COURT OF APPEAL

MUIR JA

No 11641 of 2008

VANESSA JACKSON	**(Applicant/Plaintiff)**
and	
REDCLIFFE CITY COUNCIL	**(First Respondent/Defendant)**
and	
GWENDA MAY LANCEFIELD	**(Second Respondent/Defendant)**

BRISBANE

DATE 20/11/2008

JUDGMENT

HIS HONOUR: The applicant/appellant seeks a stay of execution of orders made by a Judge of the District Court on 23 September 2008 dismissing the applicant's application for summary judgment, giving judgment for each defendant under inter alia r 293 of the *Uniform Civil Procedure Rules* 1999 (Qld) on the whole of the applicant's claim and ordering that the applicant pay the respondents' costs.

In her amended claim filed on 8 May 2008 the applicant claimed "Costs incurred arising from claim and interest arising there from. Correction of problem - at defendant's expense (not at expense of new neighbours) Correction of damages - which defendant could have claimed against their insurance. Compensation at the Court's discretion (particulars to be supplied)."

The amended statement of claim, although lengthy, is far from coherent. The allegations made in it are difficult to distil. At the bottom of the applicant's complaints is the drainage of water from lots above her house which, since she acquired her property on a date unspecified in or before October 1988, has caused her nuisance.

It was alleged that various works had been done by the two uphill property owners over the years at unspecified times with consequences for the applicant's property which are far from clearly stated. The second respondent is alleged to have become "a new downhill neighbour" at a time unspecified and to have signalled the intention of undertaking certain works to her house and in respect of her drainage.

The pleading does not allege that the second respondent's intention was put into effect but perhaps that can be inferred from an allegation that there was a drainage problem (unspecified) caused by the second respondent. It is alleged that this led to repeated but unsuccessful appeals to the first respondent between January and July 1999.

The first respondent's role in this appears to be that, being informed by the applicant prior to the end of 1998 as to the detail of the applicant's problems it failed to perform its alleged duties. Those duties are alleged in paragraph 20 of the amended statement of claim to be:

(a) a duty to the Department of Justice to ensure the fencing report on which they based their decision was accurate.

(b) a duty to the State of Queensland Department of Housing to protect property;

(c) a duty to the State of Queensland to ensure its records were kept accurate and accountable;

(d) a duty to the applicant to enable her to recover damages from the second respondent "stemming from the council approving her building alterations, to protect my property from further injustice and foreseeable harm."

Other duties are alleged in a later part of the reasons headed "Particulars of nuisance". Those duties include "a duty of care to the neighbouring properties of McCullough Avenues". A

duty of care to the neighbouring properties to address efficiently complaints regarding the law for methods of drainage. A duty of care to the applicant "to protect her property from unlawful drainage and the effects thereof". A duty of care to the applicant "to ensure her property was not repeatedly harassed by changes to drainage patterns".

After dealing with the matters which deal with the drainage problems and the duties in paragraph 20, the amended statement of claim proceeds to outline the detail and fate of a number of proceedings in the Magistrates Court, the Supreme Court and the Small Claims Tribunal in which the applicant had been involved as claimant or defendant.

The primary Judge after analysing the pleading concluded that the period of limitation for actions of the kind alleged (nuisance, negligence, negligent misstatement, breach of statutory duty and the like) lapsed after six years from the date on which the cause of action first accrued. He found that the action was not commenced until December 2007, more than two years after the expiry of the limitation period "on the most generous construction of (the) pleading". There were ample grounds to support that conclusion.

The primary Judge intimated also if he had not so found the claim would have been struck out on other grounds owing to its general deficiencies and incomprehensibility.

I have no hesitation in concluding that the pleading is vexatious or otherwise an abuse of process and for that reason should have been struck out. Without attempting to be exhaustive the pleading is unduly prolix offending, against r 149(1)(a). It sets out evidentiary matters in many places rather than material facts contrary to the requirements of r 149(1)(b). It fails to give proper particularisation of the damages claimed so that they can be quantified and the respondents can be informed of the allegations they have to meet(r 155).

Another defect in the pleading is that it fails to give proper particulars of the allegations either by date or description of relevant factual matters (r 157). It is impossible from the pleading

for a respondent to determine the case against it so that the matter can be prepared properly for trial and so that a trial of any discrete identified issue can take place.

It may be seen from the foregoing that there is little merit in the stay application. It faces the additional difficulty that that there is really no point in granting a stay. The only effect of the order, apart from the order requiring the applicant to pay costs is that until she is successful on her appeal she has no action on foot. Even if the stay were to be granted it would not be on the basis that the action could proceed before the appeal was heard.

As for costs, it was explained by Ms Brook of counsel, who appeared for the first respondent, that costs have not been assessed and her instructions are that the first respondent has no intention of seeking costs prior to the hearing of the appeal. That being the case there is no practical reason for granting any stay in respect of the execution of the costs order.

The application for stay, therefore, is dismissed. I order that the applicant pay the first respondent's costs of the application for the stay to be assessed on the standard basis. I note that there was no appearance on behalf of the second respondent and that my associate contacted the solicitors for the second respondent during the hearing to give notice that the hearing was taking place. My associate was given to understand that the solicitors for the second respondent were aware that the hearing was taking place but, for some reason or other, failed to inform the barrister who had appeared on the hearing before Judge Wilson and were thus unrepresented.
