

LAND COURT OF QUEENSLAND

CITATION: *Kelsall v Brisbane City Council* [2023] QLC 17

PARTIES: **Eunice Ying Teng Kelsall**
(applicant)

v

Brisbane City Council
(respondent)

FILE NO: AQL059-23

DIVISION: General

PROCEEDING: General application

DELIVERED ON: 20 October 2023

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 18 October 2023

HEARD AT: Heard on the papers

A/PRESIDENT: PG Stilgoe OAM

ORDERS: **1. The application is dismissed.**

2. Any submission as to costs must be filed and served within 14 days of the publication of these reasons.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – DISCOVERY AND INTERROGATORIES – INTERROGATORIES – where parties have not yet filed their statements of facts and issues – whether discovery and interrogatories should be granted.

Land Court Rules 2022
Uniform Civil Procedure Rules 1999

Kennards Self Storage Pty Ltd v Valuer-General [2023] QLC 3, applied
Lyons v Kern Konstruktions (Townsville) Pty Ltd (1983) 47 ALR 114, applied
Ure v Robertson [2010] QSC 483, applied

APPEARANCES: Not applicable

- [1] In 2018, the Brisbane City Council resumed 22 m² of land in front of Eunice Kelsall's home. Ms Kelsall has made four claims for compensation, all of which the Council has rejected. Ms Kelsall's claim for compensation for the loss of the land is comparatively modest, at \$44,000. Her total claim, including disturbance, is \$12,344,000.
- [2] Ms Kelsall is represented in these proceedings by Paul Kelsall.
- [3] Despite orders in June 2023, the parties have not yet filed their statements of facts and issues. Mr Kelsall states that he cannot file his statement of facts and issues until he has further documents from the Council. Therefore, on 22 September 2023, I ordered that Mr Kelsall file any application for disclosure by 29 September 2023.¹ This decision responds to that application.
- [4] Most of Mr Kelsall's application is a request for evidence, that is, a set of interrogatories.² The *Land Court Rules* do not provide for interrogatories so the power to require answers to interrogatories must be sourced from the *Uniform Civil Procedure Rules 1999 (Qld)* ('UCPR').³
- [5] Rule 230(1)(b) of the UCPR states that, with the Court's leave, a party may deliver interrogatories only if the Court is satisfied that there is not likely to be available to (Ms Kelsall) at the trial another reasonably simple and inexpensive way of proving the matter sought to be elicited by the interrogatory.
- [6] Mr Douglas Quayle, Counsel for the Council submits that Mr Kelsall has not addressed these considerations in his application.⁴ I agree; I have no way of knowing whether there is another way of proving these matters at trial. Indeed, because the parties have not yet filed their statements of facts and issues, I have no way of knowing whether these facts are relevant to the issues I must decide.

¹ Orders of Acting President PG Stilgoe OAM (22 September 2023) 2.

² Eunice Ying Teng Kelsall, Application for Disclosure (filed 29 September 2023) 1, 2, 4, 8, 14, 16.

³ *Land Court Rules 2022 (Qld)* r 3.

⁴ Brisbane City Council, Outline of Submissions (provided 10 October 2023).

- [7] Rule 233 sets out the grounds for objecting to answering an interrogatory. Rule 233(1)(a) states that a person may object to answering an interrogatory if it does not relate to a matter in question, or likely to be in question. Rule 233(1)(b) states that a person may object to an interrogatory if the answer is not reasonably necessary to enable the Court to decide the matters in question.
- [8] Mr Quayle submits that the claim for compensation could only concern the value of the resumed land and that the value of the resumed land could not be informed by anything other than comparable sales.⁵ That is true of Ms Kelsall's claim for the loss of the land, but it may not be true for her claim for disturbance. At this stage, however, given I do not know the precise nature of Ms Kelsall's claim, I do not grant leave to deliver the interrogatories requested.
- [9] Some of Mr Kelsall's requests are requests for disclosure of documents. The Council has a duty to disclose each document in its possession, power or control which is directly relevant to a matter in issue in the proceeding.⁶ The problem, as I have already indicated, is that Mr Kelsall has not yet delivered a statement of facts and issues, so I don't yet know whether the documents he wants are directly relevant to a matter in issue in the proceeding. I suggested to Mr Kelsall that his application for disclosure should be supported by an affidavit setting out why the documents he wanted were important; he chose not to do that.⁷
- [10] As I have already identified,⁸ the statements of facts and issues take the place of pleadings in this Court, parties can apply for disclosure before the close of pleadings but disclosure before pleadings is rarely ordered. Usually, a party must show exceptional circumstances and that it is impossible to plead without disclosure.⁹ Mr Kelsall has given me no information about whether these exceptional circumstances exist.

⁵ Brisbane City Council, Outline of Submissions (provided 10 October 2023) 14.

⁶ *Uniform Civil Procedure Rules 1999* (Qld) r 211(1)(c).

⁷ T1-6 lines 33 to 34; T1-8 lines 5 to 11.

⁸ *Kennards Self Storage Pty Ltd v Valuer-General* [2023] QLC 3.

⁹ *Lyons v Kern Konstruktions (Townsville) Pty Ltd* (1983) 47 ALR 114.

[11] Importantly, pre-pleading disclosure is not to be used as a fishing exercise.¹⁰ In the absence of Ms Kelsall's statement of facts and issues, the request for disclosure indicates a very strong tendency toward fishing.

[12] The application for disclosure is dismissed.

Orders

- 1. The application is dismissed.**
- 2. Any submission as to costs must be filed and served within 14 days of the publication of these reasons.**

¹⁰ *Ure v Robertson* [2010] QSC 483.