

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

No 2538 of 2010

LUCY XIAOSHUANG LU Plaintiff

and

ANDREW PETROU Defendant

and

STATE OF QUEENSLAND Defendant

and

AUSTRALIAN FEDERAL POLICE Defendant

and

COMMONWEALTH OF AUSTRALIA Defendant

BRISBANE

..DATE 16/04/2010

ORDER

HIS HONOUR: The present applicant, the plaintiff in the action, Ms Lu, commenced proceedings by a claim filed in this Court on the 12th of March this year. The respondents are Mr Petrou, the State of Queensland and the Commonwealth of Australia.

Ms Lu claims that Mr Petrou has done many improper acts against her for three years to break her businesses and that the Queensland Police and the Federal Police have joined in what she describes as false activities against her. She is legally unrepresented and her command of English is no better than limited. She has had the benefit of an interpreter during today's proceedings.

The statement of claim that accompanied the claim is a long and rambling document setting out a series of allegations in historical form against Mr Petrou but it is in a form which, like the claim itself, completely fails to comply with the *Uniformed Civil Procedure Rules*. That is one of the reasons why the second respondent, the State of Queensland, has applied to have the proceeding struck out or, in the alternative, to have the statement of claim struck out.

Another basis for that application by the State of Queensland is that much of the claim, although it concedes not all, refers to the effect which Mr Petrou's conduct has had on Ms Lu. She says, for example in para 23, that she went to the hospital many times and another doctor as she suffered huge mental distress and has taken lots of drugs. She says that her business has fallen on hard times in part apparently

because of that fact. She has not complied with the provisions of the *Personal Injuries Proceedings Act* and to the extent that the claim involves a claim for personal injuries it is clear that she must do so. Indeed, she commenced previous proceedings alleging personal injuries apparently on a substantially similar basis and those proceedings were ultimately dismissed because of non-compliance with that Act.

She seeks to justify the present proceedings by submitting that the claim is for what she calls "public injury", not "personal injury".

While it is true that some of the claims which she makes are not personal injuries, it is clear that some of them are. I accept the submission that to the extent the claim is for personal injuries, it cannot be sustained.

The major problem, however, with the statement of claim and the claim itself in their present form is that they do not comply with the rules of Court by setting out in a brief and coherent fashion with sufficient particularity what the plaintiff's claim is. The cause of action, if there is one, is not apparent on the face of the documents.

Drawing a claim and a statement of claim is a difficult task in a case such as the present even for a trained lawyer. It is quite clear that it is a task which is beyond Ms Lu's skills. She is not a trained lawyer, and with her limited command of English it seems to me unlikely that she will be able to formulate the claim in a way which would comply with

the rules of the Court. I am well satisfied that at the moment the form of the statement of claim is such that it is embarrassing and would prejudice a proper trial of the action.

It follows from that that the statement of claim must be struck out. I make no comment on whether the evidence, which Ms Lu has and to which she referred at length in her sometimes tearful address to me, is good or bad. What Ms Lu must realise is that it doesn't matter how good your evidence is, you have to formulate a proper claim and statement of claim in accordance with the *Uniform Civil Procedure Rules*. Ms Lu has not done so.

That being so, it is unnecessary and indeed impossible to decide her application. Her application is to have the matter set down for trial. It is an application which would not be granted in any event since the pleadings closed only three days ago. Disclosure of documents has not taken place. There has been no indication whether any expert evidence will be called and Ms Lu has not signed or tendered a request for trial date. All of these things must be done under the rules before a trial date is allocated. No doubt it is difficult for Ms Lu not being a lawyer to follow what the rules require. However, there is no dispensation under the law for people who do not have lawyers to help them.

The only question has troubled my mind about this matter is whether I should strike out only the statement of claim or the whole of the proceedings. Because part of the proceeding on its face appears not to intend to relate to personal injuries,

it is possible that a lawyer might be able to draft a statement of claim which would comply with the rules. It seems to me that this being the first time a statement of claim by Ms Lu has been attacked, I ought to allow the action to stand while striking out the statement of claim. That will give Ms Lu the opportunity to re-plead the matter with a fresh statement of claim if she is able to do so or if she engages the services of a lawyer to do so.

It should be clear to her, however, that not only will she have to obtain a properly drafted statement of claim, she will also have to amend the claim so that it complies with the rules. She deserves one more chance to do that if she is able.

I am, therefore, prepared to make the order which is sought by the State of Queensland in para 4 of its application. It follows that the plaintiff's application must be dismissed.

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I order that the plaintiff's application be dismissed.

I order that the statement of claim be struck out. I grant leave to the plaintiff to amend the claim and to re-plead on or before the 14th of May 2010. In default the claim is struck out.

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I order that the application of the third defendant be dismissed.

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