DISTRICT COURT OF QUEENSLAND

CITATION:	*Davy v Hoad & Another* [2020] QDC 41
PARTIES:	**DAVY** (Respondent) **and** **v** **HOAD & Another** (Applicants)
FILE NO:	2500/19
DIVISION:	District Court
PROCEEDING:	Hearing of an application
ORIGINATING COURT:	District Court, Brisbane
DELIVERED ON:	10/3/2020 (*ex-tempore*)
DELIVERED AT:	Brisbane
HEARING DATES:	10 March 2020
JUDGE:	RS Jones DCJ
Self-representatives	R Davy for the respondent T Hoad and M Hoad for the applicants

I am concerned here with an application on behalf of the defendants for judgment pursuant to rule 293 of the Uniform Civil Procedure Rules 1999, or in the alternative that the plaintiff's claim be struck out. Costs are also sought on an indemnity basis.

This is an extremely unfortunate case, as the parties were once clearly very close friends. It would appear that the genesis for this ongoing dispute is as a consequence of the incarceration of the plaintiff for a period of time, during which the defendants took possession of and cared for certain property, of the plaintiff.

As I have said, judgment is being sought pursuant to rule 293 for judgment to be entered in favour of the defendants. The tests for entering judgment in favour of the defendant are the same as those that apply in respect of summary judgment for the plaintiff pursuant to rule 292 of the Uniform Civil Procedure Rules.

Such orders or judgments are made in only quite special or exceptional circumstances. That is where there is no real prospect of the plaintiff succeeding in his action. Statements have been made in a number of judgments, and in particular, the *Deputy Commissioner of Taxation v*

Salcedo [2005] 2 QLR 232. Other cases also include judgments of both the Court of Appeal and the High Court.

In *Rich v CGU Insurance Limited* [2005] 214 ALR 370, it was said:

> *Ordinarily, a party is not to be denied the opportunity to place his or her case before the court in the ordinary way, and after taking advantage of the usual interlocutory processes. The test to be applied has been expressed in various ways, but all of the verbal formulae which have been used are intended to describe a high degree of certainty about the ultimate outcome of the proceedings if it were allowed to go to trial in the ordinary way.*

In Salcedo, Justice of Appeal Williams quoted from the English judgment of *Swaine v Hillman* [2001] 1 All ER 91, where Lord Woolf, Master of the Rolls said:

> *The words "no real prospect of succeeding" do not need any amplification. They speak for themselves. The word "real" distinguishes fanciful prospects or success, or they direct the court to the need to see whether is a realistic as opposed to a fanciful prospect of success.*

It has also been said that the language used is not susceptible to much elaboration. If there is a real prospect of success, the discretion to give summary judgment does not arise merely because the court concludes that success is improbable. Of course, at the end of the day, it is appropriate that applications such as this be dealt with to ensure that justice is properly done.

The proceedings commenced by way of a claim and statement of claim dating back to July 2019. In the plaintiff's statement of claim he made a number of allegations, including that he and the defendants had been close friends for a number of years, and that while the plaintiff was detained in custody, the defendants cared for certain property.

The initial statement of claim could quite fairly be described as being more of a rambling narrative than allegations of specific facts. Nonetheless an entry of a notice of intention to defend was filed, together with a defence. Thereafter, a number of interlocutory steps were taken, but of particular relevance, on 20 December 2019, his Honour Judge Barlow QC made certain orders, including that the plaintiff file and serve on or before 17 January 2020, any proposed amended statement of claim and any affidavits on which he relied in response to the application filed by the defendants on 9 December 2019. Orders also included that the defendants were to file and serve on or before 28 February 2020 any affidavits in reply to the plaintiff's affidavits.

Consistent with that order, on 15 January 2020, the plaintiff filed and served an amended statement of claim and on 20 January 2020, the defendants filed and served their amended defence. The amended statement of claim and amended defence are court documents 15 and 17 respectively. Certain technical objections were taken as to the nature of the pleading of the amendments to the original statement of claim, but for reasons it is not necessary to expand upon, I ruled against the defendant in respect of those more technical issues on the basis that I considered them to have been really overtaken by the filing of the amended defence.

The plaintiff, however, served on the defendants as late as 4 pm yesterday, being 9 March 2020, yet a further amended statement of claim. That statement was struck out for reasons which I will not repeat now, other than to say the plaintiff himself accepted that that document was served on the defendants as a consequence of a mistaken belief that he had not already done what was required by the orders of Judge Barlow QC to which I have already referred.

There can be no doubt that a number of the allegations contained in the amended statement of claim ought to be struck out in the event that judgment were not entered in favour of the defendants. They include, among other things, the problems that again the pleading is more of a rambling narrative than a pleading of relevant facts. It also includes a number of scandalous allegations, including the defendant being guilty of double standards, and theft, conspiracy, collusion, deceptive and misleading conduct and, in essence, fraud. Of course, there are no particulars which substantiate any of those allegations, and indeed, it is difficult to ascertain exactly what the plaintiff's case is.

In the amended statement of claim, the plaintiff seeks the following relief:

> *The plaintiff claims the following relief: breach of agreement – to act as the appointee of the plaintiff/to act as honestly and truthfully – to execute his duties and obligations to the plaintiff diligently and conscientiously where he entered into arrangements with family members and used the family company to disadvantage the plaintiff by using the following illegal techniques – theft, fraud, conspiracy, collusion, deceptive and misleading conduct.*

As I have already said, no particularity was provided in respect of any of those scandalous allegations.

The amount claimed was $250,000, but there is no particularity provided as to how and why that amount is appropriate. When pressed by the court about what relief the plaintiff was actually seeking, it seemed to come down to the recovery of, or in the alternative, compensation for, the plaintiff's father bowling trophy, which was described as being priceless, some poems that had been written to the plaintiff's father by the plaintiff, as I understand it, shortly before the father's death, and a Hewlett Packard laptop computer. There was some other property, but the plaintiff himself described that as being "unimportant paraphernalia."

Quite clearly, having regard to the type of relief sought, this matter should not be in this court. It should be either in the Magistrates Court or the Queensland Civil Administrative Tribunal. Indeed, had it been in that tribunal, assuming that it had the jurisdiction to deal with this matter, that tribunal has the ability to order and provide its own mediation services. That said, given what I perceive to be now the respective relationship between the parties, mediation would seem unlikely to lead to any meaningful settlement.

As I discussed with the parties, if I were to strike out the pleadings, in all probability, what would occur would be further re-pleading. On balance, I do not consider that to be an appropriate outcome. On the material before me, including the affidavit material relied on by the defendants, together with the very nature of the plaintiff's pleading and the inability of the plaintiff to articulate in any meaningful way exactly what his case was and what the relief

sought was, it strikes me that this is one of those rare and unfortunate cases where judgment ought be entered in favour of the defendants.

To summarise, am I satisfied that the plaintiff has no real prospect of succeeding on all or part of his claim, and that there is no need for a trial of the claim to dispose of the matter. Accordingly, I order that judgment be entered in favour of the defendants and the plaintiff's claim be dismissed.

In respect of the question of costs, here the parties are personally represented and, as I understand it, have at all material times represented themselves. In such circumstances, I do not consider it appropriate to make any orders as to costs.

…

It would appear, contrary to what I initially thought, that the defendants have incurred some legal cost in respect of these proceedings. However, on balance, I have decided that I will not make any orders as to costs. I have little doubt that this whole matter has caused distress to the defendants, but it is also quite clear to me that the plaintiff has also suffered a significant degree of distress, and I must say that this proceeding was able to dealt with expeditiously because of a number of concessions made by the plaintiff. Had he not been prepared to make such concessions, it might have been the case that this matter would have just drifted further, causing even further distress to the parties. Adjourn the court.