IN THE SUPREME COURT OF QUEENSLAND No. 4003 of 1987

CIVIL JURISDICTION

BEFORE MR. JUSTICE de JERSEY

BRISBANE, 10 MARCH 1988

BETWEEN:

DAVID SING CHI YUEN AND ORS. Plaintiffs

-and-

STEVE JONES PTY. LTD. AND ORS Defendants

JUDGMENT

HIS HONOUR: I refuse the application of the first defendant and order that the first defendant pay the plaintiffs' taxed costs of and incidental to it. The costs of the first defendant's appearance on 29 February 1988 will be costs in the cause.

I remind the parties of the next review hearing on 22 March 1988 at 9 a.m.

I publish my reasons.

IN THE SUPREME COURT OF QUEENSLAND No. 4003 of 1987

BETWEEN:

DAVID SING CHI YUEN and AND ORS. Plaintiffs

AND:

STEVE JONES PTY. LTD. AND ORS. Defendants

JUDGMENT - de JERSEY J.

Delivered the 10th day of March 1988.

The first defendant seeks an order striking out the plaintiffs' further amended statement of claim delivered on 2nd March, 1988, or their particulars dated 24th December, 1987, on the ground of a tendency to embarrass (O. 22 r. 32), or, in respect of the particulars, because they leave the case pleaded uninformative and confusing.

Each plaintiff sues the first defendant for damages for nuisance. The plaintiffs are shop proprietors in Queen and Albert Streets who allege that they were adversely affected by work carried out by the first defendant in relation to the new Myer Centre and extension of the Queen Street Mall. Paragraph 12 of the statement of claim alleges that from November, 1986 the first defendant, through the work on the Myer Centre, caused excessive noise and vibration and dust and water to enter the plaintiffs' premises. Paragraph 14 alleges that the first defendant's erection of hoardings and barriers in relation to that project interrupted and interfered with access to the plaintiffs' premises. Similar allegations are made in para. 19 with respect to work done on extending the mall. Paragraph 20 alleges loss to the plaintiffs, consequent upon nuisance associated with both developments.

The plaintiffs were requested to particularise these allegations. They furnished a comprehensive document in response, dated 24th December, 1987.

The complaint about the pleading was put this way:—

> “The underlying reason why this pleading is confused and confusing, is that it makes no attempt to plead the

> material facts relied upon by each plaintiff to establish its or their case. It indiscriminately pleads a series of generalisations, apparently referable to each plaintiff. The consequence for the defendant is that it is impossible to glean the precise complaints of each plaintiff."

I think it is plain enough that each plaintiff complains of the entry of noise, vibrations, dust and water, and the erection of hoardings, by the first defendant, subsequently to November, 1986. Each alleges loss which is particularised. The sources of the noise, vibrations, dust and water are identified, as is the party responsible for the intrusion. It is clear what each plaintiff is alleging. I have read the pleading and the particulars in their entirety and find no substance in the first defendant's complaint in this regard.

There was a sustained attack upon the particulars. I will mention some of the points made.

1. It was said that the particulars repeat "the same imprecise generalisations" as are contained in the statement of claim. Paragraph 2 of the particulars refers to consistent experiencing of excessive noise, vibrations and dust throughout a certain period, during the trading hours specified in para. 2(c). Paragraph 2(c)(ii) specifies dates of water entry. Paragraph 2(a)(i) gives examples of the noise, vibrations and dust. These were said to be "meaningless in themselves". Even a cursory reading, however, reveals what the plaintiffs are alleging. The examples given are informative, and giving them was a convenient way of sufficiently disclosing to the first defendant the sort of particular problem from which the plaintiffs suffered. If by reference to "imprecise generalisations" the first defendant implies a claim to such detailed information as the quantity of dust which entered over a certain period of 30 minutes, or the decibel level of noise experienced on a certain date, then I think it goes

too far. Such information, if it exists, may be obtained on discovery, but would in a case like this be out of place in particulars. Bearing in mind the role of particulars, being to prevent surprise by informing of the case to be met at trial, one could not dismiss these particulars as inadequate. This is a case where the first defendant is seeking to delve too far into the plaintiffs' evidence rather than confining itself to its right to a properly particularised recitation of the material facts relied on. It is also not without relevance that the first defendant is said to have been the author of the trouble experienced by the plaintiffs.

2. The particulars delivered on 24th December, 1987, after the issue of the writ which had issued on 30th October, 1987, refer to matters of complaint extending to 24th December, 1987. That is a valid criticism. But I would not for that reason strike them out or regard them as embarrassing. The plaintiffs will presumably seek amendment to add a claim for nuisance committed subsequently to the writ, and these presently unnecessary particulars may, as Mr. Keane pointed out, give “advance notice of the substance of further amendments which would enable all matters of complaint which have occurred up to the time of trial to be litigated”. In exercising my discretion I would not therefore require their deletion at this stage.

3. On p. 5 of the particulars there is mention of noise and vibration from the relocation of services including electricity, Telecom, water and gas. This was done, it is alleged, by the first defendant and others acting on its behalf including Telecom, S.E.Q.E.B. and “other public authorities”. It is said first that there is no pleading of vicarious liability. But the agency of those bodies for the first defendant is set up, and sufficiently in the context of these allegations. It is then said that

the public authorities are not identified. Perhaps they should have been. I infer however that they are the authorities involved with the water and gas relocations. But I cannot conclude that the first defendant, responsible in the end for all of this work, is in the least “embarrassed” by what appears to me to be only a minor uncertainty.

4. Much of what was submitted to me for the first defendant appears, on careful analysis, quite untenable. For example, on p. 13 of the particulars, there is reference to damage caused ...

> “In the case of the first plaintiff by reason of dust entering the premises from November, 1986 to June, 1987 and by reason of water, mud, grit and stone particles entering the premises by reason of customers walking through water, mud, grit and stone particles in the vicinity of the plaintiffs' premises throughout the said period but more particularly from 1st December, 1986 to 22nd March, 1987, and by reason of water entering through the rear of the plaintiffs' premises between 26th March, 1987 and 25th April, 1987 causing damage to the vinyl floor and carpet throughout the plaintiffs' premises.”

Counsel for the first defendant described that as “vague generalisations made without reference to ... the specific case to be made by (the) plaintiff”. I cannot accept this description.

5. There was a suggestion that para, (d) on p. 20 of the particulars went beyond the statement of claim in alleging interference with pedestrian traffic along footpaths and in crossing the streets. That is to be read however as an example of interference with their ultimate access to the plaintiffs' premises, and I see no difficulty arising from it.

6. Particulars were sought of the calculations of the plaintiffs' respective losses. Those particulars were provided at pp. 21 to 27. Counsel for the first defendant labelled them “vague and meaningless”. I think they are meaningful and sufficiently clear. No doubt documentary material in relation to them will be discovered. For the moment, they sufficiently inform the first defendant of the case it has to meet. I disagree generally with the submissions made in relation to the adequacy of the particulars of loss. It was said that none was provided in relation to the second plaintiff, but some are given in para. 21(b) of the pleading. If they can be supplemented at this stage, then I think that should occur, but I am not prepared to strike out the particulars generally because of that deficiency if it exists. Some of the criticism made in relation to the particulars of loss was argumentative in the sense that it went to the merits of the claim, an obviously inappropriate approach at this stage. I mention finally in this regard a contention that “nothing is pleaded which makes the loss of value of business claim recoverable by any plaintiff”. Such claims are alleged in para. 21 of the statement of claim as a species of the loss earlier referred to.

The application should fail. In the end, it seems to me to be based on a refusal to accept the legitimacy of each plaintiff's making similar claims against the first defendant. Appreciating the nature of the alleged development as it emerges from the amended statement of claim, one can acknowledge however the possibility that the claims would be very similar. In any case, these are the claims being made, and in my view the first defendant has been told sufficiently clearly of the cases it has to meet. The repetition of robust criticisms of the particulars as being meaningless has done nothing to persuade me that that is so.

I therefore refuse the application of the first defendant and order that the first defendant pay the plaintiffs' taxed costs of and incidental to it. The costs of the first defendant's appearance on 29th February, 1988 will be costs in the cause. I remind the parties of the next review hearing on 22nd March, 1988 at 9.00 a.m.