SUPREME COURT OF QUEENSLAND

CITATION:	*Cassimatis & Anor v Commonwealth Bank of Australia* [2016] QSC 281
PARTIES:	**EMMANUEL GEORGE CASSIMATIS AND JULIE GLADYS CASSIMATIS** (plaintiffs/respondents) **v** **COMMONWEALTH BANK OF AUSTRALIA** (defendant/applicant)
FILE NO/S:	SC No 12787 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application to dismiss proceeding
DELIVERED ON:	1 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	10 May 2016, further written submissions on 16 September and 23 September 2016
JUDGE:	Bond J
ORDER:	**The order of the Court is that the plaintiffs' proceeding is dismissed.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – OVERRIDING PURPOSE OF AND OBLIGATIONS UNDER RULES OR ACTS REGULATING CIVIL PROCEDURES – where the evidence reveals the plaintiffs to be in breach of their implied undertaking under UCPR r 5 to prosecute the proceeding in an expeditious way – where the defendant applies to dismiss the proceeding – where plaintiffs presently involved in proceeding in the Federal Court – where the plaintiffs submit that unless they achieve an outcome in the Federal Court which avoids any substantial liability being imposed on them they would not be in a position to fund the prosecution of this proceeding – whether there is any evidentiary basis to conclude that the plaintiffs' present inability or unwillingness to prosecute this proceeding is likely to change – whether, in the circumstances, it is an appropriate exercise of discretion for the Court to dismiss the proceeding *Uniform Civil Procedure Rules 1999* (Qld), r 5, 280, r 371 *Australian Securities and Investments Commission v Cassimatis (No 8)* (2016) 336 ALR 209, considered *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, followed *McIntosh v Maitland* [2016] QSC 203, cited

Quinlan v Rothwell [2002] 1 Qd R 647, cited
Tyler v Custom Credit Corp Ltd [2000] QCA 178, cited
Ure v Robertson [2016] QSC 210, cited

COUNSEL: P J Dunning QC, with P L Somers, for the plaintiffs/respondents
R S Hollo SC, with P K O'Higgins, for the defendant/applicant

SOLICITORS: Russells for the plaintiffs/respondents
Clayton Utz for the defendant/applicant

[1] In this proceeding, the plaintiffs seek to recover damages in excess of $17 million from the defendant (**the Bank**), which they say they suffered consequent upon –

(a) various breaches by the Bank of the terms of a margin loan agreement;

(b) various breaches by the Bank of a duty of care alleged to have been owed by the Bank to the plaintiffs; and

(c) misleading or deceptive and unconscionable conduct by the Bank.

[2] Part of the conduct by the Bank which the plaintiffs seek to impugn occurred on 30 September 2008 and consisted of an alleged failure by the Bank to provide accurate and appropriate data concerning the state of the plaintiffs' margin loan accounts. Amongst other things, the plaintiffs say that 3 identified members of the Bank's staff were aware that the data was inaccurate but inadequate steps were taken to warn customers, including the plaintiffs, of the inaccuracies. The plaintiffs say that if the Bank had not engaged in the impugned conduct, the plaintiffs would have taken a large range of significantly different financial steps than they in fact took, over the period from 1 October 2008 to October 2009. The plaintiffs say the value of the opportunity which they lost was in excess of $17 million.

[3] The plaintiffs also seek to impugn other conduct by the Bank, including conduct by the Bank purportedly pursuant to the terms of the margin loan agreement and related securities. Again, the plaintiffs say the conduct caused them to lose a valuable opportunity to engage in particular transactions, the value of which exceeded $3.8 million.

[4] The plaintiffs also advance an alternative case of unconscionable conduct in business transactions against the Bank based on the Bank's alleged conduct of failing to despatch written notices of margin call to customers believed to be in margin call, the alleged provision of inaccurate data and the Bank's knowledge of the alleged inaccuracies in its data. Amongst other things relied on is alleged conduct by a named Bank staff member.

[5] Much of the plaintiffs' case is traversed in the Bank's pleading either by denial or non-admission. The allegations of knowledge and conduct of Bank staff are amongst the allegations traversed. It is evident that any trial of the proceeding would involve lay witnesses from both sides; expert opinion evidence and a significant documentary record.

[6] The Bank conceded that for present purposes I should regard the plaintiffs' claim as arguable but nevertheless submitted that the proceeding should be dismissed.

[7] The Bank relied principally on UCPR r 5 and the Court's inherent jurisdiction, but also on UCPR rr 280 and 371. The Bank's fundamental contention was set out in its solicitor's affidavit in these terms:

> These proceedings were commenced in November 2009. Since then, the plaintiffs have done little to progress them including leaving the proceedings in abeyance for significant periods of time. The plaintiffs have not

proceeded with expedition and only when pressed to take any steps or for a response have the plaintiffs demonstrated any willingness to do so.

Despite attempts to have these proceedings managed with other Commercial List proceedings, the plaintiffs have not amended their pleadings or taken any other significant steps to prosecute their case.

The Bank is left with defending proceedings that remain on foot concerning events that occurred almost 8 years ago. The plaintiffs have demonstrated no real desire to progress the claim but have chosen to allocate their resources to other proceedings. When pressed, they have reluctantly indicated that they will prosecute the claim and some time in the future when it suits them to do so.

[8] The chronology of events revealed by the evidence was as follows:

Date	**Event**
13.11.2009	The plaintiffs commenced the proceedings by filing a claim and statement of claim.
09.07.2010	The plaintiffs filed an amended statement of claim.
03.09.2010	The Bank filed its defence.
19.11.2010	Order of Wilson J placed the proceeding on the Commercial List.
23.12.2010	The plaintiffs filed a reply.
23.11.2011 to 23.03.12	The parties exchanged correspondence regarding disclosure and some disclosure occurred.
09.07.2012	The Bank sought orders requiring the plaintiffs to make additional disclosure.
11.07.2012	Wilson J ordered the plaintiffs to produce certain categories of documents within 28 days.
11.07.2012 to 04.06.2014	There was a 2 year period during which the plaintiffs took no steps to prosecute the proceeding.
04.06.2014	The plaintiffs filed a notice of intention to proceed under UCPR r 389.
04.08.2014	McMurdo J made directions including that the plaintiffs comply with the orders of 11 July 2012 by no later than 1 September 2014.
18.08.2014	The plaintiffs provided some documents in purported compliance with 11 July 2012 orders (as extended). The plaintiffs did not respond to each of the categories of documents set out in those orders and failed to provide Protocol-compliant documents as required by those orders.
02.09.2014	The plaintiffs provided some documents in purported compliance with 11 July 2012 orders (as extended). The plaintiffs did not respond to each of the categories of documents set out in those orders and failed to provide Protocol-compliant documents as required by those orders.
09.10.2014	The plaintiffs' counsel submitted to McMurdo J that there had been some difficulty in obtaining instructions from the plaintiffs in relation to the next steps to be taken in the proceeding. Directions were made by McMurdo J that: 1. The plaintiffs file and serve any amended statement of claim by 6 November 2014. 2. No further statement of claim may be filed after 6 November 2014 except with the leave of the Court. 3. The proceeding be listed for review on 3 December 2014.

Date	Event
	4. Costs reserved.
06.11.2014	The plaintiffs sought from the Bank agreement to an extension of 14 days in which to file a further amended statement of claim.
11.11.2014	The Bank refused an extension of 14 days for the plaintiffs to file the further amended statement of claim and said it was a matter to be raised with McMurdo J. The plaintiffs did not file or serve any amended statement of claim in accordance with the direction or at all, nor have they sought an extension of time from the Court in which to do so.
11.12.2014	The proceeding was listed for review with the two other proceedings on the Commercial List with which it was being managed. The plaintiffs sought no orders in relation to the proceeding.
06.10.2015	The plaintiffs' solicitors wrote stating 'unable to prosecute their matter at the moment'.
26.11.2015	The Bank's solicitors wrote requesting the plaintiffs to indicate what steps they intend to take and when; requested a response by 3 December 2015.
25.02.2016	The Bank's solicitors had not received response so wrote again requesting a response to the 26 November 2015 correspondence.
03.03.2016	The Bank's solicitors had not received response so wrote a UCPR r 444 letter to the plaintiffs' solicitors. They outlined their argument in support of the contention that the Bank was entitled to an order dismissing the proceeding and for orders for costs of the application on an indemnity basis and for costs of the proceeding. The letter requested response by 8 March 2016.
08.03.2016	The plaintiffs' solicitors wrote a UCPR r 445 response. The letter flagged the plaintiffs' intention that in the event the Bank proceeded with its foreshadowed application, the plaintiffs would have no alternative but to make their own application for leave to proceed and for a stay of the proceeding. The letter stated the plaintiffs view was that a number of steps could be taken at the conclusion of a 5 week Federal Court trial scheduled to commence at the end of May 2016. It stated: "Accordingly, our clients propose to make an application for leave to proceed during June, 2016 and seek directions for the exchange of lay and expert evidence and for the preparation of a trial bundle. Such directions, along with any trial management orders, would contemplate the matter being set down for a six day trial."
29.03.2016	The Bank filed the application to dismiss.
01.04.2016	Commercial List review by Bond J. Consent orders were made that (inter alia): 1. The plaintiffs file and serve any material in response to application by 15 April 2016. 2. The plaintiffs file and serve any application for a stay of the proceedings or leave to proceed together with any supporting affidavit material by 15 April 2016.
15.04.2016	The plaintiffs did not file and serve any material in response to the application or any application for stay/leave to proceed.
10.05.2016	Hearing of application to dismiss. The plaintiffs filed, by leave at the hearing, a solicitor's affidavit in response to the application.

[9] The chronology justifies the Bank's complaint that the plaintiffs' conduct and their attitude to the proceeding has been and continues to be in breach of their implied undertaking under UCPR r 5 to prosecute this proceeding in an expeditious way.

[10] Before me at the time the matter was argued on 10 May 2016, the plaintiffs' explanation for their conduct had these elements:

(a) The business of Storm Financial Limited ceased in January 2009 and was the plaintiffs' sole livelihood. Since then the plaintiffs had spent more than $1.789 million on legal fees in a legal proceeding involving a claim against an insurer and on the ASIC proceeding. They were also expected to provide another $800,000 to fund the trial in the ASIC proceeding which was scheduled to start in May 2016.

(b) They could not devote the time and resources which they had devoted to those proceedings and also prosecute this proceeding.

(c) The ASIC proceeding had commenced in December 2010 and sought orders against the plaintiffs for millions of dollars in civil penalties and orders permanently banning the plaintiffs from providing financial advice.

(d) They hoped to be able to advance this proceeding if the ASIC proceeding in the Federal Court was finally resolved in their favour. But if ASIC succeeded in the ASIC proceeding (after any appeals) the plaintiffs did not expect to be able to fund this proceeding in the Supreme Court or to be in a position otherwise to prosecute it.

[11] Although the plaintiffs resisted the Bank's application, they did not put forward any concrete proposal as to when and under what circumstances they could progress this proceeding. On the evidence before me, it seemed that the prospect that something might ever actually happen in this proceeding remained only a hope. The high point seemed to be a solicitor's affidavit which expressed the opinion (which I should note was not supported by any concrete evidence addressing the financial position of the plaintiffs and the resources on which they might draw):

> If the plaintiffs succeed in the ASIC Proceeding (and recover an award of costs against ASIC), I believe that they will be able to retain my firm (even if this is on a speculative basis)

[12] The plaintiffs did not cross-apply for a stay of the proceeding, however that seemed to be the effect of what they contended I should do. They submitted the Bank's application should be dismissed and I should list the proceeding for directions at a time after the Federal Court had decided the ASIC proceeding.

[13] I had not determined the Bank's application by the time judgment was obtained in the ASIC proceeding. That occurred on 26 August 2016: see *Australian Securities and Investments Commission v Cassimatis (No 8)* (2016) 336 ALR 209 (**the ASIC judgment**). Amongst other things, Edelman J –

(a) found that each of the plaintiffs had contravened s 180(1) of the *Corporations Act 2001* (Cth) by exercising their powers in a way which caused or 'permitted' (by omission to prevent) inappropriate advice to be given to relevant investors by Storm Financial Limited;

(b) concluded a reasonable director with the responsibilities of the plaintiffs would have known that the 'Storm model' was being applied to the relevant investors and that its application would lead to inappropriate advice and consequences catastrophic for Storm; and

(c) dismissed the plaintiffs' exoneration defence, concluding that their conduct involved a 'high degree of departure' from the requisite standard and that their role was so significant and the contraventions sufficiently serious that they ought not fairly be excused.

[14] The ASIC judgment dealt with liability only. All issues concerning the form of declarations to be made, whether a penalty ought to be imposed, whether any disqualification orders ought to be made, whether any banning orders ought to be made against the plaintiffs and the plaintiffs' liability for ASIC's costs of the proceeding were ultimately deferred to a hearing in in February 2017.

[15] On 31 August 2016, I invited submissions on whether I ought to have regard to the ASIC judgment and, if so, what that regard ought to be. I received written submissions from each side, and further affidavit evidence on behalf of the plaintiffs.

[16] The plaintiffs' position was that unless they could achieve an outcome in the Federal Court which avoided any substantial liability being imposed on them (and, effectively, that meant no civil penalty orders and no adverse costs orders) they would not be in a position to fund the prosecution of the proceeding in this Court. Their solicitor deposed as follows:

> 8. I am informed by [the plaintiffs] and I believe that:-
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> (a) they maintain their earnest wish to prosecute these proceedings;
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> (b) in the event that the proceedings in the Federal Court are concluded on the basis that there is no pecuniary penalty imposed, and no order for costs made against them, then they will be in a position to prosecute these proceedings (subject of course to any appeals);
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> (c) if the proceedings are concluded on the basis that pecuniary penalty orders are made against them, and an order for costs which involves a substantial liability, then, subject again to the outcome of any appeals, they will not be in a position to prosecute these proceedings; and
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> (d) they maintain their opposition to [the Bank's] application.

[17] I note, however, that the plaintiffs do not put evidence before me which enables me to form a positive view of their prospects of achieving the favourable outcome they seek in the Federal Court. Certainly an examination of the nature of the ASIC judgment and the findings made by Edelman J does not provide any basis for forming an optimistic view on the prospect of the plaintiffs completely avoiding a judgment which imposes a substantial pecuniary burden on them, at the least in relation to ASIC's costs of prosecuting the proceeding in the Federal Court.

[18] It is also notable that the plaintiffs do not put forward any concrete evidence of their financial capacity to take the requisite steps in the Federal Court to achieve the outcome they seek. Nor do they put forward any evidence which suggests any reason to think that, if they were ultimately successful in the Federal Court, they would have any financial capacity left to prosecute the proceeding in this Court. Even assuming complete success and a reversal of the judgment of Edelman J and a cost order in favour of the plaintiffs, the best case scenario is that the plaintiffs would be further out of pocket, it being notorious that awards of costs (even of indemnity costs) do not provide a 100% indemnity.

[19] It seems to me that the present position is that the prospect that the plaintiffs might ever actually be able to take any further step in this proceeding remains only a hope on the part of the plaintiffs: a hope that they might overturn on appeal the views of Edelman J on liability or persuade his Honour or an appeal court that there should be no civil penalty orders and no adverse costs orders, and a hope that their financial resources might permit them, thereafter, to prosecute the proceeding in this Court. The evidence gives me no confidence that the hope might ever be vindicated.

[20] The plaintiffs' ultimate position seems to be that set out in their further written submissions before me, namely that if I was not minded to dismiss the Bank's application, they would, given the prospect of further delay, accede to orders in the following terms:

(a) Further prosecution of the proceeding is stayed, pending the filing of an application for directions by the plaintiffs, in accordance with subparagraph (b) hereof;

(b) The plaintiffs may, following the final determination of the proceedings in the Federal Court of Australia, *ASIC v Cassimatis and Anor*, QUD 574 of 2010 ('the ASIC Proceeding'), and any appeal therefrom including any application for special leave to appeal to the High Court of Australia, apply for directions for and in preparation of the trial of this proceeding;

(c) If, within 28 days after the final determination of the ASIC Proceeding, including any appeal therefrom and any application for special leave to appeal, the plaintiffs do not file any application for directions, this proceeding shall thereupon and without further order, be dismissed;

(d) The costs of the application are reserved;

(e) If the proceeding is dismissed, pursuant to subparagraph (c) hereof, any party may apply for any order for costs within 28 days thereafter.

[21] Again, unsurprisingly the Bank objects. It says that the plaintiffs do not apply for a stay and neither does the Bank. If the plaintiffs want a stay of the proceeding, the Bank contends, then they ought to have applied for one and identified a proper basis for a stay. They did not, and could not arrogate one to themselves by the pretence of acceding to one where none is sought. This is particularly so in circumstances where:

(a) the plaintiffs suggest a stay of their own proceeding and cite no authority in support of that proposition;

(b) the Bank is not a party and is not involved in any way in the ASIC proceeding; and

(c) there is no suggestion of any similarity or serious overlap between the issues in the ASIC proceeding and the proceeding in this Court.

[22] There is merit in the criticism of the plaintiffs' conduct. The plaintiffs flagrantly breached their duty under UCPR r 5, leaving it up to the Bank to take the running on bringing them to account. Nevertheless, it seems to me that the fact that the plaintiffs have not formally applied for a stay does not mean that I cannot take that option into account, especially as I am managing this case on the Commercial List. The plaintiffs have clearly contended that I should regard a stay on the terms they propose as an alternative to the order which is sought against them. I will take that possibility into account.

[23] The authorities governing the approach which I should bring to the Bank's application are well known.

[24] In *Tyler v Custom Credit Corp Ltd* [2000] QCA 178 Atkinson J (with whom McMurdo P and McPherson JA agreed) set out a number of considerations to be addressed, acknowledging, of course, that (at [2], citations omitted):

> The court's discretion is, however, not fettered by rigid rules but should take into account all of the relevant circumstances of the particular case including the consideration that ordinary members of the community are entitled to get on with their lives and plan their affairs without having the continuing threat of litigation and its consequences hanging over them.

[25] And, as Jackson J recently observed in *Ure v Robertson* [2016] QSC 210 (at [19], citations omitted):

> Another relevant statement was made by McPherson JA in *Cooper v Hopgood & Ganim*, which was repeated by Thomas JA in relation to the current rules of court in *Quinlan v Rothwell* and other cases as follows:
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> > "*Birkett v James* suggests only some of the factors relevant in exercising the discretion, which include matters such as the duration of the time lapse involved; the cogency of any explanation for delay; the probable impact of procrastination on fading recollection; the death or disappearance of critical witnesses or records; costs already or likely in future to be expended or thrown away; the apparent prospects of success or otherwise at a trial of the action; and the progressively growing problem of effectively hearing and determining questions of fact arising out of events that have taken place many

> years before. The list is not, and is not intended to be, exhaustive; and it takes no account of another factor that is often likely to be material, which is that ordinary members of the community are entitled to get on with their lives and plan their affairs without having the continuing threat of litigation and its consequences hanging over them. The psychological as well as the commercial effects of such a state of affairs ought not to be underestimated."

[26] In support of their contention that an assessment of relevant considerations did not favour dismissal, the plaintiffs advanced these propositions:

(a) The Bank had conceded that for present purposes I should regard the plaintiffs' claim as arguable[1]. The matters the subject of the proceeding occurred in late 2008. The plaintiffs would be prohibited from now bringing claims against the Bank in respect of such matters in contract, tort and under the *Trade Practices Act 1974* (Cth) or the *Australian Securities and Investment Commission Act 2001* (Cth). If the proceeding was dismissed, the plaintiffs would be left with only equitable claims.

(b) The plaintiffs' prejudice of being held out of arguable claims was to be contrasted with the fact that the Bank had not identified any specific prejudice which it may suffer should the matter proceed. It was difficult to accept that the Bank would be prejudiced by reason that an unidentified witness may not now be able to recall certain events.

(c) The plaintiffs had been involved in two other large and expensive pieces of litigation. It was reasonable to infer that their resources only stretch so far. There was a satisfactory explanation for the delay.

(d) Although there had been delay, there had been delay by both parties. And the litigation should be regarded as having reached an advanced stage, the only remaining steps to be completed are preparing experts reports, preparing summaries of evidence of lay witnesses, agreeing a trial plan and trial bundles of documents.

(e) The Bank should be regarded as having caused the plaintiffs very substantial financial loss which had a devastating effect on their financial position by the conduct complained of in this proceeding and by the appointment of receivers to Storm Financial Limited.

[27] For its part, the Bank submitted that UCPR r 5 gave express recognition to the need and importance of expeditious resolution of court proceedings and an end to the former laissez faire attitude by courts towards the leisurely conduct of actions at the will of the parties: see per Thomas JA (with whom de Jersey CJ and Mackenzie J agreed) in *Quinlan v Rothwell* [2002] 1 Qd R 647 at [28] to [30]. The Bank submitted, in reliance on observations by de Jersey CJ in *Quinlan v Rothwell* at [4] that the discretion to dismiss for want of prosecution may confidently be exercised, in appropriate cases, with more robustness than would previously have been considered appropriate. I accept these submissions.

[28] For its part, the Bank – correctly in my view – pointed out that a proper assessment of the chronology of events revealed:

(a) significant delay on the part of the plaintiffs;

(b) failure by the plaintiffs to comply with disclosure orders;

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1 The plaintiffs sought to persuade me that I should regard their claims as more than arguable and I should attribute significant value to their claims because the Bank had settled comparable claims in the past. I found that argument to be unpersuasive. There was no evidentiary basis to make the comparison worthwhile. I will proceed on the basis that the plaintiffs have arguable claims against the Bank, but I do not think I can make any more favourable assessment of their prospects.

(c) failure by the plaintiffs to file and serve an amended statement of claim in compliance with the Court's direction so to do, and failure to seek any extension of time;

(d) failure by the plaintiffs to comply with Commercial List directions made by me; and

(e) failure by the plaintiffs to take steps which they had flagged the intention to take.

[29] The Bank submitted that there was neither pleading nor evidential support before me for the contention that the Bank had somehow caused the plaintiffs to lose the value of their shareholding in Storm Financial Limited. The plaintiffs did not dispute that contention. The Bank also pointed out that there was no explanation how it could be that the events that took place in 2008 caused impecuniosity in the plaintiffs yet they were able to institute these proceedings (and take some steps early on), engage in proceedings against an insurer for some years, and defend proceedings against ASIC, which were commenced in December 2010.

[30] The Bank submitted that the plaintiffs' explanation – in effect that they chose to allocate their time and money elsewhere – was not an adequate explanation for the demonstrated failure to comply with UCPR r 5. I should, submitted the Bank, infer that the plaintiffs had demonstrated an inability or unwillingness to cooperate with the Court and with the Bank to have the proceeding ready for trial within an acceptable period. I agree. I do not regard the plaintiffs' explanation to be adequate. And I have already noted the deficiencies in the evidence concerning the plaintiffs financial resources, which is relevant both to evaluating the adequacy of the explanation and also the question of whether the plaintiffs will ever be able to prosecute this proceeding, even if they are successful in the Federal Court. In my view I have no evidentiary basis to conclude that the plaintiffs' present inability or unwillingness is likely to change for the better and, if so, when that might occur.

[31] The Bank submitted that the plaintiffs' conduct has visited the burdens and inconvenience of delayed litigation on the Bank and should be regarded as involving an element of vexation. I agree. Moreover, I reject the plaintiffs' suggestion that it was significant that the Bank had not identified any specific prejudice which it may suffer should the matter proceed. As to this:

(a) The matters which are the subject of the underlying dispute are already 8 years old.

(b) The proceeding may have advanced past close of pleadings, but there would nevertheless be significant work to be done if it were to proceed to trial. Lay and expert witnesses would be required on both sides[2].

(a) In my view it should not be assumed that the Bank is not prejudiced in its ability to respond to a claim of the nature of that which the plaintiffs bring by the passing of that amount of time. I think the working assumption should be to the contrary: cf per McHugh J in *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 551 to 552. I agree with the following observation by Jackson J in *McIntosh v Maitland* [2016] QSC 203 (at [38], citations omitted):

> If it was ever right to say that delay, in itself, is not inimical to the administration of justice, it is not considered right to say so now. As was said recently by the High Court in *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd*:
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> > "In *Aon Risk Services Australia Ltd v Australian National University*, it was pointed out that case management is an accepted aspect of the system of civil justice administered by the courts

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2 Senior counsel for the plaintiffs submitted that the case should be regarded as largely documentary and that I should form the view that the case was not one where failing memories of witnesses or illness or death of witnesses was apt to compromise the fact finding function of the court. That argument was not developed. I am not persuaded of its merit.

> in Australia. It had been recognised some time ago by courts in the common law world that a different approach was required to tackle the problems of delay and cost in the litigation process. Speed and efficiency, in the sense of minimum delay and expense, are essential to a just resolution of proceedings. The achievement of a just but timely and cost-effective resolution of a dispute has effects not only upon the parties to the dispute but upon the court and other litigants. The decision in *Aon Risk Services Australia Ltd v Australian National University* was concerned with the *Court Procedures Rules 2006* (ACT) as they applied to amendments to pleadings. However, the decision confirmed as correct an approach to interlocutory proceedings which has regard to the wider objects of the administration of justice."

[32] Having regard to the factors identified in the authorities to which I have referred and the particular relevant factors which I have discussed above, in my view the plaintiffs' proceeding should be dismissed. I do not regard the plaintiffs' proposed "stay" orders as a satisfactory alternative. Acceding to that course would merely visit on the Bank significant further delay and continued uncertainty. The Bank has satisfied me that the proceeding should be resolved by dismissal now.

[33] I order accordingly. I will hear the parties on costs.