SUPREME COURT OF QUEENSLAND

CITATION:	*Lu v Petrou & Ors* [2011] QCA 226
PARTIES:	**LUCY (XIAOSHUANG) LU** (applicant/appellant) **v** **ANDREW PETROU** (first respondent) **STATE OF QUEENSLAND** (second respondent) **COMMONWEALTH OF AUSTRALIA** (third respondent)
FILE NO/S:	Appeal No 3303 of 2011 Appeal No 3304 of 2011 Appeal No 3305 of 2011 SC No 2538 of 2010 SC No 11613 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension of Time/General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 September 2011
DELIVERED AT:	Brisbane
HEARING DATE:	10 August 2011
JUDGES:	Fraser and Chesterman JJA and Margaret Wilson AJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**In CA No 3303 and CA No 3304 of 2011:** **Application for an extension of time to appeal dismissed with costs to be assessed on the indemnity basis.** **In CA No 3305 of 2011:** **Appeal dismissed with costs to be assessed on the indemnity basis.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – where the appellant commenced a proceeding against the respondents in November 2009 – where the proceeding was dismissed by consent in January 2010 – where the appellant commenced another proceeding against the respondents in substantially similar terms in March 2010 – where the respondents applied to strike out the second proceeding – where the appellant did not give notice of a claim in the form approved for use under

the *Personal Injuries Proceedings Act* 2002 – where the second proceeding was struck out for non-compliance with the *Personal Injuries Proceedings Act* 2002 and as an abuse of process – where the court has power to strike out a pleading pursuant to r 171 of the *Uniform Civil Procedure Rules* 1999 – whether the strike out orders might be set aside on appeal

APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – where a further application by the appellant in the second proceeding was struck out in October 2010 – where rules 667 and 668 of the *Uniform Civil Procedure Rules* 1999 allow for a further application to be made in the Trial Division in limited circumstances – where the court has a discretion pursuant to sections 18 and 43 of *Personal Injuries Proceedings Act* 2002 to allow a claimant to apply for leave to start a proceeding despite non-compliance with the notice requirements – where the appellant did not put any material before the judge to enliven the discretion – where the appellant cited r 39 of the *Uniform Civil Procedure Rules* 1999 – where r 39 is directed at procedure within the Magistrates Court – whether the judge erred in dismissing the application

APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – where the appellant commenced a third proceeding in October 2010 – where the respondents applied to have the proceeding struck out and for orders protecting them against further similar proceedings being brought by the appellant – where the action was permanently stayed as an abuse of process pursuant to r 389A of the *Uniform Civil Procedure Rules* 1999 – where it was ordered that the plaintiff not start a similar proceeding without leave of the court – whether the judge erred in the exercise of her discretion

Constitution of Queensland 2001 (Qld), s 58
Personal Injuries Proceedings Act 2002 (Qld), s 4, s 7, s 9, s 18, s 36, s 43
Uniform Civil Procedure Rules 1999 (Qld), r 39, r 171, r 389A, r 667, r 668

Mbuzi v Hall & Anor [2010] QSC 359, considered
Mbuzi v Hall & Ors [2010] QCA 356, cited
Rogers v The Queen (1994) 181 CLR 251; [1994] HCA 42, cited
von Risefer v Permanent Trustee Company Limited [2005] 1 Qd R 681; [2005] QCA 109, considered

COUNSEL: The applicant/appellant appeared on her own behalf
The first respondent appeared on his own behalf
J M Horton for the second respondent
O K Perkiss for the third respondent

SOLICITORS: The applicant/appellant appeared on her own behalf
The first respondent appeared on his own behalf
Crown Law for the second respondent
Norton Rose Australia for the third respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Margaret Wilson AJA and the orders proposed by her Honour.

[2] **CHESTERMAN JA**: I agree with the orders proposed by Margaret Wilson AJA for the reasons given by her Honour.

[3] **MARGARET WILSON AJA**: Lucy (Xiaoshuang) Lu ("the appellant") was the plaintiff in two proceedings in the Trial Division of the Supreme Court – BS2538/10 and BS 11613/10. Presently before the Court of Appeal are –

> CA 3303/11: Application for an extension of time to appeal against orders made by Daubney J on 25 October 2010 in BS 2538/10;
>
> CA 3304/11: Application for an extension of time to appeal against orders made by Mullins J on 15 October 2010 in BS 2538/10; and
>
> CA 3305/11: Appeal against orders made by Philippides J on 28 March 2011 in BS 11613/10.

[4] Further applications by the appellant were dealt with at the commencement of the hearing on 10 August 2011 as follows: applications that the Court of Appeal be constituted by five judges, and that the appeal be allowed because of the respondents' non-compliance with CA Practice Direction No 2 of 2010 were dismissed, and uncontested applications to adduce further evidence contained in a supplementary appeal book were allowed. The appellant was also granted leave to adduce further evidence, in the form of a bundle of medical documents.

Overview

[5] The appellant is a self-represented litigant.

[6] Her first language is Mandarin, and her spoken and written English is somewhat broken. During the hearing, an interpreter was present at the Bar table. Nevertheless, the appellant largely spoke for herself, with the interpreter sometimes assisting by conveying to her what the Court had said.

[7] The appellant operated a Chinese medicine clinic in Brisbane, and was also involved in writing and publishing. She and the first respondent were in an intimate relationship from July 2007 to April 2008, and after it ended they were involved in domestic violence proceedings in a Magistrates Court. She claims she was stalked by the first respondent and that members of the Queensland Police and the Federal Police were complicit in the first respondent's conduct and failed to prevent or restrain it.

[8] As I shall explain, the appellant claims that the conduct of the respondents damaged her health and caused the loss of her business. She has consulted more than one psychiatrist in the last two years or so, and has been treated with anti-depressant and anti-psychotic medication. Despite a number of attempts, she failed to articulate

a cause of action. Further, in so far as she claimed damages for personal injuries, she failed to comply with the pre-litigation requirements of the *Personal Injuries Proceedings Act* 2002 (Qld) ("*PIPA*"). Ultimately, on 28 March 2011 Philippides J permanently stayed her most recent proceeding and ordered that she not start a similar proceeding against the respondents without the leave of the Court.

[9] In her reasons for judgment Philippides J thoroughly reviewed the history of the various proceedings, and set out relevant observations of the judges before whom various applications had come.

BS 12700/09

[10] The appellant first commenced a proceeding against the respondents on 12 November 2009. The claim was expressed as follows –

> "1. Andrew Petrou who has harassed me for 3 years long, made me lose my clinic and caused a lot of psychological injury.
>
> 2. The Queensland Police Service, whom have placed me on the police black list acted in a irresponsible attitude, use the police system against me for 4 years long, to support and cover crimes committed against me.
>
> 3. The Australian Federal Police whom participate in tormenting me and in collaborating with the Queensland police service in these false activities to be against me.
>
> 4. The above three Defendants injure me for 4 years long, they should apologize to me sincerely, also give me a fair compensation for loss of business, physical & mental injury."

In her statement of claim, she sought the following in the prayer for relief –

> "a. Andrew Petrou should compensate me:
>
> i. To lose my clinic or build another new one. $50,000.
>
> ii. To lose all my loyal patients. $150,000.
>
> iii. To lose a business chance that includes not buying a house yet but house prices more appreciated now. $74,000.
>
> iv. To always need to move residency cost. $50,000.
>
> v. For 3 years since I lost my clinic income as: 1080 days X $500 (this is the average income for owner for Chinese medicine clinic) = $540,000.
>
> vi. Declined health, treatment fees, etc 1080 days X 200 = $216,000.
>
> vii. Total $1,080,000.
>
> b. The Second and Third Defendants should compensate me:
>
> i. I am a good author as I own another business as it is a company that includes writing, publishing, selling

of books; shoot and sell movies and TV shows; etc. But now I am in fact have deep mental injuries, and all these business all needs great spirit to concentrate in work. But experienced so many terrible matters, my brain cells have deep injury and I cannot work well in all the above. I am 43 last year, which is a prime working time, but I cannot work, if only calculate I will lose the above 4 item in my whole life time, and every item income only worth to $2,500,000. Together my lost money from spirit injures will be: $10,000,000.

ii. My medicinal business lose about $5,000,000.

iii. My body treatment fee include in mental and body: $5,000,000.

iv. In 4 years I have no love life and social life, and I lost 4 years time to looking for a good husband, in all my life time I lost in love and natural good life is worth $2,000,000.

v. All total to $22,000,000. Police system should compensate all of above fee to me.

vi. Here, the Queensland police service are at most fault duty, so should charge 70%, total: $17,600,000.

vii. Australia federal police should charge 30%, total: $4,400,000."

The proceeding was dismissed by consent on 22 January 2010. Then she applied to have the consent order set aside; that application was dismissed on 10 March 2010.

BS 2538/10

[11] On 12 March 2010 the appellant commenced BS 2538/10 in substantially similar terms to the claim in the first proceeding. She claimed –

"1. Andrew Petrou played many improper acts against me for 3 years long to break my two businesses.

2. The Queensland Police Service, who placed me on the police black list, acted with a very irresponsible attitude, and used the police system against me for 3 years. The QPS has acted in breach of its duty by supporting and covering all crimes committed against me.

3. The Australian Federal Police has joined with the QPS in these false activities against me.

4. The above three defendants have taken an advantage that interferes with my legal right to conduct my business. They pushed my business into a very difficult condition and actually caused me to finally lose my clinic at Buranda in September 2008. They have also caused great damage to my

publishing business career and caused me to lose a huge amount of my income.

5. The above three defendants should give me fair compensation."

In the prayer for relief in her statement of claim she sought –

"For lost my clinic:

i. To lose my clinic or build another new one clinic cost: $100,000.00

ii. To lose all my loyal patients. $540,000.00

iii. To lose a business chance that includes not buying a house yet but house prices more appreciated now. $100,000.00

iv. To 5 years always need to move my residency cost. $100,000.00

v. For 5 years I lost my clinic income as: 1800 days X $500 (this is the average income for owner for Chinese medical clinic) = $900,000.00

vi. Make my health come down and treatment fees, etc 1800 days X $200 = $360,000.00. Farther treatment fees $360,000.00

vii. To the 5 years farther my medical career lost (my qualification is can raning 5 clinic business in some time, if no the Police interferes to me, one year late I can ran another 4 clinic), so, it is lost will be: 1440 days (4 years) x $500 x 4 (another clinic) = $2,880,000.00

Total $5,250,000.00

For damage to my publishing business:

i. The new book sell to world in 2009: $59/ copy x 300,000.00 copy = $17,700,000.00

ii. The book shoot and sell become movies of income: $2,500,000.00

iii. The book shoot and sell become TV of income: $2,500,000.00

Total $22,700,000.00

All my business lost in 5 years Total: $27,950,000.00

iv. Andrew Petrou should compensate me 20% =$5,590,000.00

v. The Second Defendant should compensate me 50% =$13,975,000.00

vi. The third Defendant should compensate me 30% =$8,385,000.00

(Here, the Queensland police service are at most fault duty, it is the whole my trouble make, so should charge 50%, this is reasonable.)"

[12] The second respondent applied to have the proceeding struck out, or in the alternative to have the statement of claim struck out. The appellant cross-applied to have the matter set down for trial. Fryberg J struck out the statement of claim, gave the appellant leave to replead, and dismissed her application.

[13] On 13 May 2010 the appellant filed an amended claim and statement of claim pursuant to leave granted by Fryberg J. With annexures, that document was many hundreds of pages long. On 24 May 2010, she made an application for a speedy trial, which was dismissed with costs on 15 June 2010. She responded to requests for particulars in the form of replies dated 8 July 2010 and later that month served a further request for trial date.

[14] On 30 or 31 August 2010 a female person who identified herself as Lucy Lu telephoned the Queensland Police Service Solicitor and asked to speak to "that bitch", referring to the Christian name of the legal officer with carriage of the proceeding. She was recorded as saying (inter alia), "...kill her whole family and she will die and she will go ... because she is a terrible bitch."

[15] The appellant filed a further amended statement of claim on 28 September 2010 and an application to dispense with the respondents' signatures on a request for trial date. That application was dismissed by Mullins J on 6 October 2010.

[16] On 15 October 2010 Mullins J heard applications by the respondents to strike out the proceeding. Her Honour ordered –

> "1. This proceeding against the first, second and third defendants is struck out for failure to comply with the pre-court procedures of the *Personal Injuries Proceedings Act* 2002 and as an abuse of process of the Court.
>
> 2. The plaintiff must pay the second defendant's costs of the proceeding, including the costs of the application filed on 4 October 2010, to be assessed.
>
> 3. The plaintiff must pay the third defendant's costs of the proceeding, including the costs of the application filed on 8 October 2010, to be assessed."

She said of the appellant –

> "The Plaintiff, Ms Lu, is self-represented. She is a Mandarin speaker and her English is not clear. She had an interpreter to assist her. She has, however, been involved in preparing the numerous documents that are on this file and although her spoken English is hesitant and sometimes difficult to understand and some of her written English is also not always clear and, as she says herself, 'bad writing', I have formed the view on the basis of the submissions that I have heard today from Ms Lu personally and on 6 October 2010 that Ms Lu is a

> very shrewd person and, although a litigant in person, she understands very well the issues that are before the Court, both those that have been placed before the Court in her claim and the arguments that are raised against her."

[17] The appellant then filed an application in BS 2538/10 for the following orders –

> "1. The Plaintiff Objection to court to dismissing the order made on 15/ October/ 2010, and her granted ensure to the commencement of *Personal Injuries Proceedings Act 2002*, and applying to the Court for orders alternative,
>
> (1). Starting urgent PIPA with the court's leave. Or
>
> (2). Starting a PIPA that court can remedy non compliance and authorize the cla[i]mant to proceed further despite non compliance.
>
> 2. Further or other orders."

[18] On 25 October 2010 Daubney J dismissed that application and ordered the appellant to pay each of the respondents' costs of and incidental to the application on the indemnity basis. His Honour said –

> "This matter has a significant chequered history marked by the plaintiff's proceedings being dismissed or struck out by Judges of the Court and this plaintiff then improperly and impermissibly seeking to re-agitate those decisions after they have been made.
>
> ...the application is and always was fundamentally misconceived. The proceeding was completely disposed of by the orders of Mullins J on 15 October 2010. The parties have been brought back to the Court today and have thereby incurred further legal expenses for no good reason and on no proper basis."

BS 11613/10

[19] The appellant commenced BS 11613/10 on 25 October 2010.

[20] On 14 November 2010 the legal officer with carriage of the proceeding for the second respondent received two emails from the appellant's email address, containing a hyperlink to a website purporting to be the appellant's. The legal officer clicked on the link where she found what was in effect a reward offered for her body and those of family members. The police were informed and the appellant was charged with stalking. She was granted bail on condition that she have psychiatric treatment.

[21] A Principal Lawyer in the Crown Solicitor's Office, Michael Prowse, took over the conduct of the proceeding for the second respondent.

[22] By late November 2010, the respondents all filed notices of intention to defend and defences. The second and third respondents pleaded (*inter alia*) that the proceeding was void and liable to be struck out because of the appellant's non-compliance with the pre-litigation requirements of *PIPA*.

[23] On 4 January 2011 one of the Crown Solicitor's legal officers wrote to the appellant. He referred to the proceeding and to documents delivered to his office on 2 December 2010 –

> "1. A Reply to the Second Defendant's Notice of Intention to Defend.
>
> 2. A document titled 'Letter of Request'. In that document you refer to correspondence which you say was produced in a different proceeding before the Supreme Court, being matter number BS2538/10. I do not have a copy of any such letter. I do not understand the nature of your request. To the extent that the letter of request seeks some arrangement pursuant to s 23 of the *Personal Injuries Proceeding Act 2002* such request is entirely premature as your claim is not properly commenced in accordance with the provisions of that Act.
>
> 3. The third document delivered on 2 December 2010 purports to be a 'Notice of Claim' pursuant to the *Personal Injuries Proceedings Act 2002* (PIPA). I draw your attention to s 9(1) PIPA which requires that a Notice of Claim should be provided before starting a proceeding in the court. In any event your Notice does not appear to conform to the prescribed form or contain the prescribed information. The required PIPA Notice of Claim forms can be accessed via the internet at the following web address: <http://www.lawforms.com.au/samples/pipa.pdf.>
>
> 4. In addition to the three documents referred to above, you also delivered, on 2 December 2010, a document titled 'Letter to the First, Second and Third Defendants' dated 1 November 2010. I am unsure of the purpose this document."

He set out the history of the whole matter and pointed to her non-compliance with *PIPA* and other legal issues. He invited her to withdraw her claim.

[24] The appellant sought to file a notice purporting to be pursuant to *PIPA*, and she sent the Crown Solicitor a letter dated 11 January 2011 with an attachment purporting to be a notice of claim in Form 1 under *PIPA*.

[25] The respondents applied to have the proceeding struck out and for orders protecting them against further similar proceedings being brought by the appellant. Their applications were heard by Philippides J.

[26] In her reasons for judgment her Honour recorded –

> "[30] At the hearing of this application, the plaintiff served the following documents which include cross-applications. In the absence of objection, leave was granted to the plaintiff to read and file the following documents, all dated 25 February 2011:
>
> 1. A request for trial date;
>
> 2. A second request for trial date;

3. A request for subpoenas directed to:

   (a) "Bob Atkinson (the Commissioner of the Queensland Police Service)";

   (b) "Tony Negus (the Commissioner of the Australian Federal Police) … to give production and evidence";

   (c) "Wynnum Police Station … to give production and produce evidence";

   (d) "Anti-Discrimination Commission Queensland … to give production and produce evidence";

   (e) "Magistrate Court of Brisbane … to give production";

   (f) "five Queensland Police Services members … to give production and evidence";

   (g) "five Australian Federal Police members … to give production and evidence";

   (h) "six people, address will offer to Registrar after received order from court. Issue: to give evidence";

4. An application for orders:

   '1. To investigate of committed perjury to court in his defend and another crime act in this case of the First Defendant, and the court give an order that charge of crime of the First Defendant.

   2. To investigate of committed perjury to court in their affidavit to denied Police ID of members of AFP: Kevin Hoiberg, Henry Taijard, Robert Smith, Justin McCarthy and Patrick David Law, and the court give an order that charge of crime of these persons of third Defendant.';

5. An application seeking summary judgement against the first, second and third defendants;

6. An application seeking an order fixing a date for or dispensing with a Compulsory Conference.

[31] At the hearing on 28 February 2011, the plaintiff sought and was given leave to read and file a further affidavit aimed at showing that 'some police try to cover up their crime and control the law'.

[32] The plaintiff additionally sought to amend the statement of claim in accordance with a document also provided to the

parties on 25 February 2011. That amended pleading includes a claim for stalking against the first defendant, which the defendants submitted only serves to confirm the vexatious and abusive nature of the plaintiff's actions. In the prayer for relief, the plaintiff claims:

'1. Damages to the Plaintiff's Personal Injuries including past Medical and Sundry Expenses; Future Medical and Sundry Expenses; compensation in General Damages from the First, Second and Third Defendants false assault and trespass.

2. Damages to the Plaintiff's clinic ruined by the First, Second and Third Defendants whom took advantage of the plaintiff via many improper acts, interfering her legal rights to conduct her business and cause her medical problem, which lead to the Plaintiff's financial loss (or assessment by Court appropriate):

    (i) of the amount of $17,500.00 per month from September 2007 to August 2008,

    (ii) of the amount of $25,000.00 per month from September 2008 to December 2008,

    (iii) of the amount of $125,000.00 per month from 2009 to the judgement date, and

    (iv) of the amount of $830,000.00 in total by missing the chance of operating another new clinic, etc.

3. Damages to the Plaintiff's publishing business from deliberate and malicious pursuit by the First defendant, with both the Second and Third Defendants continuously breaching their statutory duties, which lead to the Plaintiff's financial loss (or assessment by Court appropriate):

    (i) of the amount of $1,770,000.00 per month from March 2009 to December 2009 by failing to sell the new book worldwide,

    (ii) of the amount of $2,500,000.00 by failing to sell the copyright of the book to a movie maker in 2009,

    (iii) of the amount of $2,500,000.00 by failing to sell the copyright of the book to a TV drama maker in 2009,

    (iv) of the amount of $160,008.00 per month from January 2010 to the judgement day by failing to sell the book worldwide.

4. Damages to the plaintiff's health make her future income loss which the Court deems appropriate.

> 5. Damages to the plaintiff's other Special aspects as her cannot make the natural emotion life which the Court deems appropriate.
>
> 6. Damages on both compensatory aggravated and exemplary by the Defendants tried to cover the fact of the case.
>
> 7. Interest pursuant to Personal Injuries Proceedings Act 2002 of the Court deems appropriate.'"

[27] On 28 March 2011 Philippides J ordered –

> "1. The action be permanently stayed pursuant to the Court's inherent jurisdiction as an abuse of process.
>
> 2. Pursuant to rules 389A(3)(b) and (4) of the *Uniform Civil Procedure Rules 1999* (Qld), the Plaintiff not start a similar proceeding to proceeding 11613/10 in this Court or any other Court against the First, Second or Third Defendants in proceeding 11613/10 without the leave of the Court.
>
> 3. The Plaintiff pay the Defendants' costs of and incidental to the Applications on the indemnity basis."

Orders made by Mullins J on 15 October 2010

[28] There were two bases on which Mullins J struck out proceeding BS 2538/10:

(i) in so far as the claim was for damages for personal injuries – for non-compliance with the pre-litigation requirements of *PIPA*; and

(ii) as an abuse of process.

Her Honour did not err in doing so.

***Personal Injuries Proceedings Act* 2002**

[29] One of the appellant's claims seems to be that the conduct of the respondents damaged her mental and physical health – in other words, that it caused her personal injuries.

[30] Section 4(1) of *PIPA* provides –

> "**4 Main purpose**
>
> (1) The main purpose of this Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury."

However, subject to the exceptions contained in s 6, none of which is applicable in the present case, the Act applies to all claims for damages for personal injuries. It is immaterial that a defendant does not have insurance against his or her alleged liability.

[31] *PIPA* prescribes various steps which must be taken before litigation is commenced. Those requirements are substantive rather than procedural,[1] and so must be complied with before a valid proceeding can be instituted.

---

1 *PIPA*, s 7(1).

[32] One of the pre-litigation requirements is that the claimant give a written notice of the claim, in the approved form, to the person against whom the court proceeding is proposed to be started.[2] By s 74, the "chief executive" may approve forms for use under the Act. The "chief executive" is the chief executive of the government department which administers the Act.[3] *PIPA* is administered by the Department of Justice and Attorney General, and the approved forms are those approved by the chief executive of that department.

[33] The notice of claim in Form 1 under *PIPA* which the appellant was obliged to give before commencing a court proceeding was quite distinct from the "claim" by which a court proceeding is initiated. A claim initiating a court proceeding must be in the form approved for use under the *Uniform Civil Procedure Rules* 1999 (Qld) ("*UCPR*"). Further, it is not the function of the Court Registry to supply a claimant with the notice of claim form approved for use under *PIPA*.

[34] The appellant ignored, or at least failed to understand, the mandatory nature of the requirement that she gave a notice of claim in the form approved for use under *PIPA* before commencing litigation.

Abuse of process

[35] The Court has power to strike out a pleading pursuant to Rule 171 of the *UCPR* which provides –

> "**171 Striking out pleadings**
>
> (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."

[36] It has inherent power to strike out or stay proceedings which are an abuse of process. In *Rogers v The Queen*[4] McHugh J said –

> "Although the categories of abuse of procedure remain open, abuses of procedure usually fall into one of three categories: (1) the court's

---

2 *PIPA*, s 9.

3 *Acts Interpretation Act* 1954 (Qld), s 33.

4 (1994) 181 CLR 251, 286; [1994] HCA 42.

> procedures are invoked for an illegitimate purpose; (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or (3) the use of the court's procedures would bring the administration of justice into disrepute. " (citations omitted)

[37] Mullins J said of the pleading –

> "What I do not understand and cannot make sense of from the further amended statement of claim is the technical causes of action that the plaintiff is pursuing against each of the first, second and third defendants. Although the plaintiff complains about their conduct and gives a description of their conduct and refers to improper dealings and claims that she lost her businesses and claims the amounts of money that she is claiming, it is not apparent to me as to the legal relationships and duties that were breached that give rise to the claims.
>
> Of particular relevance to the applications to strike out the claims is the fact that in the material recited in the statement of claim are numerous references to the mental distress and medical conditions that have been caused to the plaintiff by the breaches of duties by the first, second and third defendants.
>
> For example, paragraph 3 of the further amended statement of claim states 'as engaged in a deliberate and malicious pursuit by the first defendant with both the second and third defendants continuously breaching their duties the plaintiff has suffered severe mental stress. It also affected the plaintiff's health and caused medical problems to her.'
>
> That allegation is followed after some subparagraphs by paragraph 4 of the further amended statement of claims [sic] that suggests that the alleged improper acts of the defendants interfered with the plaintiff's legal right to conduct her business, but they also led the plaintiff to suffer from mental distress and medical problems and it is implicit that the mental distress and medical problems of the plaintiff in the way the pleading is put together contributed to the business losses which the plaintiff has suffered or has said she has suffered.
>
> When I put to the plaintiff during the course of submissions that she was claiming her loss of business as a result of the personal injuries that she has alleged she suffered as a result of the defendants' conduct, the plaintiff responded that it was her fault and her 'bad writing' that had resulted in her referring to personal injuries and that it was in fact the losses of business that preceded the personal injuries that were suffered by her. I refer to this as one of the indications of the shrewdness that I detected in Ms Lu's presentation of her arguments today.
>
> Both the second and third defendants analysed the further amended statement of claim and pointed to the numerous references to the personal injuries that the plaintiff claims that she suffered as a result of the conduct of the first, second and third defendants. As I have said, I cannot work out what the causes of action are, but a fair

> reading of the further amended statement of claim leaves one only with the conclusion that part of the plaintiff's claims are for the personal injury that she alleges that she has suffered from the acts of the defendants.
>
> Apart from the fundamental failure of the plaintiff to make any attempt to comply with the pre-Court procedures of PIPA, the statement of claim is also a document that does not conform in any real way with the requirements of a pleading in this Court. It would be wrong to allow this proceeding to continue with the wild allegations that are made by the plaintiff without properly attempting to put them in a form which fairly would enable a defendant to know the case the defendant has to answer and to respond to them.
>
> It is not the purpose of the justice system to allow a plaintiff in the position of Ms Lu to rely on the fact that she is self-represented and not a native English speaker to leave as an existing action claims that are embarrassing and not able to be properly taken to trial in this Court. In view of the history of this proceeding, in conjunction with proceeding 12700 of 2009, this proceeding must be characterised as an abuse of process of the Court."

Her Honour's observations were both orthodox and apposite.

[38] The appellant failed to articulate a cause of action against any of the respondents. The court's function is to adjudicate disputes according to law. It cannot entertain a claim for damages in a legal vacuum. A party claiming damages must formulate (usually by way of pleading) and ultimately prove a cause of action – that is, a set of facts giving rise to a legally recognisable wrong. The provisions of the *UCPR* about pleadings regulate the conduct of litigation to ensure that each party is apprised of the case he or she has to meet and that the parties' resources and the public resources invested in the Court are not squandered on claims which have no identifiable legal basis.

[39] There is no ground on which Mullins J's orders might be set aside on appeal.

Orders made by Daubney J on 25 October 2010

[40] In the application determined by Daubney J on 25 October 2010, the appellant sought, in effect, the setting aside of the orders made by Mullins J and relief pursuant to s 18 and/or s 43 of *PIPA*.

[41] Generally, the recourse available to a party who is dissatisfied with an order made by the Trial Division striking out a proceeding after a contested application is by way of appeal to the Court of Appeal[5], rather than by a further application in the Trial Division.

[42] Rules 667 and 668 of the *UCPR* afford a limited scope for a further application in the Trial Division. They provide –

> "**667 Setting aside**
>
> (1) The court may vary or set aside an order before the earlier of the following—

[5] *UCPR*, Chapter 18.

(a) the filing of the order;

(b) the end of 7 days after the making of the order.

(2) The court may set aside an order at any time if—

(a) the order was made in the absence of a party; or

(b) the order was obtained by fraud; or

(c) the order is for an injunction or the appointment of a receiver; or

(d) the order does not reflect the court's intention at the time the order was made; or

(e) the party who has the benefit of the order consents; or

(f) for a judgment for specific performance, the court considers it appropriate for reasons that have arisen since the order was made.

(3) This rule does not apply to a default judgment.

Note—

For a default judgment, see rule 290.

668 Matters arising after order

(1) This rule applies if—

(a) facts arise after an order is made entitling the person against whom the order is made to be relieved from it; or

(b) facts are discovered after an order is made that, if discovered in time, would have entitled the person against whom the order is made to an order or decision in the person's favour or to a different order.

(2) On application by the person mentioned in subrule (1), the court may stay enforcement of the order against the person or give other appropriate relief.

(3) Without limiting subrule (2), the court may do one or more of the following—

(a) direct the proceedings to be taken, and the questions or issue of fact to be tried or decided, and the inquiries to be made, as the court considers just;

(b) set aside or vary the order;

(c) make an order directing entry of satisfaction of the judgment to be made."

[43] As his Honour observed, the matter did not fall within r 668, but, given the date of Mullins J's order and the filing of the application before him, it might conceivably have fallen within r 667(1).

[44] He went on –

> "…but even if I were to entertain the application on that basis, there would still need to be shown by the plaintiff some proper basis for the Court undertaking the very serious step of setting aside an order made by a Judge of this Court after full argument and for which full reasons were given."

[45] Sections 18 and 43 of *PIPA* provide –

> "**18 Claimant's failure to give part 1 of a notice of a claim**
>
> (1) A claimant's failure to give a complying part 1 notice of claim prevents the claimant from proceeding further with the claim unless—
>
> (a) the respondent to whom part 1 of a notice of a claim was purportedly given—
>
> (i) has stated that the respondent is satisfied part 1 of the notice has been given as required or the claimant has taken reasonable action to remedy the non-compliance; or
>
> (ii) is conclusively presumed to be satisfied it is a complying part 1 notice of claim under section 13; or
>
> (b) the respondent has waived compliance with the requirement; or
>
> (c) the court, on application by the claimant—
>
> (i) declares that the claimant has remedied the noncompliance; or
>
> (ii) authorises the claimant to proceed further with the claim despite the noncompliance.
>
> (2) An order of the court under subsection (1)(c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to a respondent from the claimant's failure to comply with the requirement.
>
> ...
>
> **43 Starting urgent proceeding with the court's leave**
>
> (1) The court, on application by a claimant, may give leave to the claimant to start a proceeding in the court for damages based on a liability for personal

> injury despite noncompliance with this part if the court is satisfied there is an urgent need to start the proceeding.
>
> ...
>
> (3) However, if leave is given, the proceeding started by leave is stayed until the claimant complies with this part or the proceeding is discontinued or otherwise ends."

[46] The appellant failed to put any material before Daubney J to enliven the discretions conferred by those provisions, and there was no basis upon which his Honour might have made orders under them. As he said –

> "It is quite clear on the face of the order made by Mullins J on 15 October that her Honour struck out the proceedings inter alia on the basis that they were an abuse of process.
>
> It would not be appropriate for me to circumvent that order on the basis of the flimsy material which the plaintiff has presented today. Indeed, there has been no sensible reason put before me why the orders made by Mullins J should be set aside."

[47] In a document filed in support of the application the appellant said –

> "2. The action that Objection to the court it is according to *Rule 39(3) Objection to court UCPR* The objection is taken to be an application. (4) The court may make any of the following orders on an application or objection under this rule – (a) an order dismissing –…"

Then she set out s 43 and part of s 18 of *PIPA*. In her oral submissions before Daubney J she referred again to r 39.

[48] His Honour commented that r 39 of *UCPR* was of no relevance because it is directed at procedure within the Magistrates Courts. That is quite correct. Rule 39 is part of Chapter 2 Part 6 Division 3 of the *UCPR*. Part 6 contains rules about where within the State a proceeding may be started. The provisions in division 3 apply only to Magistrates Courts.[6] By r 39 a defendant or respondent may object that a proceeding has been commenced in the wrong Magistrates Courts district. The appellant's proceeding was in the Supreme Court and there was no question of its having been started in the wrong place.

[49] The appellant has failed to demonstrate that Daubney J erred in dismissing the application and ordering the appellant to pay indemnity costs. There is no ground on which his Honour's orders might be set aside on appeal.

Application before Philippides J

[50] Undeterred, the appellant commenced another proceeding, still without complying with the pre-litigation requirements of *PIPA*, and still failing to articulate a cause of action against any of the respondents. The respondents applied to have the

---

6 *UCPR*, r 36.

proceeding struck out and for orders protecting them against further similar proceedings.

[51] She made various cross-applications. Her requests for a trial date, the issue of subpoenas and summary judgment needlessly wasted the time and other resources of the Court and those of the respondents. The investigation of alleged perjury is a matter for the police, not the Court. Although she had provided what purported to be a Form 1 under *PIPA* after the commencement of the latest proceeding, she did not establish any reason why the Court should fix a date for or dispense with a compulsory conference.[7] In relation to her application to amend the statement of claim in accordance with the draft pleading she had provided to the parties, Philippides J observed –

> "[33] The claim seeks substantially similar relief to that sought in the previous proceedings. Moreover, the claim, in so far as it relates to the third defendant, concerns allegations that four named individuals were members of the Australian Federal Police and used the powers invested in them by the position to cause the plaintiff harm. Affidavit material from each of the named individuals deposed to their never having been members of the Australian Federal Police. The material also indicated that they had been subjected on the plaintiff's website to threats and rewards for their bodies."

[52] In permanently staying the proceeding as an abuse of process, Philippides J relied on the inherent power of the Court to prevent its processes being used as a means of vexation and on r 389A of the *UCPR*. Her Honour referred also to the dictum of Keane JA (with whom the other members of the Court agreed) in *von Risefer v Permanent Trustee Company Limited*[8] that s 58 of the *Constitution of Queensland* 2001 (Qld) may provide a statutory jurisdiction that mirrors the inherent jurisdiction.

[53] In *von Risefer*, which was decided before the introduction of r 389A of the *UCPR*, the Court went further than just restraining the plaintiffs from bringing any further application in the proceeding then before it. It made an order restraining the plaintiffs –

> "... from… taking any further steps, including the issuing of any new proceedings in any Queensland court against the… defendants in or arising out of or concerning allegations made in proceedings… without the prior leave of a judge of the Trial Division of the Supreme Court."

[54] Rule 389A of the *UCPR* provides (so far as presently relevant) –

> "**389A Restricting applications that are frivolous, vexatious or abuse of court's process**
>
> (1) This rule applies if the court is satisfied that a party (the ***relevant party***) to a proceeding (the ***existing proceeding***) has made more than 1 application in

---

7 *PIPA*, s 36.

8 [2005] 1 Qd R 681; [2005] QCA 109.

relation to the existing proceeding that is frivolous, vexatious or an abuse of process.

...

(3) The court may order that—

(a) the relevant party must not make a further application in relation to the existing proceeding without leave of the court; or

(b) the relevant party must not start a similar proceeding in the court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of the court.

(4) The Supreme Court may also order that the relevant party must not start a similar proceeding in another court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of the court.

...

(9) This rule does not limit any inherent or other power of a court or judge."

[55] In *Mbuzi v Hall & Anor*[9] Applegarth J said –

> "The essential issue in determining whether r 389A applies in this case is whether the applicant has brought more than one application in relation to this proceeding (including an appeal in relation to it) that has been productive of serious and unjustified trouble and harassment."

That was a judicial review proceeding. His Honour ordered that the applicant for judicial review not file any further application in the proceeding, including an appeal in the proceeding, without the Court's leave. The applicant applied for leave to appeal against his Honour's decision.[10] His Honour's conclusion as to the essential issue in relation to r 389A was not challenged,[11] the Court of Appeal tacitly approving it by considering whether it had been satisfied. It dismissed the application for leave to appeal.

[56] In the present case Philippides J said –

> "[53] I am satisfied that the applicant has now brought more than one application in relation to this proceeding, which has been productive of serious and unjustified trouble and harassment, and which can be properly characterized as frivolous, vexatious and an abuse of process, so that an order pursuant to r 389A(3)(b) may be made precluding the plaintiff from starting a similar proceeding in this Court without the leave of the Court.

---

9 [2010] QSC 359, [34].

10 *Mbuzi v Hall & Ors* [2010] QCA 356.

11 *Mbuzi v Hall & Ors* [2010] QCA 356, [5].

> [54] The application for contempt orders, speedy trial and summary judgment are not only misconceived, but given the history of this matter, demonstrate a determination to continue to engage in oppressive conduct that has been productive of serious and unjustified trouble and harassment.
>
> [55] It is appropriate that orders be made pursuant to r 389A(3)(b) and also pursuant to r 389A(4) UCPR so that proceedings may not be commenced in another court without the leave of this Court. Those orders are made in addition to an order pursuant to the inherent jurisdiction permanently staying the proceeding as an abuse of process."

[57] Her Honour's recitation of principle and authority was unimpeachable. The appellant had repeatedly brought proceedings in which she failed to comply with *PIPA*, let alone articulate a cause of action, and in which she made many applications. Her dreadful conduct in posting information on the internet about the legal officer acting for the second respondent and her family was inexplicable on any rational basis. It was particularly concerning in light of the earlier incident on 31 August 2010.

[58] Philippides J did not err in the exercise of her discretion.

Outcome

[59] As the appellant has no prospects of succeeding on an appeal against the orders made by Mullins J on 15 October 2010 or those made by Daubney J, her applications for extensions of time in which to appeal should be dismissed.

[60] The appeal against the orders made by Philippides J should be dismissed.

[61] Costs on the indemnity basis should follow the events.

Orders

[62] The following orders should be made –

In CA 3303/11 – application for an extension of time to appeal dismissed with costs to be assessed on the indemnity basis.

In CA 3304/11 – application for an extension of time to appeal dismissed with costs to be assessed on the indemnity basis.

In CA 3305/11 – appeal dismissed with costs to be assessed on the indemnity basis.