

# SUPREME COURT OF QUEENSLAND

CITATION: *Dupois v Queensland and Television Ltd & Ors* [2014] QSC  
48

PARTIES: **CHARLES DUPOIS**  
(plaintiff)  
**v**  
**QUEENSLAND AND TELEVISION LTD**  
ACN 009 674 373  
(first defendant)  
**TCN CHANNEL NINE PTY LTD**  
ACN 001 549 560  
(second defendant)  
**GENERAL TELEVISION COOPERATION PTY LTD**  
ACN 004 330 036  
(third defendant)  
**NINE NETWORK AUSTRALIA PTY LTD**  
ACN 008 685 407  
(fourth defendant)  
**KATE DONNISON**  
(fifth defendant)  
**GRANT WILLIAMS**  
(sixth defendant)  
**THERESE ZUANETTI**  
(seventh defendant)

FILE NO/S: SC No 2754 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court at Brisbane

DELIVERED ON: 26 March 2014

DELIVERED AT: Brisbane

HEARING DATE: 17 March 2014

JUDGE: Chief Justice

ORDER: 

1. The time for filing of a statement of claim as contemplated by paras 3 and 4 of the order of Dalton J of 18 March 2013, be extended, as necessary, to 28 October 2013, when the amended claim and statement of claim was filed in 2754/2012.
2. The plaintiff have leave to deliver a further amended statement of claim addressing the matters dealt with in paras 1, 2, 3 and 4 of these reasons for judgment (within para 6 of the reasons).

3. **The plaintiff pay the first to seventh defendants' costs, assessed on the standard basis, thrown away by reason of this grant of leave to amend.**
4. **The costs of and incidental to this application otherwise be reserved.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – DEFAULT OF PLEADING – the plaintiff, a self-represented litigant, was given leave to re-plead his statement of claim on 18 March 2013 – no time frame was set by the court but by virtue of rule 381 of the *Uniform Civil Procedure Rules* the plaintiff was required to do so within 14 days – the plaintiff delivered his re-pleaded and termed ‘amended’ statement of claim on 28 October 2013 – whether the plaintiff’s ‘amended’ statement of claim filed 28 October 2013 should be struck out

*Uniform Civil Procedure Rules* 1999 (Qld) r 381

COUNSEL: The plaintiff appeared on his on behalf  
R J Anderson for the first to seventh defendants

SOLICITORS: The plaintiff appeared on his own behalf  
Johnson Winter & Slattery for the first to seventh defendants

- [1] **CHIEF JUSTICE:** On 18 March 2013, Dalton J struck out the statement of claim in each of 2754 of 2012 and 2753 of 2012 (against the plaintiff’s sister-in-law Ms Zuanetti). Her Honour effectively directed the consolidation of the two proceedings, and granted the plaintiff “leave to re-plead the statement of claim” in 2754. Her Honour ordered the plaintiff to pay the defendants’ costs (assessed on the standard basis). She declined to order assessment on the indemnity basis, as had been sought, because, as she said, the plaintiff’s claim was not “utterly without merit”.
- [2] The plaintiff delivered what is styled an “amended” statement of claim in 2754, filed on 28 October 2013. It included Ms Zuanetti as seventh defendant. Under the law which applies in Queensland, an action for damages for defamation must be commenced within one year of the alleged defamation, subject to the court’s capacity to extend the limitation period (s 32A *Limitation of Actions Act* 1974). The first to seventh defendants, who apply for the striking out of that pleading, contend that it was not delivered pursuant to Her Honour’s order, because an amended pleading should have been delivered within 14 days of that order (r 381 *Uniform Civil Procedure Rules* 1999).
- [3] The plaintiff responds that he was not aware of the need to deliver an amended pleading (or to “re-plead”) within any specific time period, and he relies on Her Honour’s having failed to speak about that. The plaintiff has never been represented by lawyers in this proceeding. He is an apparently intelligent person, and as I mentioned during the hearing, he must ordinarily have appreciated that there would be rules about these things. But in the end, I think it would be

inappropriate to strike out the pleading on this basis unless I were satisfied that the claim it seeks to mount could not succeed, and I am not satisfied of that. This is not a case where there would be demonstrable prejudice to the defendants in my considering now, notwithstanding the lapse of time, the sufficiency of an amended statement of claim, and in the exercise of my discretion, the appropriate course now is for me to extend, as necessary, the time for the filing of the amended statement of claim contemplated by paragraphs three and four of the order of Dalton J of 18 March 2013, to 28 October 2013 when the amended claim and statement of claim was filed in 2754/12.

- [4] I turn to the adequacy of the amended statement of claim.
- [5] At the request of the plaintiff, and without serious objection from Mr Anderson who appeared for the first to seventh defendants, I viewed the segment of “A Current Affair”. But the present challenge to the pleading in this jurisdiction of the court must be assessed on a rather more confined basis.
- [6] I consider there is substance to these objections raised on behalf of the defendants.
1. In relation to para 5, which pleads the alleged imputations, notwithstanding the attempt to correlate with paragraph 2, the plaintiff should particularize, in relation to each imputation, the part or parts of the interview on which he relies. Each should say, in relation to the particular sub-para of 5, something like “I rely on that part of the segment referred to in para 2...”.
  2. Also the imputations should be stated without commentary. For example, in para 5(l), the word “blatant” is not appropriate, as is the allegation of “bizarre” motivation in para 5(t). I invite the plaintiff to have comprehensive and careful regard to the defendants’ submissions (paras 17 to 27 esp) in recasting para 5; they are basically well-founded.
  3. As to the claim for \$50 million damages, the plaintiff is not entitled to withhold the identity of the company and its managing director, as has been done in para 11(h), and the whole of paragraph 11 must be recast to disclose full particulars of the claim being made.
  4. The latter part of para 12, “and has also lost...”, absent a claim of financial loss, would appear to be irrelevant, and should be deleted.
- [7] In relation to other points made by way of challenge to the pleading, I was satisfied that the respective roles of the fifth, sixth and seventh defendants were adequately made clear by para 1(g), (h) and (i).
- [8] I was also satisfied that the bases of the claim for aggravated damages (paras 7, 8, 9) were adequately set forth, sufficiently complying with Rule 158.
- [9] There was criticism of para 2, in that it includes “commentary and interpretation” (eg sub paras (h), (m), (w)). Any departure from Rule 152 is not in my view substantial, and taking account of the transcript annexed to the pleading, the plaintiff’s allegations are sufficiently clear.

- [10] I note the defendants' submission that in relation to paras 7, 8 and 9, there is non-compliance with Rule 150(1)(k). I am satisfied, however, that the plaintiff has sufficiently particularized the knowledge/states of mind for which he is contending.
- [11] This brings me to the question whether the plaintiff should be allowed to amend again, or re-plead, or suffer the dismissal of his claim. The defendants point to this as a third attempt. But I think the plaintiff has made a genuine further attempt to present what is not plainly an unarguable claim. The amended statement of claim is not redolent of argumentation and propaganda. It is salvageable. And while the defendants will be frustrated at having to respond to repeated attempts by the plaintiff to put his case in order, it is a case where some tolerance must be allowed to the unrepresented litigant, and we have not yet in this case reached the end point.
- [12] I order:
1. that the time for filing of a statement of claim as contemplated by paras 3 and 4 of the order of Dalton J of 18 March 2013, be extended, as necessary, to 28 October 2013, when the amended claim and statement of claim was filed in 2754/2012;
  2. that the plaintiff have leave to deliver a further amended statement of claim addressing the matters dealt with in paras 1, 2, 3 and 4 of these reasons for judgment (within para 6 of the reasons);
  3. that the plaintiff pay the first to seventh defendants' costs, assessed on the standard basis, thrown away by reason of this grant of leave to amend; and
  4. that the costs of and incidental to this application otherwise be reserved.
- [13] I point out in relation to order 3 that that is a usual consequence of a grant of leave to amend. If there is to be any challenge to that direction, I will entertain it, as I will to the standard based assessment, although my obvious feeling at this stage is that assessment on that basis is appropriate.