

SUPREME COURT OF QUEENSLAND

CITATION: *Markan v Bar Association of Queensland* [2014] QSC 88

PARTIES: **PETER MARKAN**
(Plaintiff/Respondent)

v

BAR ASSOCIATION OF QUEENSLAND
(Defendant/Applicant)

FILE NO/S: SC No 2980 of 2014

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 28 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 28 April 2014

JUDGE: Atkinson J

ORDERS: **1. The time set for the defendant to file the defence in the proceeding is extended, pursuant to rule 7 of the Uniform Civil Procedure Rules 1999 until seven days after the determination of the relief claimed in paragraphs 3 to 7 of the application.**

2. The following directions are made:

(a) the application is adjourned to the civil list for a half day hearing on 30 July 2014,

(b) the plaintiff/respondent is to file and serve his affidavit in response to the defendant/applicant's affidavit filed 17 April 2014 by 4:00pm on 26 May 2014,

(c) the defendant/applicant is to file and serve any affidavit in reply to the plaintiff/respondent's affidavit by 4:00pm on 9 June 2014,

(d) the parties are to file and exchange their submissions by 4:00pm on 22 July 2014.

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND PROCEDURE UNDER THE UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – TIME – where the defendant application seeks directions for

the hearing of the application - where the defendant applicant is unable to respond to the claim and statement of claim in its current form – whether the defendant applicant should be granted an extension of time to file the defence

Uniform Civil Procedure Rules 1999 (Qld), r 7, r 137

Markan v Bar Association of Queensland [2013] QSC 146

Markan v Bar Association of Queensland [2013] QCA 379

Markan v Bar Association of Queensland (Unreported, Supreme Court of Queensland, Fryberg J, 26 July 2013)

Markan v Bar Association of Queensland [2014] QCA 034

COUNSEL: The plaintiff/respondent appeared on his own behalf

J Bartz for the defendant/applicant

SOLICITORS: The plaintiff/respondent appeared on his own behalf

Bartley Cohen for the defendant/applicant

HER HONOUR: This matter concerns a proceeding taken by the plaintiff, Peter Markan, against the defendant, the Bar Association of Queensland.

The Bar Association of Queensland, the defendant to the action, has applied for the following orders:

- 5 (1) that the time set for the defendant to file the defence in the proceeding be extended, pursuant to rule 7 of the *Uniform Civil Procedure Rules 1999* (UCPR) until seven days after the determination of the relief claimed in paragraphs 3 to 7 of this application;
- 10 (2) directions for the hearing of the relief claimed in paragraphs 3 to 7 of this application;
- (3) that the respondent, Peter Markan, be declared a person who has frequently instituted or conducted vexatious proceedings in Australia, within the meaning of s 6(1)(a) of the *Vexatious Proceedings Act 2005* (“the Act”);
- 15 (4) that pursuant to s 6(2)(b) of the Act, the respondent be prohibited from instituting proceedings in any Queensland Court, apart from an appeal from these orders;
- (5) that pursuant to s 6(2)(a) of the Act, this proceeding be stayed;
- 20 (6) further, or in the alternative to the previous order, the claim be struck-out as:
 - (a) disclosing no reasonable cause of action,
 - (b) having a tendency to prejudice or delay the fair trial of the proceeding,
 - (c) being unnecessary or scandalous,
 - (d) being frivolous or vexatious, and
 - 25 (e) being an abuse of the Court, pursuant to the inherent jurisdiction of the Court and rule 16 of the UCPR;
- (7) that the statement of claim be struck-out as:
 - 30 (a) disclosing no reasonable cause of action,
 - (b) having a tendency to prejudice or delay the fair trial of the proceeding,
 - (c) being unnecessary or scandalous,
 - (d) being frivolous or vexatious, and
 - (e) being an abuse of the Court, pursuant to the inherent jurisdiction of the Court and rule 171 of the UCPR;
- (8) that the plaintiff pay the defendant’s costs on the indemnity basis;
- 35 (9) such further or other order as the Court considers appropriate.

The applicant defendant today seeks orders only in accordance with paragraphs 1 and 2 of that application, that is, that the time for the defendant to file and serve the defence be extended, pursuant to rule 7 of the UCPR until seven days after the substantive relief claimed in the application is determined, and that the application for substantive relief be set down for hearing on the civil list on a specified date, together with directions.

It is clear that the matters in paragraphs 3 to 7 should be determined on the civil list since they will take more time than is available in the applications jurisdiction. The date proposed by the defendant is suitable to the plaintiff for that hearing, as are the dates for the filing and serving of affidavits and the exchange of submissions. The question remains whether or not I should allow the application for the extension of time for the defendant to file the defence until seven days after the determination of the questions in paragraphs 3 to 7 of the application.

I have already outlined the issues raised in the substantive part of the application. It includes an application for the claim and statement of claim to be struck-out. It is not necessary for me to detail the content of the claim and the statement of claim as I am not hearing an application to strike-out. However, I will say that a judge, reasonably
5 informed, might form the view that the present claim and statement of claim by the plaintiff suffers from many of the problems suffered by those that have been struck-out and may well suffer the same fate.¹ Certainly, the submission made by the defendant that it is unable to properly respond to the claim and statement of claim appears to me to have merit. It would be difficult to see how a sensible pleading,
10 which complied with the rules, could possibly be filed to the claim and statement of claim in their present form.

It is the case that, pursuant to rule 137 of the UCPR, a notice of intention to defend must be filed within 28 days after the day the claim is served. That is, of course,
15 subject to the power of the Court, found in rule 7 of the UCPR, which provides:

A court may, at any time, extend a time set under these rules or by order.

Orders extending times are commonly made by me, in the case flow management
20 jurisdiction, and, indeed, by applications judges. There should, however, be a good reason for the extension. The reason, in this case, is that it is apparent that it would be extremely difficult to plead to the statement of claim in its present form, certainly if that pleading is to comply with the rules in chapter 6 of the UCPR.

25 The plaintiff submits that the Bar Association represents lawyers and it ought to be able to comply with the rules, and that is certainly true. However, he also submits that the Bar Association was asking for preferential treatment, which is not the case. It has made an application in accordance with the rules and it will be determined on its merit.

30 In view of the necessity for there to be a prior determination of whether or not the claim and statement of claim should be struck-out, in my view, it is appropriate to extend the time for the defendant to file a defence in the proceeding until seven days after the determination of the relief claimed in paragraphs 3 to 7 of this application.
35 Accordingly, I propose to make the orders set out in the draft order, which have been provided to me and provided to the plaintiff, that is:

- (1) the time set for the defendant to file the defence in the proceeding is extended, pursuant to rule 7 of the *Uniform Civil Procedure Rules 1999* until
40 seven days after the determination of the relief claimed in paragraphs 3 to 7 of the application;
- (2) the following directions are made:

¹ Previous claims and statements of claim by the plaintiff have been struck out, see *Markan v Bar Association of Queensland* [2013] QSC 146 upheld in *Markan v Bar Association of Queensland* [2013] QCA 379, and *Markan v Bar Association of Queensland* (Unreported, Supreme Court of Queensland, Fryberg J, 26 July 2013) upheld in *Markan v Bar Association of Queensland* [2014] QCA 034.

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- (a) the application is adjourned to the civil list for a half day hearing on 30 July 2014,
 - (b) the plaintiff/respondent is to file and serve his affidavit in response to the defendant/applicant's affidavit filed 17 April 2014 by 4:00pm on 26 May 2014,
 - (c) the defendant/applicant is to file and serve any affidavit in reply to the plaintiff/respondent's affidavit by 4:00pm on 9 June 2014,
 - (d) the parties are to file and exchange their submissions by 4:00pm on 22 July 2014.

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The costs will be costs in the proceeding.

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