SUPREME COURT OF QUEENSLAND

CITATION:	*Lade and Company Pty Ltd v Finlay & Anor; Lade v Franks & Anor* [2010] QSC 382
PARTIES:	**LADE & COMPANY PTY LTD** **ACN 010 109 369** (respondent/plaintiff) **v** **JOHN FINLAY, CEO, WHITSUNDAY REGIONAL COUNCIL** (first defendant) **THE HON DESLEY BOYLE MP, MINISTER FOR LOCAL GOVERNMENT AND ABORIGINAL AND TORRES STRAIT ISLANDER PARTNERSHIPS** (applicant/second defendant) **WILLIAM ALEXANDER LADE** (respondent/plaintiff) **v** **PETER FRANKS, CEO, MACKAY REGIONAL COUNCIL** (first defendant) **THE HON DESLEY BOYLE MP, MINISTER FOR LOCAL GOVERNMENT AND ABORIGINAL AND TORRES STRAIT ISLANDER PARTNERSHIPS** (applicant/second defendant**)**
FILE NO/S:	SC No 10 of 2010 SC No 12 of 2010
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court Mackay
DELIVERED ON:	13 October 2010
DELIVERED AT:	Rockhampton
HEARING DATE:	20 September 2010
JUDGE:	McMeekin J
ORDER:	**1. Judgment for the applicant/second defendant in each of the proceedings S10/2010 and S12/2010.** **2. If the respondent wishes to be heard on the question of costs then submissions are to be filed and served on the applicant on or before 4pm on the 20th October 2010.** **3. In the event that no submissions are filed then the respondent to pay the applicant's costs fixed in the sum of $2,764.06 in proceedings numbered S10/10 and in the**

sum of $3,027.13 in proceedings numbered S12/10.

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – SUMMARY JUDGMENT – where the applicant applied for summary judgment against the plaintiff – where the respondent disputes the validity of Queensland legislation governing the collection of rates by local governments and the granting of title to lands – where the respondent rejects the authority of the court – whether summary judgment should be entered for the defendants against the plaintiff in accordance with rule 293 of the *Uniform Civil Procedure Rules*

PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – PLEADING – STATEMENT OF CLAIM – where the applicant applied in the alternative for the plaintiff's proceedings to be struck out – where the Statement of Claim fails to disclose a reasonable course of action – where there are fundamental deficiencies in the pleadings – whether the Statement of Claim should be struck out in accordance with rule 171 of the *Uniform Civil Procedure Rules*

Australia Act (1986) (Cth), s 3(2)
Australia Act (1986) (UK), s 3(2)
Colonial Laws Validity Act 1865, s 2, s 3
Constitution Act 1867 (Qld), s 53
Constitution of Queensland 2001, s 70
Crown Proceedings Act 1980 (Qld), s 8
Evidence Act 1977 (Qld), s 43, s 46A
Great Seal Act 1884
Imperial Acts Application Act 1984 (Qld)
Local Government Act 2009, s 94 (Qld)
Uniform Civil Procedure Rules 1999, r 155(2)(c), r 171, r 293, r 681

Burns & Ors v Cassowary Coast Regional Council (Unreported, Cairns, 27 of 2010, 27 April 2010)
Dare v Pulham (1982) 148 CLR 658
Deputy Commissioner of Taxation v Salcedo [2005] 2 Qd R 232
Mabo v State of Queensland (No 2) (1992) 175 CLR 1
McCawley v R [1920] AC 691 (PC)

COUNSEL: B. Hartigan for the applicant
Respondent in person

SOLICITORS: Crown Law for the applicant
Respondent in person

[1] **McMEEKIN J:** There are two proceedings before the Court and in each an application has been brought by the second defendant – who in each case is the Honourable Desley Boyle in her capacity as Minister for Local Government and Aboriginal & Torres Strait Islander Partnerships – for summary judgment pursuant to r 293 of the *Uniform Civil Procedure Rules* 1999 (UCPR) or alternatively that the plaintiff's proceedings be struck out, as against the applicant, pursuant to r 171 UCPR contending that the plaintiff has no real prospect of succeeding on the claim.

[2] The respondents are the respective plaintiff in each proceeding – Mr Lade and his company Lade & Company Pty Ltd. I will, for convenience, make reference only to Mr Lade's proceeding as the issues seem to be the same in both.

[3] So far as is relevant to the applicant by the Claim the respondent plaintiff claims:

(a) "Relief for duress, misrepresentation, and undue influence to the amount of $5,269.63 plus 11% compound interest with daily rests for rates paid by the plaintiff…resulting from Rates Notices issued for rates and other fees on his private registered property, held by him in a Deed of Grant to an Estate in Fee-simple of alienated land in Queensland of the Commonwealth of Australia situated at 40 Peters Avenue, Midge Point, Queensland 4799".

(b) "Relief for the amount of $250,000.00 for the trespass from the placing by the corporation 'Queensland Government' of the corporate 'Public Seal of the State' on my Certificate of Title to the land described at 1(b); and for the trespass of the resultant taking by the corporation 'Queensland Government' of a third party interest in my Title, without my knowledge or consent, and there is no entry of that interest registered anywhere on my Certificate of Title."

(c) "Relief for the amount of $250,000.00 for the burden upon William Alexander Lade, not being a 'person and a corporation', resultant from the placing of a restrictive covenant on, and resultant from the taking of a third party interest in, my Certificate of Title, by the 'Queensland Government'; and by the 'Queensland Parliament' under the corporate *'Local Government Act 1993'*; all under the *'Parliament of Queensland Act 2001'* and its *'Constitution of Queensland 2001'*; to pay rates to an entity of a 'foreign government' holding an Australian Business Number for commercial activities; all devoid of any signed commercial agreement between myself and the corporation 'Queensland Government', of which the Second Defendant, The Hon Desley Boyle MY, is a Cabinet Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships (A.B.N. 65 959 415 158)."

[4] Mr Lade tendered to the Court two statements which purport to set out his argument. I have had regard to these statements but have not found them particularly helpful. An example of the submissions made is:

> "As I am a private person and Her Majesty is a private person and we are both persons of gender, we are exempt under the Corporations (Queensland) Act 1990 from any of the laws of the 'foreign government' of 'the State' of Queensland which is under the Australian System of Government held to their own statutory law and held to the Crimes at Sea

> Act 2001 of the Queensland Government which is for commercial law only."

[5] In the circumstances I have gained little benefit from the submissions and have done my best to comprehend the pleading in the Statement of Claim. The applicant's counsel has described the plaintiffs' pleading, not entirely unfairly, as "unintelligible". However, as best I can understand it Mr Lade contends:

(a) that he is a loyal subject of Her Majesty Queen Elizabeth II;
(b) that Her Majesty is the holder of all land in Queensland;
(c) that he has not consented to any alteration to this arrangement by voting at a referendum to bring about any change;
(d) that the system of local government established under various State Acts of Parliament is unconstitutional there never having been a referendum as required by s 53 of the *Constitution Act* 1867 (Qld) to alter the system of government in this State;
(e) that he has no commercial arrangement with any Minister or other authorised officer of the Queensland Government to pay rates or other charges to the State;
(f) that he acquired his land at 40 Peters Avenue pursuant to a "commercial contract under the Crown of the United Kingdom of Great Britain and Northern Ireland" his title being acquired under the *Land Act* 1962 (Qld) and the *Real Property Act* 1861 (Qld), those Acts being valid Acts as they were "sealed under the Crown of the United Kingdom of Great Britain and Northern Ireland according to law subject to the *Great Seal Act* 1884 (UK)";
(g) Ministers of the Queensland government are responsible for the commercial activities of their respective departments;
(h) that he has never entered into any arrangement with the Queensland Government or any other person (including the applicant here) to allow any person to take joint ownership of his land;
(i) that by placing the "corporate 'Public Seal of the State'" on his Certificate of Title, without his knowledge or consent, the applicant has thereby trespassed upon his Certificate and placed a restrictive covenant on it "thereby … removing the contractual rights granted by the Crown".

[6] Mr Lade, who appeared in person, indicated, quite courteously, that he does not accept the authority of the Court nor the validity of the rules of Court.

[7] Regrettably perhaps for Mr Lade, I am obliged to apply the rules of Court as much to his proceedings as to those of anyone else. Those rules provide that if the Statement of Claim "discloses no reasonable cause of action" then it is liable to be struck out: r 171 *UCPR*.

[8] The plaintiff's pleading has obvious and fundamental defects. I will give some examples. Whilst in his prayer for relief Mr Lade seeks relief based on "duress, misrepresentation and undue influence", apparently related to the payment of rates, there is no pleading of any payment of rates nor of any duress, misrepresentation or undue influence by the applicant or anyone else that has caused Mr Lade to do anything.

[9] The claim for relief in the sum of $500,000 – presumably for damages – suffers from the defect that there is no pleading that complies with r 155(2)(c) UCPR. That is the plaintiff has not pleaded "the basis upon which the amount claimed has been worked out or estimated".

[10] The assertion that a Minister of the Crown is liable, by reason of her office, for the affixation of a seal to a document by a public servant was not supported by argument or authority. To the extent that relief is sought against the Crown in right of the State then proceedings are to be brought "against the Crown under the title the 'State of Queensland'": s 8 *Crown Proceedings Act* 1980 (Qld).

[11] I appreciate that Mr Lade would no doubt assert that the *Crown Proceedings Act* 1980 and the *UCPR* are of no force and effect presumably because they were not "sealed under the Crown of the United Kingdom of Great Britain and Northern Ireland according to law subject to the *Great Seal Act* 1884 (UK)".

[12] I observe that the UCPR provisions reflect rules that have long been part of the law. The provisions I have mentioned, or rules very much like them, have, for well over one hundred years, been found necessary to ensure fairness between parties to litigation and the just resolution of competing claims. The plaintiffs' pleadings are embarrassing. They fail the test enunciated by Cotton LJ in *Philipps v Philipps* (1878) 4 QBD 139, a case often cited in this area:

> "What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard, and tell them what they will have to meet when the case comes on for trial."

[13] To like effect is the observation of the majority in *Dare v Pulham* (1982) 148 CLR 658 at 664, where Murphy, Wilson, Brennan, Deane and Dawson JJ held:

> "Pleadings and particulars have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it (*Gould and Birbeck and Bacon v Mount Oxide Mines Ltd (In liq)* (1916) 22 CLR 490); they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at trial (*Miller v Cameron* (1936) 54 CLR 572); and they give a defendant an understanding of a plaintiff's claim in aid of the defendant's right to make a payment into court."

[14] The Statements of Claim fail these tests and for that reason alone should be struck out. If there was any viable cause of action evident then I would give leave to re-plead. That brings me to the fundamental problem with the proposed causes of action. They appear to depend on the acceptance of the presumption that the legislative provisions that govern the collecting of rates in respect of land by local authorities and the granting of title to lands are invalid, and that, to be valid, Acts of our Parliament must comply with Imperial legislation.

[15] As to that latter contention it is clear that since the passing of the *Australia Act* (1986) (Cth) Australian law is now entirely free of Imperial control: *Mabo v State of Queensland (No 2)* (1992) 175 CLR 1 at 29 per Brennan J. Prior to that time

local legislation would only be void if repugnant to British statutes extending to the colonies by paramount force: ss 2 and 3 *Colonial Laws Validity Act* 1865. The *Australia Act* (1986) (Cth) and *Australia Act* (1986) (UK) ("the Australia Acts") rendered the *Colonial Laws Validity Act* 1865 inapplicable to any laws passed by the Parliament of a State and expressly declared that the Parliaments of the States had power to repeal or amend any United Kingdom legislation "in so far as it is part of the law of the State": s 3(2) of the Australia Acts. In Queensland Parliament has specified those Imperial Acts which remain in force: *Imperial Acts Application Act* 1984 (Qld). The *Great Seal Act* 1884 is not one of the Acts mentioned in the relevant schedule (Schedule 1). Hence it forms no part of the law of Queensland.

[16] Apart from invalidity brought about by a failure to comply with Imperial legislation Mr Lade also seems to contend, relying on s 53 of the *Constitution Act* 1867 (Qld), that, absent a referendum, the constitutional requirements necessary to validate the various legislative provisions under which rates have been levied or his Certificate of Title dealt with were not met.

[17] Section 53 of the *Constitution Act* 1867 (Qld) provides:

> **"Requirement for referendum**
>
> **53 Certain measures to be supported by referendum**
> (1) A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely—
> sections 1, 2, 2A, 11A, 11B; and
> this section 53
> shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act."

[18] The sections referred to in s 53 provide under the headings "The Legislature" and "The Governor" respectively as follows:

> **"The Legislature**
>
> **1 Legislative Assembly**
> There shall be within the said Colony of Queensland a Legislative Assembly.
>
> **2 Legislative Assembly constituted**
> Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever.
>
> **2A The Parliament**
> (1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in sections 1 and 2.

(2) Every Bill, after its passage through the Legislative Assembly, shall be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.

The Governor

11A Office of Governor

(1) The Queen's representative in Queensland is the Governor who shall hold office during Her Majesty's pleasure.

(2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 53.

(3) In this Act and in every other Act a reference to the Governor shall be taken—

(a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual to the office of Governor of the State of Queensland; and

(b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Queensland.

11B Definition of Royal Sign Manual

In section 11A the expression *Royal Sign Manual* means the signature or royal hand of the Sovereign."

[19] There are at least two difficulties for Mr Lade's contentions. First, parliament is quite at liberty to alter these provisions if it so wishes, even though the Act is expressed to be a constitutional one: see *McCawley v R* [1920] AC 691 (PC). So if the relevant Acts have been passed without regard to the requirements of the *Constitution Act* 1867 (Qld), as Mr Lade contends, then Parliament must be assumed to have so intended.

[20] Secondly, I am required to take judicial notice of Acts of Parliament and assume the accuracy of copies of such Acts: s 43 and 46A of the *Evidence Act* 1977 (Qld). So, without evidence to the contrary, I am not concerned with the question of whether the constitutional requirements relating to the valid passing of any Act of Parliament have been complied with.

[21] Now, so far as I am aware, there never has been a referendum held to alter these constitutional arrangements. Equally, so far as I am aware, there has been no Bill passed that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the nominated sections of the *Constitution Act* 1867, nor do any of the legislative enactments mentioned by Mr Lade in his pleading have this effect. As well, again so far as I am aware, the constitutional requirements were followed in the passing into law of the enactments in question.

[22] I turn then to the complaints about rates and the affixation of a seal to a Certificate of Title. Parliament has given formal constitutional recognition to local authorities: s 70 *Constitution of Queensland* 2001 (and see formerly s 54 *Constitution Act 1867 (Qld)* (inserted in 1989)). A local authority has power to levy rates: s 94 *Local*

Government Act 2009 and formerly s 963 *Local Government Act* 1993. Apparently Mr Lade has chosen to pay whatever rates were levied on his land. It was not demonstrated how that choice can give rise to any cause of action against the applicant.

[23] Next, Mr Lade contends that he acquired his land from the Crown of the United Kingdom of Great Britain and Northern Ireland, and that the placing of a seal upon his Certificate of Title had the effect of "removing the contractual rights granted by the Crown" and constituted "a trespass, a restrictive covenant, or the taking of a third party interest".

[24] The proposition that the placing of a seal on a document constitutes a trespass, a restrictive covenant, or the taking of a third party interest, is not self evidently true. Certainly there was no demonstration of how the placing of a seal on a Certificate of Title has had any adverse effect on Mr Lade.

[25] The proposition, I think, is that public servants acting under the authority of Acts of Parliament derogate in some way from Mr Lade's title by dealing with it as the legislation provides, and the relevant Minister is therefore liable to him for the alleged diminution in value brought about by that adverse derogation. Assuming, for the sake of argument, that there is such a derogation, the fallacy in the proposition is the notion that Parliament is precluded from so derogating once an estate in fee simple has been granted. So much has been established in a number of decisions that Ms Hartigan has taken me to: *Bone v Mothershaw* [2002] QCA 120; *Burns v State of Queensland* [2006] QCA 235; *Wilson v Raddatz* [2006] QCA 392; *Glasgow v Hall* [2007] QCA 19. Special leave to appeal to the High Court was refused in *Bone*[1] and *Glasgow*[2].

[26] It is apparent that the plaintiffs have no real prospect of success and have not demonstrated that there is any need for a trial: *Deputy Commissioner of Taxation v Salcedo* [2005] 2 Qd R 232.

[27] Mr Lade initially sought an adjournment so that his case could be argued by a Mr Walter who for personal reasons could not attend the hearing. There is no point. The end result is plain. I note that Mr Walter has conducted similar arguments in some of the cases I have mentioned and failed: see *Burns* (supra); *Wilson* (supra); and *Glasgow* (supra). See also the decision of P Lyons J in *Burns & Ors v Cassowary Coast Regional Council* (Unreported, Cairns, 27 of 2010, 27 April 2010). Costs orders have been made against Mr Walter in some cases. The applicant made Mr Lade aware of this history well prior to the hearing.

[28] In each case I grant judgment for the applicant/second defendant.

[29] The applicant has filed affidavits in which the deponent has set out the costs incurred by the applicant. The costs have been assessed on the standard basis. I have not heard from Mr Lade on the question of costs. Normally of course costs will follow the event: r 681 *UCPR*. Where the pleading discloses no cause of action and where the defendant has drawn the plaintiff's attention to earlier decisions which made plain the deficiencies in the pleaded case and so given the plaintiff the opportunity to avoid the costs of the application there is strong reason why the

[1] High Court Unreported, B29/2002, 25 June 2003.
[2] [2007] HCA Trans 557.

usual rule should apply. Nonetheless I will give Mr Lade the opportunity to be heard if he wishes. The orders will be as follows:

(a) If the respondent wishes to be heard on the question of costs then submissions are to be filed and served on the applicant on or before 4pm on the 20th October 2010;

(b) In the event that no submissions are filed then I order that the respondent to pay the applicant's costs fixed in the sum of $2,764.06 in proceedings numbered S10/10 and in the sum of $3,027.13 in proceedings numbered S12/10.