# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Dudzinski v Cth & Ors* [2008] QSC 294 |
| PARTIES: | **ANNA DUDZINSKI**<br>(plaintiff/applicant/respondent)<br>**v**<br>**COMMONWEALTH OF AUSTRALIA**<br>(first defendant/respondent/applicant)<br><br>**CENTRELINK**<br>(second defendant/respondent/applicant)<br><br>**BRIAN HARRIS**<br>(third defendant/respondent/applicant)<br><br>**STEVE ULHMANN**<br>(fourth defendant/respondent/applicant)<br><br>**DAVID ROSALKY**<br>(fifth defendant/respondent/applicant)<br><br>**SHOUN ROSSINGTON**<br>(sixth defendant/respondent/applicant)<br><br>**JOHN CURCURUTO**<br>(seventh defendant/respondent/not a party to the application)<br><br>**JUDY O'SHEA**<br>(eighth defendant/respondent/applicant) |
| FILE NO: | SC No 9303 of 2005 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| DELIVERED ON: | 21 November 2008 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 21 October 2008 |
| JUDGE: | Mackenzie J |
| ORDERS: | **1. The statement of claim against the First, Second, Third, Fourth, Fifth, Sixth, and Eighth defendants be struck out pursuant to rule 171 of the *Uniform Civil Procedure Rules* 1999 (Qld) with leave to re-plead within 28 days.**<br><br>**2. The plaintiff pay the costs of the application of the First, Second, Third, Fourth, Fifth, Sixth and Eighth defendants to be assessed.** |
| CATCHWORDS: | PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER RULES OF |

COURT – SUMMARY JUDGMENT – where the plaintiff's claim and statement of claim were previously struck out with leave to re-plead – where the content of the re-pleaded statement of claim was almost identical to the struck-out pleadings – where the plaintiff was self-represented – where the defendants sought summary judgment against the plaintiff or alternatively, an order striking out the claim and statement of claim – whether summary judgment should be granted – whether the pleadings had a tendency to prejudice or delay the fair trial of the proceeding

*Uniform Civil Procedure Rules* 1999 (Qld), r 171, r 292, r 293

COUNSEL: The plaintiff appeared on her own behalf
S A McLeod for the first, second, third, fourth, fifth, sixth and eighth defendants
No appearance for the seventh defendant

SOLICITORS: The plaintiff appeared on her own behalf
Australian Government Solicitor for the first, second, third, fourth, fifth, sixth and eighth defendants
No appearance for the seventh defendant

[1] **MACKENZIE J:** The plaintiff has brought a claim against the Commonwealth and six officers of Centrelink claiming damages for events allegedly arising in the course of her dealings with Centrelink. One of the defendants is shown on the headings of some documents as being deceased and is not represented in the present proceedings. For convenience I will refer to the remaining defendants as "the defendants". The defendants seek judgment against the first plaintiff pursuant to r 293(2) UCPR. Alternatively they seek an order pursuant to r 171(2) that the claim and statement of claim be struck out.

[2] The plaintiff also brought two applications for judgment against the defendants. The first, filed on 18 September 2008 and invoking r 292(2), (summary judgment for the plaintiff), r 171(2), (striking out the defence) and r 288(3), (judgment by default for a debt or liquidated demand), was returnable on 22 October 2008. The second, filed on 14 October 2008 and relying on r 379 (disallowance of amendment of a pleading) was returnable on the 21 October 2008.

[3] There was correspondence in which the plaintiff expressed the view that the defendants' application filed on 7 October 2008 had deliberately been listed for 21 October 2008 to thwart her application returnable on 22 October 2008. From what I was told, the timing may be coincidental. However that may be, the two applications by the plaintiff were heard prior to the defendants' application with a view to avoiding any complications in that regard. No objection was raised to hearing the application returnable on 22 October 2008 in conjunction with the other applications. Each of those applications was dismissed on the ground that none of the circumstances required to be established by the respective rules to enliven the discretion to give the relief sought had been established.

[4] It should also be mentioned that Mrs Dudzinski applied at the outset for an adjournment on the ground that she was studying for law examinations. In the

absence of any more compelling reason than that advanced and because of the fact that she had herself made the second of her applications returnable on 21 October 2008, I did not grant that application. Once her applications were dismissed, she declined the opportunity to apply for adjournment of the defendants' application and, indeed, insisted that it proceed.

[5] She had also applied for leave for her husband to conduct the case on her behalf. While English is plainly not her first language, I was satisfied from her ability to communicate during her application for an adjournment and from the fluent expression of her claim and outline of argument that she was capable of conducting the case herself. I was also satisfied that she had a better grasp of the principles involved in the matter then most unrepresented litigants have in similar applications. Her husband, who was permitted to sit with her at the bar table, gave her assistance and advice throughout the hearing.

[6] At one stage, when it may be thought that she perceived that her prospects of success were waning, she asked me to disqualify myself. As no grounds that might persuade me to do so were advanced, I declined to do so. Finally, she sought leave to cross-examine Mr Cosgrove, a solicitor from the Australian Government Solicitor whose affidavits were read in the application. One merely exhibited conversation, principally about the listing of the applications. The other attempted an analysis of the current pleading and compared it with the one that had previously been struck out by Martin J and expressed an opinion that they were substantially the same. I declined to give her leave to cross-examine him since it appeared that I would not gain any further assistance on relevant issues from it. As I informed the plaintiff at the hearing, I considered it was my function to form an independent view as to the merits of the defendants' application, which would include performing such an exercise myself.

[7] A summary of the action may conveniently be found in the affidavit of Mr Cosgrove filed on 27 March 2008. Relevantly for present purposes, the action was commenced by Mrs Dudzinski on 4 November 2005. Subsequently, her husband was added as second plaintiff. There was what the defendants' legal representatives considered ineffective service of the claim on 30 June 2006. Correspondence ensued throughout 2006 about that and perceived defects in the pleading, including particularisation of the claims. Later while the amended statement of claim was being awaited, there was discussion about the viability of the legal basis of the claim. The claim was renewed for 12 months from 4 November 2006.

[8] On 2 November 2007, the second amended statement of claim was served. It was followed on 13 November 2007 by the third amended statement of claim and the fourth amended statement of claim. On 30 November 2007, the defendants' notice of intention to defend and defence were filed. A comprehensively amended defence was filed on the 19 February 2008. On the 5 March 2008 the reply was served. On 27 March 2008 an application was made by the defendants for judgment under r 293(2). Alternatively, an order striking out the claim and statement of claim was sought. Martin J gave judgment against the second plaintiff but declined to do so against the first plaintiff. However he struck out the fourth amended statement of claim except for the paragraphs relating to quantum, with leave being given to re-plead. Pursuant to that leave, and an extension of time given by Dutney J, the plaintiff filed a re-pleaded statement of claim, described as amended statement of claim, on 10 June 2008.

[9] One of the points she now makes is that the defendants did not file their defence to the amended claim and statement of claim until 6 October 2008. While that is well beyond the period within which the defence should have been filed, failure to file a pleading in a timely way is not fatal without more, e.g. failure to comply with a guillotine order to file it by a certain time or failure to do so pursuant to leave given to do so within a particular time allowed in the order granting leave, or any extension of that time. The failure to do so has no enduring consequence since no application to obtain judgment by default under r 284 was made prior to any default being remedied.

[10] One of the matters raised in the plaintiff's outline of argument is a submission that, as an unrepresented litigant, she should not be required to present the same standard of pleading as that required from a legal practitioner. It is said to be an "error of law and a jurisdictional error" to strike out a pleading of an unrepresented plaintiff because the pleading is not of the same standard as a legal practitioner's. She refers in that regard to the *Judiciary Act* 1903 (Cth).

[11] Of necessity, this court allows some latitude in many ways to litigants who choose to represent themselves. However the underlying purpose of pleadings must be achieved so that the business of the court can be carried out effectively and, more importantly, so that claims are expressed in a way that informs the opposing party adequately of the case it has to meet. Further, it must be ascertainable from the pleading that a viable cause of action is pleaded. In summary, a pleading, although not expressed in a way that an experienced lawyer would plead it may be sufficient to reach or exceed the minimum standard required for compliance with the rules, but a pleading, whether by a lawyer or unrepresented litigant, that falls short of the minimum requirements of the rules will be liable to be struck out irrespective of who pleads it.

[12] The application by the defendants to strike out the most recent defence will be approached on that basis.

[13] Under r 293 UCPR, on a defendant's application, the court may give judgment against the plaintiff for all or part of a claim if it is satisfied:

(a) the plaintiff has no real prospect of succeeding on all or a part of the plaintiffs claim;

(b) there is no need for a trial of the claim or part of the claim.

[14] Comparison of the amended statement of claim filled 10 June 2008 with the fourth amended statement of claim, which was the pleading struck out by Martin J, shows that although the arrangement of the pleading has changed in some respects, most of the paragraphs are very similar if not identical to those comprised in the fourth amended statement of claim. In a few cases there is some new content, or the same concept has been reworded. Some of the sums of money referred to have been varied. In a small number of instances, the years when events occurred have been changed, and, in others, allegations appear to be pleaded against additional or different defendants.

[15] A difficulty with the statement of claim in its present form is that, in a number of areas, it lacks a structure that would allow a reader of it to comprehend easily the basis of some of the claims. For example, there are many assertions in it of states of

mind of the defendants and of the characterisation of their actions as, for example and without attempting to be exhaustive, wilfully false, reckless, malicious, negligent, and the like. However, in at least some instances it is not easy, if possible at all, to ascertain the basis for such a description, other than the plaintiff's assertion that the actions have characteristics attributed to them. In that regard the pleading is deficient.

[16] Further, while it would not necessarily be fatal if it stood alone, the lack of logical structure in some parts at least of the statement of claim should be addressed in any re-pleading. That process should also include a critical assessment by the plaintiff of whether all of the issues raised generate a viable cause. A pleading that is set out logically and expresses in a clear syllogistic way what it intends to achieve (within the bounds of a recognised cause of action) will have better prospects of surviving than one that merely repeats, with minor additions and rearrangements, as the present statement of claim does, the pleading that was struck out by Martin J. If that cannot be achieved, the risk that no further leave to re-plead will be given is real.

[17] With regard to summary judgment, I have come to the conclusion that it is premature to conclude that the test in r 293 UCPR has been satisfied. However, the pleading as it stands has at least a tendency to prejudice or delay the fair trial of the proceeding in terms of r 171 and it will be stuck out under paragraph 3 of the defendants' application. All things considered, the respondent should be permitted a further attempt to re-plead sufficiently, subject to the observation made above.

[18] The orders are as follows:

1. That the statement of claim against the First, Second, Third, Fourth, Fifth, Sixth, and Eighth defendants be struck out pursuant to rule 171 of the *Uniform Civil Procedure Rules* 1999 (Qld) with leave to re-plead within 28 days.

2. The plaintiff pay the costs of the application of the First, Second, Third, Fourth, Fifth, Sixth and Eighth defendants to be assessed.