

LAND COURT OF QUEENSLAND

CITATION: *McPherson v Logan City Council* [2021] QLC 33

PARTIES: **Susan Marie McPherson**
(applicant)

v

Logan City Council
(respondent)

FILE NO: AQL050-21

DIVISION: General division

PROCEEDING: Application to strike out

DELIVERED ON: 29 September 2021

DELIVERED AT: Brisbane

HEARD ON: 21 September 2021

HEARD AT: Brisbane

PRESIDENT: FY Kingham

ORDERS:

- 1. The paragraphs of the Applicant's Amended Statement of Facts, Matters and Contentions identified as categories 1 & 3 in these reasons are struck out.**
- 2. By 4 pm on 13 October 2021, the Applicant may file a Further Amended Statement of Facts, Matters and Contentions.**
- 3. The case is listed for review and submissions on costs at 10 am on 15 October 2021.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – where the respondent brought an application to strike out paragraphs of a statement of facts, matters and contentions – whether the paragraphs raised matters that were irrelevant and unnecessary – whether this would cause delay and expense – where a substantial number of the paragraphs were struck out

Acquisition of Land Act 1967 s 20, s 26
Land Court Act 2000 s 7
Land Court Rules 2000 r 4, r 8
Uniform Civil Procedure Rules 1999 r 5, r 171

Barclay Mowlem Construction Ltd v Dampier Port Authority (2006) 33 WAR 82; [2006] WASC 281, applied
Brewarrana Pty Ltd v Commissioner of Highways (No 1) (1973) 6 SASR 541; (1973) 32 LGRA 170, cited
Cidneo Pty Ltd v Chief Executive, Department of Transport and Main Roads [2011] QLC 18, applied
Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111, applied
Macarthur Central Shopping Centre Pty Ltd as TTE v Valuer-General [2016] QLC 10, applied
Ostroco v Department of Transport and Main Roads [2013] QLAC 4, applied
Shaw & Ors v Idemitsu Australia Resources Pty Ltd & Ors [2020] QLC 40, applied
Toan Van Pham & Ors v Brisbane City Council [2011] QLC 38, applied
Townsville City Council v Chief Executive, Department of Main Roads [2006] 1 Qd R 77; [2005] QCA 226, applied
Van der Est & Anor v Queensland Rail Limited (No 2) [2018] QLC 4, applied

APPEARANCES: K McAuliffe-Lake (instructed by LaBlack Lawyers) for the applicant
JS Brien (instructed by Clayton Utz) for the respondent

- [1] Mrs McPherson has a claim for compensation for the compulsory acquisition of her property by the Logan City Council. The matter is listed for hearing in November. The parties have nominated their expert witnesses (town planners and valuers), although the Court has not yet made orders for the preparation of their evidence. In the context of discussions about the scope of disclosure, the Council has raised concerns about Mrs McPherson's Amended Statement of Facts, Matters and Contentions (ASFMC). This resulted in Council applying to strike out numerous paragraphs of that statement.
- [2] The Land Court has jurisdiction to assess compensation for resumption of land, together with costs attributable to disturbance, under s 20 and s 26(1) of the *Acquisition of Land Act 1967* (ALA). Council contends the following issues raised by the ASFMC are irrelevant and unnecessary to Mrs McPherson's claim:

1. Underlying scheme of resumption (including Council’s budget and “down zoning”) (paras 12–13, 20–23, 25–35, 89–97)
 2. Neighbouring properties and purchase of other properties (paras 16–17, 50–54)
 3. Council’s conduct and dealings with the Applicant, including previous offers (paras 18–19, 40–43, 47–49, 55–58, 60–70, 102, 106–113).
- [3] The Council asks for those paragraphs to be struck out because their inclusion would involve the parties in unnecessary time and cost in preparing for the hearing.
- [4] Mrs McPherson denies the Council has established a basis for striking out substantial portions of her claim, which would require repleading. She submits the Council’s approach is unwarranted in law, unnecessarily technical for this jurisdiction, and fails to consider the processes and procedures available in the Land Court for clarifying the issues.

Principles

- [5] Although the Land Court is sometimes referred to as a “no pleadings” jurisdiction, that is a gloss on the Court’s procedures, and tends to undermine the utility of the Court’s directions for defining the issues for trial.
- [6] Under the *Land Court Rules 2000* (LCR), a claim for compensation commences by originating application. The applicant must briefly state the facts, circumstances, or other relevant matters on which the proceeding is based.¹ That serves the function of a claim under the *Uniform Civil Procedure Rules 1999* (UCPR).
- [7] The LCR make no provision for pleadings. The effect of this is that the relevant provisions of the UCPR apply, with necessary changes.²
- [8] Generally, the Court makes directions requiring the parties to define the issues, which displace some rules in the UCPR. In this case, the Court directed the parties to file Statements of Facts, Matters and Contentions. Such statements fulfill the function of pleadings under the UCPR. They provide sufficient information to

¹ *Land Court Rules 2000* r 8(c).

² *Ibid* r 4.

define the issues, at least for the purpose of pre-trial preparation, such as disclosure of documents, and preparation of lay and expert evidence.

- [9] The Council relies on r 171 of the UCPR for this application. That rule allows the Court to strike out all or part of a pleading if it tends to prejudice or delay the fair trial of the proceeding, or is unnecessary, scandalous, frivolous or vexatious.
- [10] It is not necessary to establish that a SFMC is a pleading under the UCPR.³ The Land Court is concerned with ensuring its process enhances expedition and efficiency of matters.⁴
- [11] That is consistent with the philosophy of the UCPR stated in r 5, which emphasises a just and expeditious resolution of issues with a minimum of expense or delay. It is also consistent with s 7 of the *Land Court Act 2000* (LCA) on which Mrs McPherson relies. That section requires the Land Court to act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.
- [12] A provision of that nature widens rather than restricts the discretion available to the Court.⁵ As Mrs McPherson has observed, the Court has several procedures it may use to manage, narrow and clarify the real issues in a dispute. In cases dealing with requests for particulars, this Court has eschewed an overly technical approach to the pleadings, given the opportunities for the issues to be refined through the preparation of expert evidence.⁶ That reflects contemporary case management techniques of civil jurisdictions.⁷
- [13] Here the complaint is not about particulars of the claim. Rather, it is that the applicant has raised matters that are irrelevant and unnecessary to her claim. That dispute is not amenable to resolution through other pre-trial procedures. The power to strike out irrelevant parts of a SFMC is one procedure available to ensure the parties, and the Court, are not put to unnecessary time and expense in dealing with issues that are not relevant to the Court's function.

³ *Cidneo Pty Ltd v Chief Executive, Department of Transport and Main Roads* [2011] QLC 18 [23].

⁴ *Toan Van Pham & Ors v Brisbane City Council* [2011] QLC 38 [6].

⁵ *Townsville City Council v Chief Executive, Department of Main Roads* [2005] QCA 226 [40].

⁶ *Macarthur Central Shopping Centre Pty Ltd as TTE v Valuer-General* [2016] QLC 10; *Van der Est & Anor v Queensland Rail Limited (No 2)* [2018] QLC 4; *Shaw & Ors v Idemitsu Australia Resources Pty Ltd & Ors* [2020] QLC 40.

⁷ *Barclay Mowlem Construction Ltd v Dampier Port Authority* [2006] WASC 281 at [5]–[7], [16].

Underlying scheme of resumption (category 1) and Council’s conduct and dealings with the Applicant (category 3)

[14] Categories 1 and 3 can be considered together, because Mrs McPherson makes the same argument as to their relevance. In summary, the disputed paragraphs describe various masterplans and budgets, and communications between the parties prior to the date of resumption.

[15] Except for a few paragraphs (102–113), Mrs McPherson says they are relevant for the following reasons:

“Evidence underlying scheme of resumption said to commence in 2009

Underlying scheme of resumption is relevant to the assessment of compensation under the ALA

From 2009 onwards the Applicant suffered the direct and natural consequence of the underlying scheme, by:

- non completion of renovations
- did not attend to maintenance, repairs and upgrades of a power meter box
- resulting loss in rental income
- did not install solar panels
- incurred legal costs from 2017 onwards
- interruption to renting of Granny Flat

Costs said to be incurred throughout the scheme of resumption as a direct and natural consequence of the taking of the land”

[16] That explanation draws a link between the compensation and decisions made before resumption about repairs and maintenance of the property, in particular the granny flat.

[17] The Council says none of this is relevant, partly because of their agreement about zoning in assessing compensation.

[18] Although zoned *Recreation and open space zone – Recreation parks precinct* under the Logan Planning Scheme 2015 (version 1) at the date of the resumption, the parties have agreed the property should be valued as if it were zoned *Medium Density Residential Zone-High Rise Precinct*.⁸

⁸ ASMFC [11]; Respondent’s Response to the Applicant’s Statement of Facts, Matters and Contentions [11].

[19] In light of the parties' agreement about the zoning assumption, Mrs McPherson has not explained how the scheme of resumption, and the down zoning of her land, is relevant in assessing its value.

[20] However, there are other aspects of the disputed paragraphs that have possible relevance.

[21] The whole of Mrs McPherson's property was taken on 6 December 2019. At that time it had a single dwelling which included an extension constructed in the 1980s, which Mrs McPherson describes as a granny flat. She contends the highest and best use of the property when resumed is either:

- (a) as the site of a new development;
- (b) a residential dwelling together with an income generating auxiliary unit; or
- (c) a residential dwelling.⁹

[22] Mrs McPherson has not specified which was the current use, and which were potential uses, at the time of resumption. She asserts the same value and the same disturbance items, regardless of whether compensation is assessed on the current or a potential use of the property. Some of the disturbance items claimed are pre-acquisition costs or losses.

[23] Depending on the basis for valuing the property (current or potential use), Mrs McPherson may well have a basis for claiming some pre-acquisition items as "costs attributable to disturbance."¹⁰

[24] While this claim is not a forum to air grievances about the acquisition of a property, it is possible that some communications between the parties prior to resumption may be relevant in considering whether the losses were caused by the resumption, are not too remote, and were reasonably incurred.¹¹

[25] The problem with the ASFMC is that Mrs McPherson has delivered a prolix statement that does not clearly articulate the basis of her claims in the alternative, or

⁹ ASFMC [120].

¹⁰ *Acquisition of Land Act* s 20(5).

¹¹ *Director of Buildings and Lands v Shun Fung Ironworks* [1995] 2 AC 111; *Ostroco v Department of Transport and Main Roads* [2013] QLAC 4.

the relevance of many of the matters pleaded. That cannot be remedied by pre-trial preparation. Indeed it is likely to produce further disputes.

[26] Unless the claim is put in proper order, there will be ongoing disputes about disclosure and pre-trial preparation. It is not in the interests of either party, or an appropriate use of public resources, to spend time, effort and money dealing with irrelevant issues.

[27] Given Mrs McPherson's insistence the Council disclose documents relating to the disputed paragraphs, she must be able to explain their relevance. She has not done so. The paragraphs in categories 1 & 3 will be struck out, but Mrs McPherson should have leave to replead her claim to demonstrate the relevance of pre-acquisition communications to her claims.

Neighbouring properties and purchase of other properties (category 2)

[28] These paragraphs of the ASFMC relate to 4 properties, 3 of which were bought by the Council. They contain assertions about the sales and the inferences that may be drawn from them in valuing the property.

[29] Whether a sale is sufficiently comparable to be useful in valuing the property is "primarily a question of fact to be assessed by an expert valuer."¹² The Court will be assisted by the opinions of the valuers engaged by both parties. They will consider what sales are comparable and explain how they analyse them in arriving at their valuation of the property.

[30] The relevant circumstances of a comparable sale are a matter for the experts to consider. In choosing and analysing comparable sales, they will investigate any circumstances that suggest the sale should be disregarded or adjusted. If there is any dispute about that, whether a factual dispute about the circumstances of the sale, or the relevance or use of those circumstances from either a valuation or legal perspective, that can be dealt with at trial.

[31] Mrs McPherson cannot give opinion evidence as to value, nor can she give evidence of the factual circumstances of the sales she says are relevant. That does not mean

¹² *Brewarrana Pty Ltd v Commissioner of Highways (No 1)* (1973) 32 LGRA 170, 180.

these paragraphs of her ASFMC are objectionable. They are her contentions, which she will seek to prove by admissible evidence.

Conclusion

[32] Substantial sections of the ASFMC will be struck out given the conclusion on categories 1 & 3. Mrs McPherson will be given a reasonable opportunity to properly articulate her case. As the Council has repeatedly raised its concerns about the ASFMC, 2 weeks should be sufficient time. The case will be listed for review and submissions regarding the costs of this application shortly afterwards.

[33] I order:

- 1. The paragraphs of the Applicant's Amended Statement of Facts, Matters and Contentions identified as categories 1 & 3 in these reasons are struck out.**
- 2. By 4 pm on 13 October 2021, the Applicant may file a Further Amended Statement of Facts, Matters and Contentions.**
- 3. The case is listed for review and submissions on costs at 10 am on 15 October 2021.**