SUPREME COURT OF QUEENSLAND

CITATION:	*Worchild v The University of Queensland Law Society Inc & Anor* [2005] QCA 374
PARTIES:	**ANDREW WORCHILD** (plaintiff/applicant) **v** **THE UNIVERSITY OF QUEENSLAND LAW SOCIETY INCORPORATED** (first defendant/first respondent) **CANDICE JACOBS** (second defendant/second respondent)
FILE NO/S:	Appeal No 5302 of 2005 DC No 3799 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	5 October 2005
DELIVERED AT:	Brisbane
HEARING DATE:	5 October 2005
JUDGES:	McPherson and Jerrard JJA and Douglas J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**1. Application for leave to appeal refused** **2. Applicant to pay the respondents' costs of and incidental to the application**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – INTERLOCUTORY ORDERS AND JUDGMENTS – where applicant had purchased a student discount card called an "L Card" – where one of the purported providers of discounts on the L Card refused to honour that discount – where applicant sued over this refusal in the Federal Court – where applicant's action in the Federal Court unsuccessful – where applicant had costs awarded against him by the Federal Court – where applicant brought proceedings in the District Court seeking to recover the amount of the Federal Court costs order plus his own expenses in the Federal Court action as a self-represented

	litigant – where respondents applied to have applicant's action struck out – where applicant cross-applied for summary judgment – where applicant's claim struck out but given leave to replead – where applicant elected to seek leave to appeal that decision – whether leave to appeal should be granted
	Fair Trading Act 1989 (Qld), s 38 *Trade Practices Act* 1974 (Cth), s 52
	General Steel Industries Inc v The Commissioner for Railways (NSW) (1964) 112 CLR 125, applied *Pickering v McArthur* [2005] QCA 294; Appeal No 4013 of 2005, 16 August 2005, cited *Rayner v Whiting* [1999] QCA 214; [2000] 2 Qd R 552, cited
COUNSEL:	The applicant appeared on his own behalf P D T Applegarth SC with M Hodge for the first respondent Q T Cregan for the second respondent
SOLICITORS:	The applicant appeared on his own behalf Bruce Dulley Family Lawyers for the first respondent Brian Bartley & Associates for the second respondent

DOUGLAS J: This is an application for leave to appeal from interlocutory orders made by his Honour, Judge McGill, in the District Court. His Honour struck out the applicant's statement of claim but gave him leave to replead and dismissed his application for summary judgment. The pleading that was struck out by his Honour alleged that the plaintiff was a retail purchaser of a student discount card known as an "L card". It alleged that the first defendant and/or second defendant were issuers of the card and that they made representations to him that he was entitled to discounts on drinks at, and free entry to, two nightclubs.

The first respondent is a law students' society. The second respondent is alleged to be an officer of another such society. The applicant alleges that those representations and some other representations induced him to commence legal

proceedings against one of the nightclubs that he would not have commenced had the representations not been made, from which he alleged that he suffered loss and damage.

He commenced proceedings in the Federal Court against Drink Nightclub Pty Ltd and one of its directors. That action was summarily dismissed by Cooper J and he was ordered to pay the respondents' costs. In this action he sought to recover the costs he was ordered to pay in the Federal Court amounting to $24,000 and fees for his time spent as a litigant in person amounting to $36,000 together with a number of declarations.

The learned District Court Judge struck out his pleading. In detailed reasons for judgment his Honour concluded that the allegations relied on to support the applicant's claim in fraud did not support such a cause of action both because the representations pleaded could not support such a cause of action and because the pleading did not sufficiently allege that the representations were made with the intention that the plaintiff should act on them by commencing proceedings in the Federal Court. In my view his Honour was correct in that analysis.

His Honour also pointed out that a claim made purportedly for damages for misleading and deceptive conduct contrary to s 52 of the *Trade Practices Act* 1974 (Cth) failed to allege that the first defendant was a trading corporation, nor was it alleged that any other representations relied on were made by it in trade or commerce, nor, his Honour concluded, was there

a proper pleading of a breach of s 52 in respect of which the second defendant could have been knowingly concerned, she being a natural person.

He also pointed to the failure to plead that either defendant was engaged in trade or commerce in respect of a claim purportedly made pursuant to s 38 of the *Fair Trading Act* 1989 (Qld) and pointed out that there were no allegations in the pleading of material facts which would show that the plaintiff was a consumer for the purposes of that Act.

His Honour went on to deal in detail with the claim for damages for negligence purportedly made in the pleading. He concluded that part of the pleading dealing with the duty to take reasonable care was defective, but that otherwise the pleading was not sufficiently inadequate to satisfy the test in *General Steel Industries Inc v. The Commissioner for Railways (NSW)* (1964) 112 CLR 125.

He was of the view, however, that it was clearly not reasonably foreseeable that the plaintiff would respond to the representations alleged, assuming they were made and assuming they involved a breach of duty, by commencing proceedings in the Federal Court against the nightclub and its director. See paragraph 30 of his Honour's decision.

His Honour's view was that the commencement of inappropriate proceedings of that nature was not a reasonably foreseeable consequence of any misinformation as to the scope of operation

of the L card. That conclusion was sufficient for his Honour to decide to strike out the claim for negligence, but he went on to consider other problems arising from the pleading of causation. That led his Honour to the conclusion that the case pleaded, that the plaintiff was induced to commence the doomed Federal Court proceeding by the making of representations by the respondents, was not necessarily inadequately pleaded. See paragraph 34 of his Honour's reasons.

These seem to me to be conclusions open to his Honour on the pleadings. They do not raise matters of general importance. It is apparent that his Honour concluded that the pleading should be struck out because of the numerous problems identified by him in the pleading. He gave liberty to replead, however, while expressing doubts as to the capacity of the plaintiff to plead a cause of action in negligence on the present material against the respondents and saying that it was not possible to tell at that time whether any proper statutory causes of action could be pleaded.

In giving leave to replead he allowed a generous period of six weeks. That opportunity was not taken up by the applicant, nor did he seek to stay his Honour's order pending the hearing of this appeal.

His Honour's decision revealed an orthodox, careful approach to the analysis of the pleadings. One of the surprising criticisms that was made of it on this application was that

the reasons were inadequate. That was incorrect. They were detailed reasons which, had the applicant paid heed to them, would have assisted him greatly in producing a more intelligible pleading.

The applicant has also sought to argue that the learned District Court Judge, by being associated with one of the applicant's lecturers in the production of a legal on-line text, should have disqualified himself from hearing the applicant's case. The lecturer referred to is employed at a university separate from either of the institutions associated with either respondent and is not otherwise said to have any knowledge of the matters litigated, nor is his Honour said to have been aware of the fact that his co-author lectured the applicant. This incoherent allegation provides no reason to disqualify his Honour from having heard the application.

In my view it was appropriate that the pleading be struck out for the reasons expressed by his Honour. The dismissal of the applicant's summary judgment application was a natural consequence of that decision, nor did the evidence relied on by him in the summary judgment application permit it to be granted. In giving leave to replead his Honour made sure that the striking out of the pleading would not result in any substantial injustice to the applicant. He was permitted to continue the proceedings towards a hearing on the merits by being given the opportunity to correct the errors identified by his Honour. He has suffered no substantial injustice, nor does he have a reasonable argument that there is an error to

be corrected in his Honour's decision. See *Pickering v. McArthur* [2005] QCA 294 at paragraph 3; *Rayner v. Whiting* [2000] 2 Qd R 552 at 553.

The fact that, by his own inaction in failing to replead within time, his action was dismissed is his own fault and not one which should encourage this Court to give leave to appeal. I would refuse the application.

McPHERSON JA: For the reasons given by Justice Douglas, with which I agree, this is not an application in which a grant of leave to appeal is or would be justified. The matter is essentially one of procedure and practice in which liberty to replead was given to the plaintiff in the Court below when his statement of claim was struck out. No question of injustice to him can be said to arise from that course, particularly in the light of the careful reasons of his Honour who heard the application. I would therefore dismiss the application for leave to appeal.

JERRARD JA: I agree with the reasons for judgment of both Justice Douglas and of the presiding Judge.

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McPHERSON JA: Well the order against which I do not think there is anything you can say, Mr Worchild, is that the applicant is ordered to pay the costs of and incidental to this application.