IN THE SUPREME COURT OF QUEENSLAND No. 264 of 1994

Brisbane

Before the Hon. Justice Williams

[Mitchell v. Q.R.L. and Anor]

BETWEEN:

RONALD GORDON MITCHELL (Plaintiff)

AND:

QUEENSLAND RUGBY FOOTBALL LEAGUE LIMITED (First Defendant)
(ACN 009 878 013)

AND:

MARGARET McGLONE (Second Defendant)

JUDGMENT - WILLIAMS J

Judgment delivered 24/05/1995

CATCHWORDS:

Pleadings - statement of claim - numerous allegations vague and too broad - jury trial - struck out with leave to replead

Counsel: Morris Q.C. for applicant/defendants
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Solicitors: Gilshenan & Luton for applicants/defendants
Baker Johnson for respondent/defendants
Hearing date: 4 May 1995

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By separate summonses each of the defendants in the action has applied for an order that the whole of the amended statement of claim of the plaintiff delivered on 24 February 1995 be struck out on a number of grounds including that it tends to prejudice, embarrass, or delay, the fair trial of the action. Those orders are resisted by the plaintiff.

As a result of being tackled whilst playing rugby league on 6 September 1992 the plaintiff suffered serious spinal injuries and is now quadriplegic. On or about 7 March 1992 he had signed a document entitled Player's Agreement and had at that time paid the sum of $5 entitling him to some insurance cover. He has received a payment of $30,000 pursuant to that insurance, and it has been asserted against him that that was the maximum amount payable. In the action, which relies on a number of causes of action, the plaintiff is claiming damages in the total sum of $1.57 million. The causes of action against the first defendant, Queensland Rugby Football League Limited, are firstly in contract, and secondly pursuant to ss.82 and/or 87 of the Trade Practices Act. It should be recorded that senior counsel for the plaintiff expressly conceded in the course of argument that the plaintiff was not making any claim in tort against either defendant. The cause of action against the second defendant, Margaret McGlone, is for damages for breach of warranty of authority.

Senior counsel for the plaintiff submitted that the principal cause of action was that derived from the

provisions of the Trade Practices Act referred to above. He also conceded that for the plaintiff to succeed in contract it would be necessary for the court to imply terms additional to those expressly found in the Player's Agreement signed by the plaintiff.

At the outset it should be noted that the plaintiff has asked for a trial by jury. That makes the pleadings of even greater importance than they usually are in a damages action. From a reading of the pleadings the jury should be able to understand fully the matters in issue at the trial, and the definition of those issues should not be clouded by the inclusion of material in the statement of claim raising emotive issues. Where a jury is involved the statement of claim should clearly draw to the jury's attention at an early stage the critical facts providing the foundation of the plaintiff's case. Against that background it is significant to note that the plaintiff's signing of the Player's Agreement is alleged in para. 15, the incident causing damage in para. 24, and the allegations based on the Trade Practices Act commence at para. 29.

The second defendant is alleged to have been at all material times the secretary of the Julia Creek Rugby League Football Club. It is alleged that she made statements to the plaintiff at or about the time he entered into the Player's Agreement, and it is that conduct which gives rise to the claim of breach of warranty of authority against her.

The first defendant is not expressly a party to (that is, it is not a signatory to) the document signed by the plaintiff on 7 March 1992 but it is the contention of the plaintiff that because of conduct of the first defendant and/or representations made on or about 7 March 1992 with respect to the role of the first defendant, the court should conclude that in law the document of 7 March 1992 constitutes a contract between the plaintiff and the first defendant. Further, in order to succeed in contract the plaintiff must establish that a term was to be implied

(essentially from the conduct of the first defendant and the second defendant as its agent) that "the insurance cover would be reasonably adequate to compensate for any injuries suffered when playing under the agreement".

The statement of claim is comprised of 38 paragraphs which take up approximately 17 pages of typescript. The critical matters I have referred to are to be extracted primarily from paras. 15, 17, 24, 28, and 32. In my view it must be said that it is a difficult task, even for a trained lawyer, to distil those matters from the totality of the pleading; with all due respect to those responsible for its drafting it would, in my view, be totally confusing to a jury. No reasonable jury would upon a reading of the statement of claim have any appreciation at all of the relevance and significance of much of what is said in the document.

I now turn specifically to the amended statement of claim.

Counsel for the defendants did commence with the observation that the change of address pleaded in para. 1 is irrelevant. That is so, but it is hardly of itself a matter of any significance.

In para. 3 it is alleged that the first defendant was engaged "in promoting and presenting under its authority" the playing of rugby league matches. Particulars are given which assert that the material times were the 1992 football season "and a number of years prior thereto". In my view much of the content of para. 3 is far too wide and vague, and is embarrassing in so far as it may be said to be relevant to the action in contract. Given the format of the pleading it cannot really be relevant to the Trade Practices Act causes of action because all relevant matter to that is pleaded subsequently to para. 29.

As counsel for the defendants pointed out the first defendant would be obliged by O.35 r.4 to make disclosure of all documents "directly relevant" to the allegations

contained in para. 3. If para. 3 is material to the cause of action in contract then the first defendant would be obliged to undertake a far reaching and costly exercise in the discovery of documents. It seems to me that if the pleading started off with the agreement signed by the plaintiff and then brought in the alleged role of the first defendant the pleading would more keenly focus on what were the relevant issues and in consequence needless discovery would be avoided.

Having para. 3 as the first substantive paragraph in the statement of claim is clearly embarrassing because it gives an undue emphasis to the vague and general, if not emotive, matter alleged therein. One could readily be forgiven for concluding that the statement of claim was so drawn as to create certain beliefs in the minds of the jury before they came to the critical elements of the cause of action.

Paragraph 4 is also far too vague and broad. It alleges that "all players in such games" are bound by certain rules. What the plaintiff has to prove, it would seem, was that the game in which he was playing at the time he was injured was governed by the rules. The way para. 4 is pleaded the first defendant would be obliged to raise in its pleading the fact, if it be the case, that some games or some players at some time are not bound by the rules. Those matters are simply irrelevant.

The vagaries of the initial allegations in the statement of claim are emphasised by comparing the allegation in cl.5 with that in cl.3. In the former reference is made to matches "under the auspices and control of" the first defendant whereas in the latter it is asserted the first defendant is "engaged in promoting and presenting" such games. Is there a difference between the expressions? If so, is it material? But more importantly what is the relevance of games other than that in which the plaintiff was playing at the time he was injured. It may be that, if one defines the issues by referring to the

agreement signed by the plaintiff and the game in which he was injured, one can then make relevant some wider conduct on the part of the first defendant. If only because para. 5 is found at the outset of the pleading and before the critical matters are adverted to it has the consequence of making the pleading embarrassing for the first defendant.

Paras. 7 and 8 of the pleading alleged that the first defendant required players to be insured and further required such policies to be effected through QRL Insurance Finance Agency Pty Ltd. Again it seems to me that the wording of those paragraphs makes them embarrassing. If, as worded, they are relevant that must be because they are concerned with the cause of action in contract. There is no reference to the plaintiff in either paragraph. It is not said that the plaintiff was required to be covered by a policy of insurance before he could play. Paragraph 7 could be traversed by the first defendant leading evidence to show that a significant number of players could play though not covered by insurance. That, of course, would not be relevant to the issue the plaintiff seeks to raise.

Paragraph 10 alleges that the first defendant is "organised in such a way that it has a number of affiliated clubs throughout Queensland". Again, particularly in the context where it appears, that is so vague as to be embarrassing. A critical question, may well be whether or not the Julia Creek Rugby League Football Club was affiliated with the first defendant as is alleged in para. 14. In so far as para. 10 raises wider issues it is clearly embarrassing.

Further the generality of the allegation made in para. 11 - the reference to "its affiliated clubs" and "recruiting players" - again makes the pleading so wide and vague that it must be embarrassing.

Similarly para. 12 is far too wide. A real issue here may well be whether or not the second defendant in recruiting and signing up the plaintiff acted as an agent for the first defendant. What is the possible relevance of

the reference to other secretaries of other clubs. Would it matter if the first defendant could prove that 55% of secretaries of affiliated clubs did not have authority to act as its agent. Again, in context, the paragraph must be classed as embarrassing.

In an appropriate context the specific material pleaded in paras. 13 and 15(b) may not be objectionable. I can see why counsel for the defendants made the submissions which he did, but if they were the only complaints against the statement of claim they would probably not be sufficient to warrant its being struck out.

Despite the rhetoric found in paras. 1 to 15 inclusive it is difficult to identify the conduct referred to in para. 16 as being that which resulted in terms being implied into the Player's Agreement signed by the plaintiff on 7 March 1992. Particulars of the written terms are given but in neither para. 16 nor 17 is the conduct identified which would support the allegation that there was a term to be implied by conduct to the effect that "the insurance cover would be reasonably adequate to compensate for any injuries suffered when playing under the agreement". Paras. 16 and 17 are so deficient in particularity in that regard that in my view they could be classified as embarrassing.

An alternative allegation is made in para. 21 that, if the second defendant was not the agent of the first defendant for the purpose of negotiating and concluding the Player's Agreement, the first defendant held out that the second defendant was such an agent. Particulars are given thereof. In my view paras, (c) and (d) of the particulars are embarrassing. They are in no way related to the conduct of the second defendant. What is the relevance of the first defendant's conduct in relation to secretaries of other clubs. As I have pointed out on a number of occasions already this allegation could be traversed by the first defendant, but the proof that the allegation was untrue as a general proposition would be irrelevant for purposes of this litigation.

I turn now to para. 27(b). It alleges that insurance policies to cover sporting injuries were "readily available" which would compensate an injured player for amounts up to $1.6 million. I cannot see the possible relevance of that allegation. If the first defendant contracted with the plaintiff to ensure he was covered by insurance to that extent then even if such policies were not readily available the first defendant would be bound by its contractual obligation. Further, what does "readily available" in this context mean? Is the quantum of premium relevant to determining whether or not such policies are "readily available"? It is vexatious and embarrassing to put such an allegation in a statement of claim such as this.

Counsel for the defendants did not object to para. 30 which alleged that the first defendant was engaged in trade or commerce in that it was engaged in the activities therein particularised. But what he did object to was the allegation made in the ensuing paragraph. In para. 31 it is alleged that eight particularised activities were carried out in the "course of its trade or commerce". Most of those are very generally expressed. I cannot see the relevance of them. Given what was alleged in para. 30, the next important allegation should have been that in dealing with the plaintiff at the time he signed the Player's Agreement the first defendant was engaged in trade and commerce. That allegation is not made in para. 31 save to the extent that it would be encompassed by the vague general allegation of "procuring players to enter into Players Agreements with it". By pleading the matters in para. 31 the plaintiff is clearly raising false issues which can only prejudice the fair trial of the action. The allegations are embarrassing.

I have some difficulty in comprehending the relevance of paras. 33 to 38 as pleaded. There appeared to be some suggestion they provided a basis upon which the plaintiff could recover against the second defendant. As in my view the statement of claim will have to be redrafted

consideration should then be given to clarifying this part of the pleading.

A deal of time was spent in the course of argument discussing the authorities in which consideration has been given to the relevance of "silence" when considering what constitutes deceptive or misleading conduct. That argument was relevant to allegations such as that found in para. 32(c). In the circumstances I do not propose to make any final ruling thereon. Undoubtedly due regard will be had when redrafting the statement of claim to all that was said by either side in the course of argument on this point.

Another matter which should be considered when the statement of claim is being redrafted is whether or not it is necessary to allege that the plaintiff would not have played rugby league but for his belief that there was an insurance cover to the extent that it was "reasonably adequate to compensate for any injuries suffered when playing under the agreement".

It has been recognised that the court has power to strike out a statement of claim in which objectionable matter is so mingled with other matter that the pleading as a whole may tend to embarrass the fair trial of the action, notwithstanding that the cause of action may be spelled out of the pleading as a whole. That principle is essentially derived from Davy v. Garrett (1878) 7 Ch.D. 473 and was applied by Dunn J. in Madden v. Kirkegard Ellwood and Partners (1975) Qd.R. 363. In my view the ultimate position here is much the same as that found by Dunn J. to be the position in that case. There his Honour at 366:

> "Its condition is such that no 'surgery' can save it. It will be an act of mercy to terminate its existence."

Those observations are applicable here. Any attempt to amend this pleading by surgical operation will only confuse the issue further.

Counsel for the defendants did submit that the plaintiff could not improve its pleading, particularly as against the second defendant. But I am not convinced of that. It seems to me that one can distil from the statement of claim a possibly viable cause of action against each of the defendants.

The amended statement of claim should be struck out, but the plaintiff should be given leave to replead against both defendants.