SUPREME COURT OF QUEENSLAND

CITATION:	*Central Sawmilling No. 1 P/L & Ors v State of Queensland* [2003] QCA 311
PARTIES:	**CENTRAL SAWMILLING NO. 1 PTY LTD** ACN 009 828 700 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 2 PTY LTD** ACN 009 828 719 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 3 PTY LTD** ACN 009 828 728 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 4 PTY LTD** ACN 009 828 737 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 5 PTY LTD** ACN 009 828 746 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 6 PTY LTD** ACN 009 828 755 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 7 PTY LTD** ACN 009 828 764 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 8 PTY LTD** ACN 009 828 773 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 9 PTY LTD** ACN 009 828 782 (plaintiff/appellant) **CENTRAL SAWMILLING NO. 10 PTY LTD** ACN 009 828 791 (plaintiff/appellant) trading under the style or name of **PARKSIDE BUILDING SUPPLIES (MACKAY)** (plaintiff/appellant) **v** **STATE OF QUEENSLAND (FORMERLY PRIMARY INDUSTRIES CORPORATION)** (defendant/respondent)
FILE NO/S:	Appeal No 3166 of 2003 SC No 8989 of 1997
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from interlocutory decision

ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	25 July 2003
DELIVERED AT:	Brisbane
HEARING DATE:	16 July 2003
JUDGES:	de Jersey CJ, Mackenzie and Helman JJ Judgment of the Court
ORDER:	**Appeal dismissed with costs to be assessed**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – AMENDMENT – where original statement of claim relied on alleged breach of three agreements in writing – where amended statement of claim relied on alleged breach of different agreement – where amended statement of claim also raised claim of estoppel – whether amended statement of claim introduced new cause of action *Uniform Civil Procedure Rules* 1999 (Qld), r 375(1), r 376(4), r 379 *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170, applied *Contender 1 Ltd v L E P International* (1988) 63 ALJR 26, applied *Hall v Hall*, Tasmanian Supreme Court, unreported, 3 December 1996, applied
COUNSEL:	D R Cooper SC, with C L Francis, for the appellants D Fraser QC, with T W Quinn, for the respondent
SOLICITORS:	Ruddy Tomlins and Baxter for the appellants Crown Solicitor for the respondent

[1] **THE COURT:** This appeal is brought against a learned Judge's order disallowing amendments to the statement of claim made without leave by the appellants on 25 February 2003. The learned Judge took the view that the amendments introduced a new cause of action, and that the matter did not fall within rule 376(4) of the Uniform Civil Procedure Rules. Acknowledging the breadth of the discretion to allow amendment under rule 375(1), her Honour went on to consider nevertheless whether the amendment should stand, but was disinclined to exercise her discretion favourably to the appellants because of a lack of particularity. She therefore acceded to the respondent's application under rule 379 that the amendments be disallowed.

[2] The appellants had made a cross-application for leave to amend. Her Honour was not prepared to grant leave because of the lack of particularity of the amendments as they stood. She did however offer the appellants an adjournment of their cross-application so that a properly particularised amendment could be presented, but the

appellants declined that offer of adjournment. Her Honour therefore dismissed the cross-application.

[3] The appellants contend that the learned Judge erred in her conclusion that the amendments introduced a new cause of action; or that she should have found (rule 376(4)) that any new cause of action arose out of substantially the same facts as those basing the cause of action originally pleaded; or that she should in any event have granted leave to amend.

[4] The principal question agitated on appeal was whether the Judge was correct in concluding that the amendments made by the document of 25 February 2003 introduced a new cause of action. One is however bound to observe at the outset that the issues raised on this appeal are very much matters of practice and procedure. That is particularly so where the overall result leaves the appellants free to launch another application for leave to amend based on a properly particularised proposed pleading. That aside, we should, especially in deference to the submissions made on appeal, enter into some discussion of her Honour's approach.

[5] By the original statement of claim of 6 June 2000, the appellants relied on three agreements in writing providing for their purchase of forest timber from the respondent. The claim as originally fashioned in that pleading was quite precisely based on alleged breach of those three separately identified written agreements. The appellants pleaded that in 1981, six years after the date of the first agreement, the respondent introduced an allocation policy for the cutting and milling of specified quantities of timber from the sales areas, being those specified in the pleaded agreements, in respect of five year periods commencing on 1 October 1981. Allocations were subsequently made. It is in respect of allocations over the period 1 October 1991 to 30 September 1996 that the appellants mount a claim for damages. The issues allegedly crystallised upon the respondent's cancelling any allocations and current sales permit and timber cases, on 21 August 1994, as from 1 October 1994. That was when the breach allegedly occurred, hence the need to obtain leave to amend because of the earlier expiration of the limitations period. (The "case" and "sales permit" are allegedly agreements into which the respondent entered, with the appellants, in order to designate the "sale areas" within the zone from which allocations could be taken).

[6] The claim is styled as a claim for damages for breach of contract. The basis pleaded in the original statement of claim was an express or implied term of the allocations that the appellants would be entitled to a certain amount of timber and that the allocations would not be terminated before a certain date. But as her Honour reasonably pointed out, there was to that point nothing pleaded to indicate that the "allocations" had contractual effect.

[7] Unsurprisingly the respondent delivered a defence asserting that the allocations conferred no rights and created no obligation, and that insofar as there was a policy, it might be varied.

[8] The effect of the amendment purportedly made by the document of 25 February 2003 may conveniently be taken from her Honour's reasons for judgment:

> "It pleads that there was an agreement in 1981 between the [respondent] and Millers, including the [appellants], that there would

> be a policy for the phasing out of timber harvesting over a 20 year period, and that pursuant to that 1981 agreement, the allocation policy would be established to continue from the 1st of October 1981, to the 30th of September 2001 in respect of Crown lands other than State forests and timber reserves, and in respect of State forests and timber reserves that there would be an indefinite, but sustainable period in respect of those.
>
> The amended statement of claim pleads that pursuant to that agreement and policy the [appellants] were authorised to cut and mill timber for prescribed allocation zones and allocation periods, and it was in order to give effect to those authorisations that the [appellants] entered the timber cases and sales permit …
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> … there was an implied term that those agreements would not be terminated except in conformance with the 1981 agreement and policy … [and] that there was, in fact, a breach of the 1981 agreement, the policy, the timber cases and the sales permit in the form of the cancellations and … there was an estoppel, again on the strength of the agreement and policy.
>
> [The appellants] … plead a loss of profit to the 30th of September 2001 in relation to the Crown land which is not State forest or timber reserve, and for a sustainable period in respect of the balance of the land."

The amendments converted a claim for $526,260 damages into a claim for $2,980,741, although a mere monetary increase is not necessarily, because of that character, significant for present purposes. The amended statement of claim raised a claim of estoppel, as emerges from the above extract from her Honour's judgment. It suffices to record our agreement, notwithstanding the submission of Mr Cooper SC, with her Honour's apparent view that especially because that contention was raised "on the strength of the agreement and policy," the fate of the amendment raising the estoppel fell to be determined in the same way as for the balance of the amendments.

[9] Mr Cooper (for the appellants) took us to a number of parts of the original statement of claim from which he submitted a reader must have inferred that the appellants were relying upon the allocations and the policy as being contractual documents. That cannot with respect be accepted. As put by the learned Judge:

> "I do not think one would infer from the original statement of claim any contractual basis from the policy. What one would more readily infer is that its drafter was trying to suggest some contractual status to the allocations without a clue as to why that should be."

[10] This is not a case, as was contended, of the refashioning or redesignation or further particularisation of a claim on the basis of facts already pleaded. The elevation of the policy and the allocations, by means of the document of 25 February 2003, to a contractual level, served to introduce a completely new cause of action which, as her Honour observed, "[relied] on an agreement which was not previously adverted to involving different parties, more parties than the [appellants] and the

[respondent], and different obligations, giving rise to different consequences in terms of damage."

[11] It is right to say, as submitted for the respondent, that by failing to provide particulars of the challenged amendments, the appellants denied the respondent the opportunity for proper assessment of issues relevant to the exercise of a discretion to allow the amendment, especially prejudice, bearing in mind that were the newly alleged agreement oral, it was more than 20 years old. Relevant particulars would be the nature of the agreement – whether oral or written, more precisely when and where it was concluded, its consideration if not under seal, and its particular terms.

[12] What has been said already is sufficient to set forth the essence of the matter. Her Honour was faced with an attempt by way of amendment to introduce a substantial new cause of action into an existing proceeding. The court's leave had not been obtained. It was necessary. The form of the amendment was inappropriate in any event for lack of particularity. Her Honour properly recognised the breadth of her discretion. It is plain that merely because the amendment introduced a new cause of action she would not ultimately have refused leave to amend. It was the lack of particularity of the amendment which, with the offer of adjournment having been declined, resulted in the dismissal of the cross-application for leave to amend.

[13] No appellable error emerges from the learned Judge's approach, and especially so when one acknowledges the true character of the issue, involving as it does matters of practice and procedure: *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170, 177; *Contender 1 Ltd v L E P International* (1988) 63 ALJR 26, 28. This is particularly so when, as previously mentioned, the appellants are left in the position where they may, if so advised, bring a further application for leave to amend in accordance with a properly particularised proposal.

[14] We were asked to consider a wide range of submissions involving the minutiae of the matter. It is not necessary or appropriate that we provide any detailed analysis of those further matters. The broader approach covered above is sufficient to warrant the disposal of the appeal.

[15] We were also referred to a number of case authorities. The cases advanced by the appellants of course relate to particular situations, rather than arguably established definitive principle, and the respondent rightly puts this within the characterisation in *Hall v Hall* (Tasmanian Supreme Court, unreported, 3 December 1996), for example, of a ""new case" varying so substantially from what has previously been set up that it would involve investigation of matters of fact or questions of law, or both, different from what have already been raised and of which no fair warning has been given …" (there was, additionally, an argument that the substance of the respective rules of court dealt with in the cases was not uniform, although there is no need to explore that contention here).

[16] The appeal is dismissed with costs to be assessed.