

DISTRICT COURT OF QUEENSLAND

CITATION: *James & Ors v Phillips & Lowes* [2005] QDC 084

PARTIES: **DARRYN JAMES AND PERPETUAL TRUSTEES AUSTRALIA LTD AS JOINT ADMINISTRATORS OF DEBRA LOUISE JAMES (Applicant)**

And

PHILLIPS & LOWES, A FIRM (Respondent)

FILE NO/S: BD3769 of 2004

DIVISION: Civil

PROCEEDING: Chamber application

ORIGINATING COURT: District Court

DELIVERED ON: 30 March 2005

DELIVERED AT: Beenleigh

HEARING DATE: 4 March 2005

JUDGE: Tutt DCJ

ORDER: **1. The defendant deliver its List of documents in accordance with r 214 of UCPR within 14 days from the date of this order;**

2. That the defendant's application filed 1 March 2005 is dismissed; and

3. That the defendant pay the plaintiffs' costs of and incidental to the plaintiffs' application and the defendant's cross-application to be assessed on the standard basis.

CATCHWORDS: Application for disclosure under the Rules – cross-application for further and better disclosure.

Uniform Civil Procedure Rules 1999 (Qld) rr 211, 214

COUNSEL: Ms C Heyworth-Smith for the applicant.

Mr S McLeod for the respondent.

SOLICITORS: Murphy Schmidt for the applicant.

McInnes Wilson for the respondent.

Introduction

- [1] There are two applications before the court. One filed on 23 February 2005 on behalf on the applicants (plaintiffs in the original action) and a cross-application filed 1 March 2005 on behalf of the respondent (defendant in the original action). For convenience I shall refer to them as plaintiffs and defendant respectively.
- [2] The plaintiffs seek the primary order that the defendant make disclosure in the proceeding pursuant to r 214 of the *Uniform Civil Procedure Rules 1999* (Qld) (“UCPR”). In the cross-application the defendant seeks further and better disclosure of the plaintiffs’ documents to include documents purportedly in the possession of the plaintiffs’ solicitors relating to advice given to the plaintiffs by the senior partner of the plaintiffs’ firm of solicitors or other members of that firm.
- [3] A party’s duty of disclosure in any proceeding is contained r 211 of the UCPR which relevantly provides that:

“211 Duty of disclosure

- (1) A party to a proceeding has a duty to disclose to each other party each document —
- (a) in the possession or under the control of the first party; and
 - (b) directly relevant to an allegation in issue in the pleadings; and
 - (c)”

The Claim

- [4] The current proceeding before the court is a claim by the plaintiffs against the defendant firm of solicitors for damages and interest for alleged negligence and/or breach of contract arising out of the defendant's alleged failure to complete an application for the court's sanction of a settlement compromise in a personal injuries damages claim of a Mrs Deborah Louise James ("Mrs James") as a result of which Mrs James lost an amount of interest which would have otherwise accrued to her if the court's sanction order had have been completed at an earlier date.

Current Applications

- [5] The chronology of events¹ in the current proceeding is of short compass and is as follows:

21 October 2004	Claim and Statement of Claim
14 December 2004	Notice of Intention to Defend
16 December 2004	Reply. Pleadings closed.
13 January 2005	28 days from close of pleadings. Disclosure due.
19 January 2005	First request by Plaintiffs' solicitors for Defendant's list of documents.
1 February 2005	Second request by Plaintiffs' solicitors for Defendant's list of documents.
10 February 2005	Third request by Plaintiffs' solicitors for Defendant's list of documents.
23 February 2005	Plaintiffs' application for disclosure filed and served.

¹ See the affidavit of Joanne Christina Rennick ("Ms Rennick") sworn 23 February 2005.

- [6] Dealing specifically with the plaintiffs' application I cannot see that there has been any realistic resistance to this application nor it seems, can there be on the material filed on behalf of the plaintiffs. There is a suggestion in paragraph 14 of Grant John Dearlove's ("Mr Dearlove") affidavit sworn 1 March 2005 that the plaintiffs have been precipitate in filing the current application and should have given the defendant a further "warning" before the application was filed. However on the material before me it would appear that the plaintiffs' solicitors have acted promptly and efficiently to advance this litigation in accordance with the fundamental philosophy of the UCPR.²
- [7] I am therefore satisfied that the plaintiffs are entitled to the primary order sought with perhaps a slight variation as to time and I shall order accordingly.
- [8] The defendant's cross-application seeks further and better disclosure of the plaintiffs' documents including alleged documents in the plaintiffs' solicitors' possession with respect to advice apparently given by the plaintiffs' solicitors to at least one of the plaintiffs prior to the current proceedings.
- [9] The plaintiffs resist this application primarily on the grounds that full disclosure of all relevant documents has been made in the list of documents delivered by them to the defendant and a copy of which is exhibit "JCR1" to the affidavit of Ms Rennick sworn 23 February 2005, but in any event even if there were other documents in their possession relating to communications between the plaintiffs' solicitors and the plaintiff prior to this proceeding they would attract legal professional privilege as between solicitor and client.

² See r 5 of the UCPR.

- [10] The plaintiffs support their submission in this regard through the affidavit of Gerald Anthony Murphy (“Mr Murphy”) sworn 3 March 2005 in which Mr Murphy swears very clearly that he was consulted by Mrs James and one of the plaintiffs, Darren James, “in or about June 2001” but that his advice “was restricted” to the terms of a client agreement which they had received from the defendant in respect of the forthcoming application to the Guardianship and Administration Tribunal for the appointment of an administrator of the settlement funds under the *Guardianship and Administration Act 2000 (Qld)*.
- [11] The defendant relies upon the affidavits of Mr Dearlove sworn 1 March 2005 and 2 March 2005 respectively to which there are exhibits including emails between a Mr Roger Cannon and Mr Geoffrey Lowes of the defendant.
- [12] Mr Dearlove asserts that the email from Mr Lowes to Mr Cannon strengthens the allegation that Mr Murphy of the plaintiffs’ solicitors firm played some greater role in the sanction application before the Tribunal than merely advising Mrs James and Darren James in respect of the client agreement. I do not accept that this email does anything of the sort but on the contrary tends to confirm exactly that to which Mr Murphy contends in paragraph 3 of his affidavit that “my advice was restricted to the terms of the client agreement”.
- [13] In respect of Mr Dearlove’s second affidavit sworn 2 March 2005 I cannot see the relevance of exhibit “B” to the application.
- [14] In all the circumstances I am of the opinion that the plaintiffs have fulfilled their duty of disclosure under the UCPR by the delivery of their list of documents as

exhibited to Ms Rennick's affidavit aforesaid and the defendant's cross-application is therefore dismissed.

[15] The orders of the court in respect of both applications are as follows:

1. The defendant deliver its list of documents in accordance with r 214 of UCPR within 14 days from the date of this order;
2. That the defendant's application filed 1 March 2005 is dismissed; and
3. That the defendant pay to the plaintiffs' their costs of and incidental to the plaintiffs' application and the defendant's cross-application to be assessed on the standard basis.