

SUPREME COURT OF QUEENSLAND

CITATION: *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc & Ors* [2017] QSC 237

PARTIES: **JAMES BOYD THOMPSON**
(plaintiff)
v
CAVALIER KING CHARLES SPANIEL RESCUE (QLD) INC
(first defendant)
LAURENCE JOHN PITTS
(second defendant)
KATHERINE LEPELAAR
(third defendant)
BEVERLEY ANN HUSH
(fourth defendant)

FILE NO: BS9148 of 2013

DIVISION: Trial Division

PROCEEDING: Interlocutory application

DELIVERED ON: 21 October 2016

DELIVERED AT: Brisbane

HEARING DATE: 14 October 2016

JUDGE: Mullins J

ORDERS: **1. Paragraphs 1 to 6, 8 and 11 to 16 of the particulars filed on 8 April 2016 are struck out.**
2. The particulars filed on 6 May 2016 are struck out.
3. The application filed on 4 October 2016 (doc 129) is otherwise dismissed.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – PARTICULARS – FURTHER AND BETTER – where plaintiff volunteer was aggrieved by termination of membership of defendant association – where defendant association applied unsuccessfully to strike out the statement of claim – where other defendants applied to strike out the statement of claim on the same grounds and had made a previous strike out application that was unsuccessful in respect of some of the paragraphs that are now the subject of the current strike out application – whether the strike out application should be heard – where plaintiff filed further particulars which purported to relate to specific paragraphs of the statement of

claim – where application made to strike out particulars – whether particulars could be characterised as particulars of the paragraphs of the pleading

Uniform Civil Procedure Rules 1999 (Qld), r 157, r 162, r 171

COUNSEL: The plaintiff appeared in person
E J McCutcheon (*sol*) for the second, third and fourth defendants

SOLICITORS: I P Link for the second, third and fourth defendants

- [1] The plaintiff was a member of the first defendant to which I will refer as the Association. Each of the second, third and fourth defendants were officers of the Association at relevant times. This proceeding was commenced on 27 September 2013 by Mr Thompson, as he was aggrieved when his membership of the Association was terminated at a management committee meeting on 21 July 2011.
- [2] The proceeding was originally brought against seven defendants and the amended statement of claim filed on 11 January 2016 had 631 paragraphs. The solicitors who were then acting for the first and sixth defendants applied pursuant to r 171(1) of the *Uniform Civil Procedure Rules* 1999 (Qld) to strike out the claim and amended statement of claim, insofar as it extended to the first and sixth defendants. A like application was made by the solicitors for the remaining defendants. I heard those applications on 4 and 12 February 2016. I struck out paragraphs 154 to 631. I also struck out paragraphs 128 to 153 and gave Mr Thompson liberty to replead those paragraphs in relation to the aspect of the conduct of the management committee relevant to whether the members of the management committee had made the decision to terminate the plaintiff's membership before giving him the opportunity to show cause, limited to the relief claimed in subparagraphs (i) and (ii) of paragraph 153. I also struck out the claim and statement of claim against the fifth, sixth and seventh defendants and ordered judgment in favour of those three defendants.
- [3] Subparagraphs (i) and (ii) of paragraph 153 provided for the following relief:
- “(i) Declaration that the termination of his membership is void.
 - (ii) An injunction to prevent the Association and its members taking further action against the plaintiff in respect of his ongoing membership arising from the issues raised in this proceeding.”
- [4] Mr Thompson filed his second amended statement of claim on 4 March 2016. Paragraph 142 includes what is set out above from paragraph 153 in the amended statement of claim. Paragraphs 136 to 141 are new paragraphs inserted in the second amended statement of claim. Paragraph 142 also includes the allegation that “The plaintiff has suffered damage and loss”.

- [5] On 11 March 2016 the solicitors then acting for the Association applied for an order pursuant to r 171 of the *UCPR* that the second amended statement of claim be struck out, as far as it extends to the Association or, in the alternative, that identified paragraphs be struck out as against the Association, including paragraphs 136 to 141.
- [6] It does not appear that the second, third and fourth defendants made a like application, although Ms McCutcheon who acts on their behalf appeared before Dalton J on 24 March 2016 when the Association's application was argued. The orders that were made on that day extended to all defendants and concerned the conduct of the proceeding not limited to the matters raised by the Association's application. The orders that were made were:
- “1. Direct that rules 165(2) and 166(4) of the *UCPR* do not apply to all parties in this proceeding.
 2. Direct that the defendants are not required to plead to parts of the amended statement of claim which are clearly designated as particulars.
 3. Direct that particulars of loss in paragraph 141 of the amended statement of claim be provided in a separate document headed ‘Particulars’. Direct that this document be filed and served by 8 April 2016. Leave to amend the claim in accordance with the monetary loss figure.
 4. Direct that all defendants have until 9 May 2016 to file and serve a defence to the second amended statement of claim.
 5. The costs of today's application be reserved.”
- [7] The Association's application was therefore unsuccessful in respect of the orders sought in reliance on r 171(1).
- [8] Mr Thompson filed a document entitled “Particulars” on 8 April 2016 which purports to expand on the allegation in paragraph 141 of the second amended statement of claim. On the same date, Mr Thompson filed an amended claim, relying on the leave given by Dalton J, which inserted an additional paragraph in the relief claim:
- “In compensation for the financial loss (*to 1 August 2016*) which is articulated in paragraph 141 of the Second Amended Statement of Claim and details provided in the ‘PARTICULARS’ document filed on 8 April 2016, the plaintiff claims \$6,650.00.”
- [9] On 6 May 2016 Mr Thompson filed a document which purports to be particulars of the damages pleaded in paragraphs 138, 139, 140, 142 and 225 of the second amended statement of claim.
- [10] In the review of the matter by Flanagan J on 20 May 2016, a timetable was set for the defendants to write a rule 444 letter to the plaintiff identifying any alleged defect or deficiencies in the second amended statement of claim, including the particulars provided by the plaintiff. The plaintiff was directed to file any further amended statement of claim by 4pm on 28 June 2016 and the defendants were given liberty to

apply to bring any further strike out applications in respect to any further filed amended statement of claim.

- [11] Mr Thompson did not file any further amended statement of claim, as anticipated by the directions made by Flanagan J.
- [12] Leaving the issue of the particulars to one side, a dilemma is presented by the fact that the second, third and fourth defendants are now agitating a strike out application in respect of paragraphs of the second amended statement of claim that were not struck out when the Association's application to strike them out was heard on 24 March 2016. If the second, third and fourth defendants were to succeed in their application, it would have the awkward result that the paragraphs struck out against them would remain in the pleading for the purpose of the claim against the Association. There is the added difficulty for the second, third and fourth defendants that their previous application to strike out the amended statement of claim pursuant to r 171(1) of the *UCPR* was treated by me as an application to strike out paragraphs that could not be sustained or were objectionable and many of the paragraphs that survived that strike out application were then the subject of those defendants' rule 444 letter that preceded the current strike out application.
- [13] Mr Thompson has been accorded some leniency as a self-represented litigant and there are aspects of the second amended statement of claim that would not be tolerated in a pleading drawn by a lawyer. The essence of the claim for breach of contract based on the manner in which Mr Thompson alleges his membership of the Association was terminated is clear enough to allow the matter to proceed to trial. In respect of the paragraphs in the pleading that survived the strike out before me and the additional paragraphs inserted in the second amended statement of claim that survived the application before Dalton J, it is appropriate to exercise the discretion not to consider the strike out application by the second, third and fourth defendants in respect of the same paragraphs of the second amended statement of claim.
- [14] Flanagan J anticipated that the defendants would challenge the particulars provided by the plaintiff. They were the subject of the rule 444 letter that preceded the current strike out application and, although not specifically the subject of separate relief claimed in the application to strike out the second amended statement of claim, they were the subject of both written and oral submissions made on behalf of the second, third and fourth defendants at the hearing of the application.
- [15] I will deal first with the particulars that relate to paragraph 141 of the second amended statement of claim. Paragraph 141 pleads:
- “As a consequence of the breaches of contract by the First Defendant, Second Defendant, Third Defendant and Fourth Defendant, the plaintiff's income has been reduced as a result of the loss of regular and frequent contact with dog owners who may have chosen to employ him to board their dogs as frequently had been the situation prior to his expulsion from membership.”

- [16] Dalton J directed that particulars of loss in paragraph 141 be provided. That loss was described in paragraph 141 by reference to the reduction in the plaintiff's income that the plaintiff alleged was the result of the loss of regular and frequent contact with dog owners who may have used his services to board their dogs. That loss is alleged in paragraph 141 to be the consequence of the breaches of contract that are already alleged in the pleading, relating to the failure to comply with the rules of the Association and the rules of natural justice in terminating his membership of the Association.
- [17] The document filed as particulars of paragraph 141 goes much further than particulars of the loss that is described in that paragraph. It is in the nature of a pleading that purports to raise a claim based on a collateral contract to the effect that the Association promised Mr Thompson that, if he were a member of the Association, the Association would facilitate his earning fees from boarding dogs as a service to other members of the Association. The particulars contain a number of paragraphs that tell the story of how Mr Thompson commenced boarding a dog from the time he completed his membership form to join the Association on 29 June 2008 and continued to board dogs until his membership of the Association was terminated.
- [18] There is no claim presently pleaded in the statement of claim as a separate cause of action based on a collateral contract between Mr Thompson and the Association under which the Association assumed an obligation to provide him an opportunity to earn income from boarding dogs. Such an obligation does not flow from mere membership of the Association. To the extent that Mr Thompson is seeking to set up a collateral contract in the particulars of paragraph 141, that could only be the subject of a separate cause of action pleaded properly in the statement of claim. Paragraphs 1 to 6, 8 and 11 to 16 of the particulars filed on 8 April 2016 are not truly particulars of the loss that is described in paragraph 141 and should be struck out pursuant to r 162(1) of the *UCPR* on the basis they are unnecessary (r 162(1)(b)), therefore have a tendency to prejudice or delay the fair trial of the proceeding (r 162(1)(a)), and are otherwise frivolous or vexatious (r 162(1)(c)).
- [19] The particulars filed on 6 May 2016 are not particulars in respect of each of the several paragraphs that are identified in the document as being particularised, but in the nature of another pleading. Particulars are generally for the purpose of amplifying material facts that have been pleaded to prevent surprise at trial and must comply with r 157 of the *UCPR*.
- [20] Paragraphs 2 to 5 in the particulars filed on 6 May 2016 are in the nature of a general commentary and therefore must be struck out pursuant to r 162(1)(b). Paragraphs 6 to 13 which purport to be particulars of paragraph 138 of the second amended statement of claim are a summary of the evidence that Mr Thompson will no doubt seek to adduce at the trial. They are not particulars of the allegations in paragraph 138 of the second amended statement of claim which in basic terms assert that, as a result of the breaches of contract, the plaintiff has suffered damage, because he is no longer a member of the Association who can contribute to the Association's activities and experience a sense of personal fulfilment from doing so. Those particulars must be struck out pursuant to r 162(1)(a) and (b).
- [21] Paragraph 14 of these particulars provide:

“As well as having the effect of working against or defeating the Association’s Objects and the consequent damage to the Association itself, the sudden and improper expulsion of the plaintiff from membership and curtailment of those activities caused substantial damage to the plaintiff which the plaintiff estimates to merit payment of \$8,000 damages in compensation to him.”

- [22] Mr Thompson appears to have plucked a figure out of the air of \$8,000 as damages to compensate him for the alleged breaches of contract by the Association and the second, third and fourth defendants in respect of the termination of his membership. Any damages that are claimed must be damages of a nature that are recoverable for a breach of contract that relate to the breaches and the actual loss that flows from the breaches. Apart from attempting to quantify an amount for damages, paragraph 14 is inconsistent with the description of the damages found in paragraph 138 of the second amended statement of claim and on that basis should be struck out as having a tendency to prejudice or delay the fair trial of the proceeding (r 162(1)(a)).
- [23] Paragraphs 15 to 25 purport to be particulars of paragraph 139 of the second amended statement of claim. Paragraphs 15, 17 and 20 to 24 contain either irrelevant matters or matters of evidence and are not proper particulars. Paragraph 16 adds nothing to what is already set out in paragraph 139 of the second amended statement of claim. Paragraphs 18 and 19 are objectionable on the basis that they describe suffering in the nature of personal injury which Mr Thompson alleges he experienced as a result of the termination of his membership. In February 2016 I had struck out all paragraphs in the amended statement of claim that comprised allegations in the nature of a claim to recover damages for personal injury on the basis of Mr Thompson’s non-compliance with the *Personal Injuries Proceedings Act 2002 (Qld)*. It is an abuse of process for Mr Thompson by way of particulars to attempt to re-introduce a claim to recover damages for personal injury. Paragraphs 18 and 19 therefore must be struck out pursuant to r 162(1)(d).
- [24] Paragraph 25 of the particulars purports to quantify the damages claimed under paragraph 139 of the second amended statement of claim. It expresses Mr Thompson’s claim in terms, however, that do not correspond to that which is the subject of paragraph 139. In addition, as it is placed after the paragraphs that identified personal injury which Mr Thompson claims to have suffered, I infer that personal injury is incorporated in the “considerable damage” which is described in paragraph 25. Paragraph 25 should therefore be struck out pursuant to r 162(1)(a) and (d).
- [25] Paragraphs 26 to 30 of the particulars filed on 6 May 2016 purport to be particulars of paragraph 140 of the second amended statement of claim. Paragraph 140 alleges that as a consequence of the breaches of contract by the defendants, “the plaintiff has been made to endure a degree of personal disgrace” which it is alleged has been witnessed by persons who have subsequently become involved with the Association and other members of the community connected with the Association. Paragraph 26 of the particulars is in the nature of a submission, paragraph 27 is completely irrelevant and paragraph 28 is a matter of evidence. Paragraph 29 is objectionable as it claims an award of compensatory damages “to vindicate the plaintiff’s reputation, consolation for the distress and hurt caused and reparation for the injury done to the plaintiff by both

the failure to conform to the terms of the contract constituted by the Rules and the wrongful expulsion of the plaintiff' which does not reflect the allegations in paragraph 140. Paragraph 29 must therefore be struck out pursuant to r 162(1)(a) and (b). Paragraph 30 is a claim for damages to the plaintiff's reputation which again is not a particular of paragraph 140 and on the same basis as paragraph 29 must also be struck out.

[26] I will therefore make the following orders:

1. Paragraphs 1 to 6, 8 and 11 to 16 of the particulars filed on 8 April 2016 are struck out.
2. The particulars filed on 6 May 2016 are struck out.
3. The application filed on 4 October 2016 (doc 129) is otherwise dismissed.

[27] The second, third and fourth defendants have had some limited success on this application. Subject to hearing submissions from the parties on the issue of the costs of the application, I am inclined to reflect that limited success by ordering that the second, third and fourth defendants' costs of the application (doc 129) filed on 4 October 2016 (limited to the costs of striking out the particulars filed on 8 April and 6 May 2016) are the second, third and fourth defendants' costs in any event.

[28] It could be thought that Mr Thompson's approach to his litigation against the Association and the second, third and fourth defendants is a way of prolonging his relationship with the Association and those defendants. It is apparent from the lengthy hearings of interlocutory skirmishes which have taken place in connection with this proceeding so far this year that the proceeding is unlikely to resolve without a trial, so it therefore needs to proceed to trial in order to bring it to a conclusion.