.

(2) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.

(3) In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.

(4) The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.

Example –

The court may dismiss a proceeding or impose a sanction as to costs, if, in breach of the implied undertaking, a plaintiff fails to proceed as required by these rules or an order of the court.

[70] Rule 171 provides:

(1) This rule applies if a pleading or part of a pleading—

(a) discloses no reasonable cause of action or defence; or

(b) has a tendency to prejudice or delay the fair trial of the proceeding; or

(c) is unnecessary or scandalous; or

(d) is frivolous or vexatious; or

(e) is otherwise an abuse of the process of the court.

(2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.

(3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading.

[71] In addition to its jurisdiction under the rules, the court has an inherent jurisdiction to strike out a proceeding (or a defence) that is bad in law. By a combination of its inherent and rules based jurisdiction, the court can control useless litigation and ensure that the rules of pleadings are observed. The power to strike out is ameliorated by the court's discretion to allow amendments to pleadings, but if an action is clearly hopeless, the sooner it is halted, the better: the court has a duty to see that useless litigation is ended as soon as possible.[15]

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[15] Cairns B C, *Australian Civil Procedure,* Lawbook Co, Sydney 2016, pages 538*ff*.

[72] The power to strike out pleadings is to be exercised sparingly and only in clear cases.[16] "[G]reat care must be exercised to ensure that under the guise of achieving expeditious finality a [claimant] is not improperly deprived of [the] opportunity for the trial of [the] case by the appointed tribunal".[17] But 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, scandalous, vexatious or embarrassing; or which is otherwise an abuse of the process of the court.[18]

[73] Unrepresented plaintiffs are not licensed to proceed unconstrained by the rules governing adversarial litigation.[19] They are not permitted to disregard the requirements of the *UCPR* or to conduct litigation in a manner which is unjust to the other parties and contrary to the interests of justice.[20] "[L]itigation is not a learning experience. The Courts do not permit litigants, even unrepresented litigants, to prosecute claims which cannot proceed fairly to the other parties."[21]

Material relevant to rule 171(3)

[74] In the case of the application by the defendant legal representatives, I have taken into account, under rule 171(3), the correspondence between the parties and in particular the tone and attitude of the plaintiffs as reflected therein (and outline above).

[75] In the case of both applications, I have taken into account statements made by Mrs Willi, on behalf of the plaintiffs, at the hearings.

[76] During her submissions in response to the defendant legal representatives' application, Mrs Willi said "this case" (her claim) was "all about" Mr Banks bringing the evidence he had of *Mr and Mrs Willi* stalking Mr Brodsky and Ms Healy (which was an allegation made in correspondence by the defendant legal representatives prior to the trial before his Honour Judge Robertson).[22]

[77] I understood Mrs Willi to mean that the claims had been filed for the purpose of uncovering "evidence" which I presume the Willis hoped to use to exonerate them.

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[16] *Royalene Pty Ltd v Registrar of Titles* [2007] QSC 59 at [6] per McKenzie J; *Dey v Victorian Railways Commissoners* (1949) 78 CLR 62 at 91; *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 128-129.

[17] *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125, 130 (Barwick CJ); *Noble & McBride v State of Vic and State of Qld* [1999] QCA 110; Appeal No 9023 of 1997, 13 April 1999, 17.

[18] As summarised by Bond J in *Lee v Abedian & Ors* [2016] QSC 92, at [38] and [39] referring to *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] – [9] per Judd J.

[19] *Robertson v Hollings* [2009] QCA 303 at [11].

[20] *Imbuzi v Hall & Anor* [2010] QSC 359 at [27].

[21] Ibid.

[22] Transcript 1- 24, line 19 – 1 – 25, line 45.

Mrs Willi said that the plaintiffs' reply, which made demands of Mr Banks for material, was "the whole focus of this here today".[23]

[78] Similar themes emerged during my questioning of Mrs Willi during her submissions in response to the application by the defendants. It seemed to me that she was convinced that there had to be – somewhere – evidence which would vindicate her and her husband.

[79] She agreed with my summary of her position that the reason the plaintiffs brought the claim (perhaps both claims) was to get orders from the court for the production of material to enable the plaintiffs to argue their appeal:[24]

> RESPONDENT MRS WILLI: I am only interested in where did all this start from? And I know where it start from but I need to – people to provide the proof. Brodsky and Healy have never provided any evidence.
>
> HER HONOUR: All right.
>
> RESPONDENT MRS WILLI: And as for what I want - - -
>
> HER HONOUR: Okay, so - - -
>
> RESPONDENT MRS WILLI: - - - I want their evidence.
>
> HER HONOUR: - - - can I understand again, just so I understand. So are you saying you brought this claim and statement of claim against Brodsky and Healy because you want certain material from them and you can't think of any other way - - -
>
> RESPONDENT MRS WILLI: Proof.
>
> HER HONOUR: - - - to get it from them.
>
> RESPONDENT MRS WILLI: Proof of evidence. They said - - -
>
> HER HONOUR: Right.
>
> RESPONDENT MRS WILLI: - - - that we've done this.
>
> HER HONOUR: Right.
>
> RESPONDENT MRS WILLI: Because it's got to start – the line of process has got to start somewhere.
>
> HER HONOUR: All right. So have I got that right. You brought this claim and statement of claim in this court - - -
>
> RESPONDENT MRS WILLI: Yep.
>
> HER HONOUR: - - - as a means by which you thought you would be able to get orders from this court that they produce material that you need - - -
>
> RESPONDENT MRS WILLI: Yep.

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[23] Transcript 1 – 27, line 10.

[24] Transcript 1 – 14 – 1 – 15.

HER HONOUR: Let me finish – so that you can argue your appeal.

UNIDENTIFIED SPEAKER: Exactly.

[80] She continued:[25]

> … they've cost us a lot of money. A lot of money. So I am not going to take this lightly. I'll just keep appealing till I have somebody see where there has been [Mr Willi interrupted: "a miscarriage of justice"] … miscarriage of justice, totally.

[81] A little later, after stating that she had to "get to the truth and bring it out", she agreed with my summary of her position that regardless of the decision of any court, she would appeal until she got the evidence and until, as she saw it, justice was done.[26]

[82] She also said that she needed to bring the truth out, and "anything that goes here today, I'll just appeal because I need that justice".[27]

Whether to strike out the claim and statement of claim concerning the defendant legal representatives

[83] Persons choosing to litigate without the benefit of legal representation must observe the requirements of the *UCPR*. Those requirements include requirements of form and as to content or substance.

[84] I note that the plaintiffs' claim and statement of statement of claim are not in the approved form.[28] Of greater significance though are matters which concern the content or substance of the pleadings. Counsel for the defendant legal representatives identified the plaintiffs' failure to comply with rules 149, 155, 157, and 158(2) of the *UCPR*.

[85] Rule 149 provides as follows:

> (1) Each pleading must—
>
> (a) be as brief as the nature of the case permits; and
>
> (b) contain a statement of all the material facts on which the party relies but not the evidence by which the facts are to be proved; and
>
> (c) state specifically any matter that if not stated specifically may take another party by surprise; and
>
> (d) subject to rule 156, state specifically any relief the party claims; and

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[25] Transcript 1 – 15, lines 14 – 22.

[26] Transcript 1 – 16, lines 5 – 20.

[27] Transcript 1 – 17, lines 21 – 24.

[28] Form 2 for a claim; form 16 for a statement of claim. I note also, although no issue was taken about it, that the plaintiffs failed to serve the claim in accordance with rules 106 and 114 of the UCPR.

(e) if a claim or defence under an Act is relied on—identify the specific provision under the Act.

(2) In a pleading, a party may plead a conclusion of law or raise a point of law if the party also pleads the material facts in support of the conclusion or point.

[86] Rule 155 requires a party to state the nature and amount of damages claimed, and to provide particulars in the pleading of the nature of the damages suffered, the exact circumstances in which the damage was suffered and the basis on which the amount has been worked out or estimated.

[87] Rule 157 provides as follows:

A party must include in a pleading particulars necessary to —

(a) define the issues for, and prevent surprise at, the trial; and

(b) enable the opposite party to plead; and

(c) support a matter specifically pleaded under rule 150.

[88] Rule 158(2) requires a party who claims exemplary or aggravated damages to plead particulars of all matters in support of the claim.

[89] Counsel submitted that the statement of claim did not contain sufficient material facts nor did it afford the applicants an opportunity to identify the case they had to meet.

[90] Some general observations may be made about the claim, statement of claim and the reply.

[91] The statement of claim focuses on three pieces of correspondence from Mr Brodsky and Ms Healy's legal representatives relating to the matter determined by his Honour Judge Robertson, the enforcement hearing summons and the hearing itself.

[92] In paragraph 5, the plaintiffs complain that Mrs Willi has been defamed in a letter dated 8 May 2015, which referred to her assaults upon Mr Brodsky and Ms Healy (on the basis that she did not commit those assaults).

[93] In paragraph 6, the plaintiffs complain that a letter dated 3 August 2015 was "provocative correspondence" because it referred to the plaintiffs "previously displayed malice" and alleged that their conduct towards Mr Brodsky and Ms Healy constituted the "tort of intimidation" or "stalking and/or threats under section 359 of the Criminal Code".

[94] In paragraphs 7 and 8, the plaintiffs complain about allegations in a letter dated 22 February 2017 that they had engaged in "malicious prosecution, assault and stalking" and made fraudulent counterclaims and a fraudulent easement document. In those paragraphs, the plaintiffs allege a duty on the part of the defendant legal representatives "to resolve the issues between the parties and not to inflame the situation with the use of derogatory language".

[95] Paragraph 9 contains the plaintiffs' complaints about the hearing of the enforcement summons and the questions asked of Mr Willi. The plaintiffs' claim that the questioning amounted to "unnecessary harassment and stalking of the Plaintiffs which goes well beyond [the defendant legal representatives'] duty to represent their clients".

[96] In paragraph 10, the plaintiffs complain that the pursuit of the enforcement action, while an appeal is pending, is part of a course of conduct by the defendant legal representatives which amounts to harassment and stalking.

[97] These complaints are said by the plaintiffs to give rise to claims for damages for defamation, professional misconduct, unprofessional conduct, harassment and stalking.

[98] In addition to demanding the production of documents, the reply alleges the commission of criminal offences and misleading and deceptive conduct. As counsel submitted, it is drawn in discursive and very confusing terms and is different from the case articulated in the statement of claim.

[99] I will now consider the claims one by one and their conformity or otherwise with the relevant rules and, in the case of the defamation claim, the limitation period.

Defamation

[100] I have assumed that paragraphs 5, 6 7 and 8 of the statement of claim are intended to set out the material the plaintiffs allege is defamatory.

[101] The dates of the correspondence referred to are 8 May 2015, 3 August 2015 and 22 February 2017.

[102] The plaintiffs' claim was commenced on 26 June 2018.

[103] Section 10AA of the *Limitations of Actions Act* 1974 provides that "an action on a cause of action for defamation must not be brought after the end of 1 year from the date of publication of the matter complained of".

[104] The limitation period may be extended to three years under section 32A of the Act if the court is satisfied that the action could not reasonably have been commenced within one year of the date of publication. However, there has been no application for an extension (which would only be available in the case of the 2017 letter) nor have the plaintiffs raised a basis for such an extension. Indeed, in the circumstances of this case, it would be difficult for the plaintiffs to overcome the hurdle that the action could not reasonably have been commenced within one year of the publication.

[105] Whether the defamation claim was intended as a claim based in common law or statute, it is defective. As counsel submitted, a number of orthodox elements of such a claim were entirely absent:

- There is no pleading that the publication relevantly identified the plaintiffs;
- The defamatory imputations alleged to arise from the publications have not been identified; and

- There is no pleading that the publications caused any damage to the plaintiffs' reputations.

[106] The damages claim does not comply with the requirements of rules 155 or 158(2). Aggravated damages are sought, but no circumstances of aggravation are pleaded. Exemplary damages are sought but the claim is wholly un-particularised.

[107] There is no prayer for relief in the statement of claim.

[108] The defamation claim is seriously defective, as well as out of time.

[109] Aggravated and exemplary damages are only available for tortious claims.[29] Defamation appears to be the only tortious claim made. Although the reply suggests that the defendant legal representatives, who were acting for Mr Brodsky and Ms Healy, owed the plaintiffs a duty not to "inflame" things – that is not so; their duty is only owed to their own clients[30], whatever the plaintiffs meant by a duty not to "inflame". Upon the striking out of the defamation claim, the claim for aggravated and exemplary damages will also fall away.

Professional Misconduct; unprofessional conduct

[110] The plaintiffs do not use the phrases "professional misconduct" or "unprofessional conduct" in the statement of claim although it may be inferred that the plaintiffs allege broadly that the conduct of the defendant legal representatives as outlined by them amounts to professional misconduct or unprofessional conduct – as they understand those terms.

[111] The defendant legal representatives are entitled to be informed about the case which is pleaded against them. The statement of claim does not identify any statutory provision upon which the claim is based; but in any event, as counsel pointed out, this is not a regulatory prosecution. The plaintiffs have not articulated any relevant private or civil cause of action which would give rise to a claim for damages.

[112] The claim is seriously defective.

Harassment and stalking

[113] Paragraphs 9 and 10 of the respondent's statement of claim seem to assert causes of action in "harassment and stalking" arising out of the defendant legal representatives acting in the enforcement action on behalf of Mr Brodsky and Ms Healy.

[114] The plaintiffs have failed to plead material facts or particulars. It is not apparent how the plaintiff's allegations form the basis of an actionable civil claim. The plaintiffs have failed to identify any relevant statutory provision or common law cause of action upon which the claim is said to be based.

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[29] *Hughes v Western Australian Cricket Association (Inc)* (1986) 69 ALR 660 at 706; *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118.

[30] see *Hill v Van* Erp (1997) 188 CLR 159 at 167, referred to in *Lee v Abedian & Ors* [2016] QSC 92.

[115] Stalking is a criminal offence, defined by section 359B of the *Criminal Code*. The conduct referred to in the statement of claim does not fall within that section. "Harassment" is used in the *Anti-Discrimination Act* 1999, within the expression 'sexual harassment', as defined by section 119 of that Act but that is nothing like the allegations made in the statement of claim. Counsel for the defendant legal representatives also referred to the definition of 'harass' in the Oxford English Dictionary, that is to 'trouble by repeated attacks, subject to constant molesting or persecution, law waste, devastate, tire out, exhaust'. The conduct alleged in the statement of claim is not of that kind.

[116] The content of the reply does not assist.

[117] I agree with counsel's submission that the allegations in paragraphs 9 to 11 are "so rolled-up and ambiguous that they are largely incoherent".

[118] Paragraph 11 alleges that the plaintiffs' health has suffered because of the defendant legal representatives' harassment and stalking – but the specific facts, matters and circumstances said to give rise to the substantial damages claim (for $1.5 million) are not pleaded or particularised. The pleading does not identify how it is that the harassment and stalking has caused the alleged loss, or how that loss has been quantified. Nor is it possible to understand which of the acts are said to have caused loss to whom of the plaintiffs. There has been no compliance with rule 155.

[119] The claim is seriously defective.

Disposition of the application

[120] I order that the claim and statement of claim concerning the defendant legal representatives be struck out in their entirety.

Whether the claim and statement of claim concerning the defendants should be struck out

[121] Counsel for the defendants referred to his Honour Judge Robertson's finding that the plaintiffs conduct (their trespass) was undertaken "with a view to vexing and causing inconvenience" to the defendants. Counsel submitted that the "vexing" continued in this way –

> "(a) having commenced this present proceeding against the defendants with many unrecognisable causes of action and an incoherent and un-particularised statement of claim, but which essentially appears to be an attempt by the plaintiffs to re-litigate the matters the subject of the District Court Proceeding (which is the subject of the appeal referred to below). The plaintiffs claim damages of $950,000.00 together with aggravated and exemplary damages;
>
> (b) have commenced proceedings in the Supreme Court against [the defendant legal representatives] … That proceeding claims $1.5 million …
>
> (c) having applied to the Court of Appeal for leave to appeal against the judgment in the District Court proceedings."

[122] Counsel contended that the statement of claim provided no guidance to, or particulars in support of, the 16 "causes of action" nominated in the claim and that it was impossible to

identify any genuine complaint in the statement of claim (in the sense of a complaint which may underpin a legitimate cause of action).

[123] Counsel referred to rule 171 and the statements of the Court of Appeal in *Robert Bax & Associates v Cavenham Pty Ltd*[31] about its application:

> Rule 171 closely resembles the language of the former O 22 r 32 Rules of the Supreme Court 1991 (Qld) which enabled a judge to strike out or amend any matter in the pleading which tended "to prejudice, embarrass, or delay, the fair trial of the action". The word "embarrass" has not been retained. Nonetheless any pleading which is difficult to follow or objectively ambiguous or creates difficulty for the opposite party insofar as the pleading contains inconsistencies, is liable to strike out because it can be said to have a tendency to prejudice or delay the fair trial of the proceeding, rather than "embarrass" the opposite party.

[124] He submitted that the claim and statement of claim were "difficult to follow"; "objectively ambiguous" and "create[d] difficulty for" the defendants: they were embarrassing and should be struck out. He submitted, having regard to rule 171(3), that the court should take into account on this application that the present proceedings continued the plaintiffs' ongoing campaign to vex and inconvenience the defendants.

[125] I have set out above the matters which I have taken into account in both of these applications in addition to evidence about the pleadings.

[126] It is not possible for me to determine whether the plaintiffs are driven to pursue this litigation by a desire to vex and inconvenience the plaintiffs as an end in itself, or whether they are driven by a desire to 'win' by whatever means; without any appreciation of the appropriate processes by which they might challenge the findings of his Honour Judge Robertson, or the limits to those processes; and without any inclination to inform themselves about those processes or limits.

[127] Regardless of their motivation, they have demonstrated a cavalier and defiant approach to the process of the court.

[128] There is little to be gained by attempting to extract from the documents *something* that might be intended as a claim and a related statement of claim. At the least, they "create difficulty" for the defendants. They fail to reveal any reasonable cause of action. The claim reads as a list of grievances plucked from the statement of claim which contains scandalous suggestions or broad and unparticularised assertions, including –

- that the defendants legal representatives [somehow] "inflamed" his Honour Judge Robertson to blatant prejudice and many errors;
- the defendants have made false allegations to the police and in court;
- the defendants conspired to bring false accusations against the plaintiffs;

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[31] [2011] QCA 53, at [16], White J with whom McMurdo P and Fraser JA agreed.

- the defendants have stalked the plaintiffs since the first week they took up residence in every possible way;
- the stalking continued through court hearings;
- the court hearings violated the plaintiffs' privacy;
- the Noosa News defamed us and "injured our reputation";
- "Neighbours have turned on us and sent text messages …";
- Mr Brodsky violated the plaintiffs' privacy by accessing their bank accounts;
- the defendants trespassed; and
- the defendants allowed rubbish to go onto the plaintiffs' land.

[129] The plaintiffs made no secret of the fact that they were attempting, via this litigation, to achieve disclosure for other purposes. Nor did they make a secret of the fact that they would continue to "appeal" until justice, as they saw it, was done.

Disposition of the application

[130] I order that the claim and statement of claim concerning the defendants be struck out in their entirety.

The *von Risefer* order

[131] The defendants seek an order from the court which would have the effect of preventing the plaintiffs from bringing any further applications in any existing proceedings, or any further proceedings against Mr Brodsky and Ms Healy, or their legal representatives, arising out of or concerning the allegations made in these proceedings.

[132] The order sought is similar to the order made by the Court of Appeal in *von Risefer v Permanent Trustee Co Pty Ltd.*[32] In that case, the primary judge found that the plaintiffs' statement of claim did not disclose a cause of action known to the law; attempted to re-open concluded litigation; and was, in some respects, scandalous or absurd.

[133] The plaintiffs appealed from that decision, but their notice of appeal and outline of argument were as deficient as their statement of claim. Their appeal was without discernible merit and was bound to fail.

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[32] [2005] QCA 109.

[134] Keane JA, with whom McPherson JA and Philippides J agreed, struck out the notice of appeal describing it as vexatious and an abuse of the process of the court. His Honour continued (footnotes omitted):[33]

> [11] … This Court has the power to bring this abuse to an end in the exercise of its inherent jurisdiction to prevent its processes being used as a means of vexation. While this power should only be exercised with caution, I am of the opinion that it should be exercised in this case to minimize the extent to which the defendants may be put to expense to respond to the vexatious and, indeed, oppressive conduct of the plaintiffs.
>
> …
>
> [14] It has long been established that a court has the power to ensure that its own processes are not abused. The basic jurisdiction for this aspect of a court's inherent jurisdiction was explained by Baron Alderson in *Cocker v Tempest* where his Lordship said:
>
> > "The power of each Court over its own process is unlimited: it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter for the most careful discretion."
>
> This principle continues to be recognised and applied by courts in both Australia and the United Kingdom. The result is, as Wallace P, Jacobs and Asprey JJ noted in the context of the Supreme Court of New South Wales, in words that are equally applicable to the Supreme Court of Queensland, that:
>
> > "… there can be no doubt that this Court has an inherent jurisdiction to endeavour to ensure that the pursuit of its ordinary procedures by litigants does not lead to injustice and for this purpose to grant in the exercise of its discretion a stay of proceedings, whether permanent or temporary, upon which conditions or terms (if any) as may seem appropriate in the particular circumstances and that this is a jurisdiction which may be exercised at any stage of the proceedings where it appears to be demanded by the justice of the case."
>
> [15] In *Commonwealth Trading Bank v Inglis* Barwick CJ and McTiernan J said:
>
> > "… the making of unwarranted and vexatious applications in an action which is pending in the court is, in our opinion, a matter over which there is an inherent power in the court to exercise control. There is an essential difference, in our opinion, between regulating the conduct of such an action so as to prevent the court's process from being abused, on the one hand, and impeding a particular person in the exercise of a right of access to the court, on the other hand …

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[33] Ibid at [11]*ff*..

> … there is an inherent power in the court to control the bringing of applications in the course of an action of which the court is seized for the purpose of preventing a party abusing the processes of the court …
>
> …
>
> [22] The history of these proceedings has been briefly summarised above. In my view that history provides ample justification for imposing on the plaintiffs the restraint sought … If there were any doubt that such protection is warranted, it would be dispelled by the rising level of irrationality and incoherence which characterises the plaintiffs' most recent arguments, and a consideration of the rationale for making protective orders of this kind given by Lord Phillips MR in *Bhamjee v Forsdick (Practice Note)* where his Lordship said:
>
> > "The court, therefore, has power to take appropriate action whenever it sees that its functions as a court of justice are being abused … A court's overriding objective is to deal with cases justly. This means, among other things, dealing with cases expeditiously and allotting to them an appropriate share of its resources (while taking into account the need to allot resources to other cases). This objective is thwarted and the process of the court abused if litigants bombard the court with hopeless applications. They thereby divert the court's resources from dealing with meritorious disputes, and waste skilled and scarce resources on matters totally devoid of merit.
>
> [23] The defendants seek orders to protect them against further proceedings by the plaintiffs in addition to protection against further applications being made in the proceedings which are already pending …
>
> …
>
> [25] … In my view, this Court has the power to protect the defendants against any further attempt by the plaintiffs to relitigate the same complaints in fresh proceedings as an aspect of the inherent jurisdiction to which I have referred or, possibly, in reliance on s 58 of the *Constitution of Queensland* 2001 (Qld). It is, no doubt, a power to be exercised with the utmost caution; but this case affords a clear example of the kind of case in which it should be exercised to protect the parties against whom baseless allegations of unlawful conduct have been made from the expense, inconvenience and hurt involved in the further repetition of those allegations.

[135] Mr Brodsky and Ms Healy were the subject of complaints by the plaintiffs about, in Ms Healy's case, her parenting, and in the case of them both, to the police and the council. It seems that they have been the subject of complaints to the Environmental Protection Agency and to the Attorney General.[34] It seems that their children have been reported to the RSPCA. All of this is in addition to the claims made against them in this litigation.

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[34] Transcript 1 – 9, lines 10 – 20.

[136] The plaintiffs have stated their intention to proceed with litigation for as long as it takes until they are – as they see it – vindicated, but they have demonstrated no preparedness to respect legal processes or to confine themselves to the legitimate means of review.

[137] As I mentioned above, they have a cavalier and defiant approach to the deployment of legal processes. They bring unreasonable claims, or claims which have no support (such as, for example, their application to stay the enforcement hearing, which was not supported by any evidence) which cause expense and hardship to those who must respond to them.

[138] They have indicated an intention to behave unreasonably in the future (by seeking to have decisions reviewed until they are satisfied with the result – whether their claim is meritorious or not), and have behaved unreasonably in the past including by refusing to co-operate in the enforcement hearing and in bringing the present claims.

[139] They have stated that they will not pay costs to the other side – a position which has been reflected in Mr Willi's failing to produce relevant financial documents for the purposes of the enforcement hearing.

[140] Bearing in mind the need to take a cautious approach, I consider this an appropriate case to make the order sought. The justice of the case requires that the defendants be protected against the expense (financial and emotional) of any unreasonably oppressive litigious conduct by the plaintiffs.

[141] The order I will make will permit the application for leave to appeal the decision of his Honour Judge Robertson to proceed, but will not allow the plaintiffs to bring further proceedings relating to the matters covered by the claim and statement of claim without the leave of a judge of the trial division of the Supreme Court.

Costs

[142] The defendants sought costs on an indemnity basis. The defendant legal representatives did not.

[143] With respect to the defendants' application for costs on an indemnity basis, I have had regard to the statement of Jackson J in *Mio Art Pty Ltd v Macequest Pty Ltd (No 2)* that there should not be a greater disposition towards making an order for costs to be paid on the indemnity basis in the case of applications to strike out under r 171 than in the case of other interlocutory applications, notwithstanding the specific reference to the indemnity basis in r 171(2).

[144] I have also taken into account the statements of relevant principle gathered by his Honour Justice Applegarth in *Fick v Groves (No 2)* (footnotes excluded*)*:[35]

> [3] In *Thiess Pty Ltd v FLDSMIDTH Minerals Pty Ltd (No 2)*, McMurdo J cited the leading authorities on the circumstances in which an order for indemnity costs may be justified. Some authorities require unreasonable conduct on the part of a

[35] [2010] QSC 182 at [3] – [4].

litigant. Chesterman J in *Todrell Pty Ltd v Finch (No 2)* preferred a criterion of "something irresponsible about the conduct of the losing party which exposed its opponent to costs which should, in fairness, be ordered on the indemnity basis". As McMurdo J observed in *Theiss Pty Ltd*, whether the criterion is that of unreasonable or irresponsibility, there must be something about the facts and circumstances beyond the demerit of a party's case, as reflected in the outcome, before such an order is warranted.

[4] The judgment of Sheppard J in *Colgate-Palmolive Company v Cussons Pty Ltd* is frequently cited in this context. It is authority for the proposition that the circumstances which may be considered to warrant the exercise of the discretion to award costs on an indemnity basis include:

- the fact that proceedings were commenced or continued in wilful disregard of known facts;
- the making of allegations which ought never to have been made;
- the undue prolongation of a case by groundless contentions;
- evidence of particular misconduct that causes loss of time to the Court and to other parties;
- any imprudent refusal of an offer to compromise.

[145] Also, in *Paroz v Paroz,*[36] P Lyons J observed that circumstances which have been regarded as warranting the exercise of the discretion to award indemnity costs include misconduct, which has caused the court and the other parties to lose time; that proceedings were commenced for an ulterior purpose; that proceedings were commenced in wilful disregard of clearly established law; and that the proceedings contained allegations which ought never have been made or which include groundless contentions.

[146] The defendants informed the plaintiffs in their defence that their claim and statement of claim were liable to be struck out. Whether the Willi's choose to remain ignorant of court processes or choose to defy them, this defective process has caused hardship and expense to Mr Brodsky and Ms Healy.

[147] Counsel asked me to find that the proceedings were commenced for the ulterior purpose of vexing Mr Brodsky and Ms Healy. I do not find myself able to make such a finding. However, I find that these proceedings were commenced as part of a determined campaign on the part of the plaintiffs to achieve "justice" as they see it, by whatever means they choose, without adhering to orthodox legal processes and unconstrained by the rules of pleading.

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[36] [2010] QSC 157 at [4].

[148] When I sought Mrs Willi's submissions about costs on an indemnity basis, she said that she was not paying for any costs "because they've put me in hardship … So, I've got no money."[37] She indicated that she would not be complying with *any* costs order – on the standard basis or otherwise.

[149] In bringing these proceedings, the plaintiffs have behaved irresponsibly and unreasonably. They are not unintelligent. They appreciate that the way to challenge the decision of his Honour Judge Robertson is through an appeal and they have commenced such a process. The present proceedings are in part an attempt to undermine his Honour's decision and his factual findings in an illegitimate way; and in part an attempt to extract from Mr Brodsky, Ms Healy or the defendant legal representatives "evidence" – the existence of which the plaintiffs seem convinced – which will reveal that they have been the victims of a miscarriage of justice. These proceedings have been accompanied by a threat to continue with legal processes until justice, as the Willis see it, is done and without an intention to meet any costs order voluntarily.

[150] I consider this an appropriate case to order that the plaintiffs pay the defendants' costs on an indemnity basis. I have reached that conclusion bearing in mind that, generally, courts are more reluctant to make such an order against unrepresented litigants, but that such an order may be made in an appropriate case.

[151] **Orders**

[152] In proceeding 6842/18, it is ordered that –

1. the plaintiffs' claim and statement of claim be struck out;

2. the plaintiffs pay the defendant legal representatives costs of the claim, including this application.

[153] In proceeding 7041/18, it is ordered that –

1. the plaintiffs' claim and statement of claim be struck out;

2. the plaintiffs, and each of them, by themselves, their servants and their agents, be restrained from making any further applications, or taking any further steps, including the issuing of any new proceedings in any Queensland Court, against the defendants or their legal representatives arising out of, or concerning the allegations made in this proceeding, without the prior leave of a judge of the Trial Division of the Supreme Court of Queensland;

3. the plaintiffs pay the defendants' costs of this claim, including the costs of this application, on an indemnity basis.

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[37] Transcript 1 - 17.