

SUPREME COURT OF QUEENSLAND

CITATION: *Young v Crime and Corruption Commission* [2019] QCA 189

PARTIES: **GREGORY RAYMOND YOUNG**
(appellant)
v
CRIME AND CORRUPTION COMMISSION
(respondent)

FILE NO/S: Appeal No 1461 of 2018
SC No 12210 of 2017

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2018] QSC 12 (Martin J)

DELIVERED ON: 13 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 16 May 2019

JUDGES: Fraser and Morrison and McMurdo JJA

ORDER: **Appeal dismissed with costs.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – DISCLOSING NO REASONABLE CAUSE OF ACTION OR DEFENCE – where the appellant filed a claim against the Crime and Corruption Commission, seeking damages for negligence and breach of statutory duties – where the appellant alleged that the Commission breached a duty of care owed to him when the Commission purportedly failed to respond appropriately to a series of complaints made by him to the Commission about his former employer, a local council – where the claim was struck out on the basis that it disclosed no reasonable cause of action and was vexatious – whether the *Crime and Corruption Act 2001* (Qld) imposes a duty on the Commission to facilitate the recovery of compensation or other redress for someone who may have been a victim of a major crime or corruption – whether that Act provides a personal right of action against the Commission to a person who was the victim of a major crime or corruption – whether the appellant’s claim was bound to fail and was rightly struck out

Crime and Corruption Act 2001 (Qld), s 4, s 25, s 33, s 35

COUNSEL: The appellant appeared on his own behalf

B I McMillan for the respondent

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

- [1] **FRASER JA:** I agree with the reasons for judgment of McMurdo JA and the order proposed by his Honour.
- [2] **MORRISON JA:** I have read the reasons of McMurdo JA and agree with those reasons and the order his Honour proposes.
- [3] **McMURDO JA:** On 20 November 2017, the appellant, Mr Young, filed a claim in the trial division against the respondent (the “CCC”). He claimed damages for negligence and breach of statutory duties, as well as equitable compensation for breach of fiduciary duties. The CCC filed a notice of intention to defend, which pleaded simply that the proceeding was frivolous or vexatious and an abuse of process. Mr Young then filed an amended statement of claim on 31 January 2018. After a hearing on 2 February 2018, Martin J struck out the claim and the amended statement of claim,¹ and this is an appeal against that order.
- [4] In essence, Mr Young alleged that the CCC had failed to respond appropriately to a series of complaints which, in a period from 2011 to 2017, he had made to the CCC about the Gold Coast City Council. Mr Young was employed by the Council in a senior position for nearly 10 years until, in May 2005, he was summarily dismissed. He pleaded that when he worked for the Council, he was the subject of a false complaint that he had sexually harassed another employee, an allegation which was subsequently upheld at a hearing in the Australian Industrial Relations Commission. He alleged that this false complaint, other conduct by which he was harassed in his workplace and his dismissal from his employment caused or contributed to his condition of serious depression, and that he suffered financial losses of the order of nearly \$5 million. He pleaded that by this misconduct by the Council’s employees (or some of them), offences of extortion, under s 415 of the *Criminal Code* (Qld), were committed. He pleaded that had his complaints been properly investigated by the CCC, the Council would have seen the error of its ways, and that it would then have compensated him for those losses.
- [5] There was also a claim that the Council failed to investigate what he alleged was judicial corruption. He pleaded that this occurred in the context of a proceeding which he had brought in the trial division against the Council. That case was summarily dismissed, and he pleaded here that he was not given procedural fairness in the disposition of that claim.
- [6] He pleaded that the CCC owed statutory duties to investigate and “deal with” his complaints, and that he had a personal right of action against the CCC as a person, or one of a class of persons, for whose benefit the duty was created. He claimed that the CCC owed a duty of care to him, in responding to his complaints, which it breached. And he claimed that the CCC owed a fiduciary duty to him, which it breached in the same way. His claims for damages and/or equitable compensation were made upon the same basis, which was, as I have mentioned, that his loss and damage from the conduct of the Council would have been compensated by the

¹ *Young v Crime and Corruption Commission* [2018] QSC 12 (“Reasons”).

Council if the CCC had discharged its duties in response to his complaints. He also claimed punitive and aggravated damages against the CCC.

- [7] In the Reasons, Martin J made these observations about the pleading:
- (1) It was based on a series of misapprehensions by Mr Young about the relationship between him and the CCC, the effect and purpose of the *Crime and Corruption Act 2001 (Qld)* (“the CC Act”), and the effect and purpose of the *Criminal Code*.²
 - (2) It showed a misunderstanding of the law relating to fiduciary relationships and negligence.³
 - (3) It revealed a misunderstanding of the relief which might be available in the proceeding if a cause of action were to be demonstrated, an example of which was that the pleading sought a “finding” that Mr Young had not been guilty of the sexual harassment of a certain woman when they were both employed by the Council in 2005.⁴
 - (4) It was diffuse and a combination of assertion, aside and argument.⁵
 - (5) There was no apparent basis for any of the claims made by Mr Young which might make it appropriate to permit him to attempt to re-plead his case.⁶
 - (6) The pleading was a “rambling abuse of the process of this Court.”⁷
- [8] Mr Young challenges the judgment upon several grounds. The first, he says, is that he was denied natural justice by not being given a proper opportunity to present his case against the strike-out application. More particularly, he claims that he was denied natural justice by the refusal of his request for an adjournment of the hearing. Second, he claims that this was compounded by the judge not giving adequate reasons for refusing the adjournment. His third ground is that the judge erred in striking out the claim and amended statement of claim, and his fourth ground is that inadequate reasons were given by the judge for doing so.
- [9] The strike-out application was filed on 19 December 2017 and heard on 2 February 2018. At the commencement of the hearing, Mr Young asked his Honour to adjourn the hearing of the application, so that he would have more time to address the CCC’s arguments. He agreed with his Honour that he had received the application on 20 December 2017, so that he had had more than 40 days to prepare his argument. But he complained that it was not until 24 January 2018 that he had seen the detail of the CCC’s case (which was an apparent reference to the outline of submissions of the CCC which had been provided to him on that date). Apparently he proposed to do so in affidavit form, by presenting a factual case by which his pleaded case might be proved. Counsel for the CCC opposed the adjournment, which his Honour refused, holding that the application to strike out the pleading and the proceeding was made upon the basis that there was no arguable cause of action which was revealed by the pleading, and that such an application was not to be addressed by evidence. The judge said that Mr Young had had

² Reasons [4].

³ Ibid.

⁴ Reasons [5](a) and 6.

⁵ Reasons [12].

⁶ Reasons [17].

⁷ Ibid.

substantial time to deal with the application, which was to be met by submissions, and possibly also an amended pleading, but not by evidence.

- [10] There was no error in refusing the adjournment. His Honour was correct to conclude that there would be no utility in granting the adjournment, and that Mr Young had been given ample time to consider and prepare his arguments in response to the submissions for the CCC. Mr Young's first and second grounds of appeal are not made out.
- [11] His third and principal ground of appeal requires a discussion of each of the causes of action which he had pleaded. Of central relevance to each of them is the CC Act and, more particularly, its provisions for the functions of the CCC.
- [12] The express purposes of the CC Act are to combat and reduce the incidence of major crime and to reduce the incidence of corruption in the public sector.⁸ Those purposes are to be achieved primarily by the CCC being established as a permanent commission, with investigative powers, not ordinarily available to the police service, to enable it to effectively investigate major crime and criminal organisations and their participants, and with powers to investigate cases of corrupt conduct.⁹
- [13] The various functions of the CCC are categorised by the CC Act, and the categories upon which Mr Young pleaded his case are the crime function and the corruption function.¹⁰
- [14] The crime function of the CCC is defined by s 25. It is to investigate major crime referred to the CCC, under Division 2 of Part 2 of the CC Act, by the so-called reference committee, a body which is constituted by (amongst others) the chairman of the CCC, the Commissioner of Police and persons appointed by the Governor in Council as community representatives.¹¹ Under its crime function, the CCC is also to investigate criminal organisations or participants in those organisations. In investigating major crime which is referred to it by the reference committee, the CCC may gather evidence for the prosecution of persons for offences and liaise with other law enforcement agencies and prosecuting authorities.¹² Sections 27 to 30 provide for the process of a referral of major crime, or a particular incident of major crime, to the CCC for investigation. It is true, as Mr Young pleads, that the offence of extortion, under s 415 of the *Criminal Code*, is "major crime" as that term is defined in Schedule 2 of the CC Act. However Mr Young did not plead that there was a reference by the reference committee of the particular offending in his case.¹³ Even for that reason alone, there was no apparent merit in his case insofar as it alleged a failure to perform the crime function.
- [15] By s 33, the CCC has the corruption function, which is to ensure that a complaint about, or information or matter involving, corruption is dealt with in an appropriate way,

⁸ CC Act s 4(1).

⁹ CC Act s 5(1), (2) and (3).

¹⁰ In paragraph 177 of the pleading, there is a reference to provisions governing the CCC's intelligence functions under s 53 of the CC Act, but which has no apparent connection to his overall case, which is that the CCC did not investigate or deal with his particular complaints.

¹¹ CC Act s 278.

¹² CC Act s 26.

¹³ CC Act s 27(1)(a).

having regard to the principles set out in s 34. Amongst those principles are the following:

“(d) **Public interest**

- the commission has an overriding responsibility to promote public confidence—
 - in the integrity of units of public administration and
 - if corruption does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—
 - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
 - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration
 - any likely increase in public confidence in having the corruption dealt with by the commission directly.”

[16] The corruption function is performed in response to a complaint. By s 35(1), the CCC is to perform its corruption function by doing any one or more of a number of things, including the following:

- “(a) expeditiously assessing complaints about, or information or matters (also complaints) involving, corruption made or notified to it;
- (b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;
- ...
- (e) dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration;
- ...
- (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;
- (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—
 - (i) the prosecution of persons for offences; or
 - (ii) disciplinary proceedings against persons;
 ...”

- [17] The functions of the CCC, and the duties which the CC Act imposes upon it in the performance of each of its functions, are directed to the public interest. It is the public interest in combatting and reducing the incidence of major crime, and reducing the incidence of corruption in the public sector, which is served by the performance of these functions. It is not a function of the CCC to serve individual interests, by facilitating the recovery of compensation or other redress for someone who may have been a victim of a crime or an event of corruption. In performing its corruption function, the CCC need not investigate each and every complaint; rather, by s 35(3), the CCC must “focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.” The fundamental flaw affecting the entirety of Mr Young’s case was a misapprehension that the CCC has a duty to serve and protect the interests of individuals in that way, rather than to serve the public interest.
- [18] It is this misapprehension which underlies Mr Young’s claim that the CC Act provided him with a personal right of action for breach of a statutory duty of the CCC. In this case, the CCC had a responsibility for dealing with Mr Young’s complaints that there had been corrupt conduct.¹⁴ The CCC was obliged to deal with those complaints under s 46(1), by expeditiously assessing each complaint and taking the action which it considered most appropriate in the circumstances, having regard to the principles set out in s 34. For present purposes, it may be accepted that Mr Young did plead that the CCC had failed in the discharge of its duty under s 46(1), by not duly assessing his complaints or taking the action which the CCC considered most appropriate. However more than a breach of a duty imposed by a statute is required for the existence of a right of action for damages for a breach of that duty. A right of action exists only where a statute imposes a duty for the protection or benefit of a particular class of persons, from which it can be seen that, upon its proper construction, the statute intends to provide a ground of civil liability when the breach of the duty causes injury or damage of a kind against which the statute was designed to afford protection.¹⁵ To succeed on such a claim, a plaintiff must show that he or she was a person, or one of a class of persons, for whose benefit the duty was created.¹⁶
- [19] On one interpretation of the statement of claim, Mr Young did plead that the CC Act was intended to protect a particular class of persons, of which he was a member, namely persons who were the victims of extortion, fraud (that also being alleged by him) or corruption. If so, the effect of his case was that the statute imposes the relevant duties upon the CCC, with the intention of protecting such persons against the risk that they would not be compensated by the person or entity whose crime or corruption had caused him to suffer loss. But as I have said, it is the public interest which is to be served by the performance of the functions of the CCC and the discharge of its related duties. The CC Act did not confer a private cause of action, as Mr Young pleaded, and his claim for damages for a breach or breaches of a statutory duty was bound to fail and was rightly struck out.
- [20] As to the claim for damages for negligence, Mr Young did not plead that there was a duty of care owed to him by the CCC under the common law. He did not plead

¹⁴ CC Act s 45(1).

¹⁵ *Byrne v Australian Airlines Ltd* (1985) 185 CLR 410 at 424; [1995] HCA 24 per Brennan CJ, Dawson and Toohey JJ citing *Sovar v Henry Lane Pty Ltd* (1967) 116 CLR 397 at 404, 405; [1967] HCA 31.

¹⁶ *Downs v Williams* (1971) 126 CLR 61 at 75; [1971] HCA 45 per Windeyer J.

facts and circumstances by which the CCC came to owe him a duty to take care in the performance of its functions, in response to his complaints. Rather he pleaded that there was a “statutory duty of care ... in relation to the major crimes of extortion and judicial corruption and as such, a statutory Duty of Care ... in respect of other major crimes in this matter, inclusive of for example, perjury, grievous bodily harm and torture.” In effect, his claim for damages for negligence was a repetition of his claim for damages for breach of the CCC’s statutory duties, which I have just discussed. This part of his case was bound to fail and was rightly struck out.

[21] Mr Young’s claim that he was owed fiduciary duties by the CCC was also unsustainable. In *Hospital Products Ltd v United States Surgical Corporation*,¹⁷ Mason J observed that the critical feature of those types of relationships which are generally accepted as fiduciary relationships “is that the fiduciary undertakes or agrees to act for or on behalf or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense.”¹⁸ As I have said, the relevant duties imposed by the CC Act are not to exercise its investigative powers in the interest of an informant, but to do so in the public interest. This part of the claim was rightly struck out.

[22] Therefore I agree with Martin J where his Honour concluded:¹⁹

“This is not a case where the error is one of the expression of the cause of action. On the material before me, I can see no basis for any of the claims made by the plaintiff and it would be inappropriate to expose the defendant to a further claim based upon the assertions which are contained in the current pleading.”

[23] What I have said so far is sufficient to dispose of the appeal. However I should record my agreement with his Honour’s description of the non-compliance of the pleading with the *Uniform Civil Procedure Rules*. His Honour fairly described the pleading as involving “a continuous repetition of irrelevant, unsupportable and scandalous claims”.²⁰

[24] I also agree with his Honour’s observations that, by the pleading, Mr Young sought a large number of orders which, assuming everything else in his favour, could not have been made in this proceeding. As his Honour said, some of those orders would affect persons who were not parties to this case. And clearly an order could not have been made that “the disparaging attack by Gold Coast City Council against [the appellant] during [certain proceedings in 2007]” be “annulled”. His Honour also referred to other relief sought by the pleading which did not involve the CCC, namely that in paragraph 197 of the pleading, in which Mr Young sought orders that a jury “decide (with 4 types of damages) with the Queensland Supreme Court to quantify confirmed damages via damages and/or via equitable compensation” some twelve questions of fact, such as whether Mr Young had engaged in sexual harassment.

¹⁷ (1984) 156 CLR 41 at 96-97; [1984] HCA 64.

¹⁸ See also *John Alexander’s Clubs Pty Ltd v White City Tennis Club Ltd* (2010) 241 CLR 1 at 34-36 [86], [90]; [2010] HCA 19 at [86], [90].

¹⁹ Reasons at [17].

²⁰ Reasons at [16].

- [25] Lastly, the argument that adequate reasons were not given by Martin J cannot be accepted. His Honour's Reasons, within a reserved but promptly given judgment, revealed why he had concluded that the pleading and the claim should be struck out.
- [26] I would order that the appeal be dismissed with costs.