

SUPREME COURT OF QUEENSLAND

CITATION: *Argus Accounting Pty Ltd and Anor v Anthony Blake Pty Ltd and Ors* [2018] QSC 316

PARTIES: **ARGUS ACCOUNTING PTY LTD**
ACN 612 896 358
(first plaintiff)

ARGUS PRIVATE PTY LTD
ACN 159 585 190
(second plaintiff)

v

ANTHONY BLAKE PTY LTD
ACN 097 058 547
(first defendant)

ANTHONY BLAKE
(second defendant)

JUTTA BLAKE
(third defendant)

FILE NO: SC No 292 of 2018

DIVISION: Trial Division

PROCEEDING: Applications for Summary Judgment

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 14 November 2018

DELIVERED AT: Brisbane

HEARING DATE: 9 November 2018

JUDGE: Martin J

- ORDERS:
- 1. The Plaintiffs' application filed 22 October, 2018 be dismissed.**
 - 2. The Plaintiffs pay the Defendants' costs of and incidental to the application to be assessed on the standard basis.**
 - 3. There be judgment for the Second and Third Defendants against each of the Plaintiffs, in respect of the whole of the Plaintiffs' claims in this action against each of the Second Defendant and the Third Defendant.**
 - 4. The Plaintiffs pay the Second and Third Defendants' costs of and incidental to the Plaintiffs' action as against the Second**

and Third Defendants to be assessed on the standard basis.

CATCHWORDS: PROCEDURE – CIVIL PROCEDURE IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – where the plaintiffs claim damages for breach of contract against three defendants – where the second and third defendants claim to not be parties to the contracts said to be breached – whether the second and third defendants are entitled to summary judgment

PROCEDURE – CIVIL PROCEDURE IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – where the plaintiffs claim damages for breach of contract against three defendants – whether the plaintiff is entitled to orders for disclosure against the first, second and third defendants – whether the plaintiff is entitled to the striking out of the defence of the first, second and third defendants

COUNSEL: C Grindal (*director*) for the plaintiffs
Michael Jonsson QC for the first, second and third defendants

SOLICITORS: C Grindal (*director*) for the plaintiffs
Miller Bou-Samra Lawyers for the first, second and third defendants

- [1] In this matter there are opposing applications for summary judgment and other relief. As the application by the second and third defendants for summary judgment may affect any order that might be made on the plaintiffs' application for disclosure, I will deal with that application first. The plaintiffs claim approximately \$4.5 million for damages for various breaches of contract. The plaintiffs allege that they and the defendants entered into what they describe as two interconnected agreements whereby (a) the plaintiffs would purchase an accountancy business from the defendants (the sale agreement); and (b) the defendants would manage and operate the business for 12 months after sale (the contractor agreement).
- [2] The case for the second and third defendants is quite simple. They say that they were not parties to either the sale agreement or the contractor agreement. The principles which govern an application of this kind are well known. An applicant for summary judgment must satisfy the court that (a) the respondent has no real prospect of succeeding on all or part of its claim; and (b) there is no need for a trial of the claim or part of the claim. These rules have been

considered in a number of cases and the principles which emerge may be summarised in the following way:

- (a) The issues raised in proceedings will be determined summarily only in the clearest of cases,
 - (b) the words “no real prospect of succeeding” direct the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success,
 - (c) if there is a triable issue of law, the application should be refused,
 - (d) there must be a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way,
 - (e) the onus is on the applicant to satisfy the Court of the two requirements referred to above and only when a prima facie entitlement to summary judgment has been established does the evidentiary burden shift to the respondent.
- [3] The contracts which ground the plaintiffs’ case do not refer to either the second or third defendant as a party to the agreement. It is the first defendant which is named as the seller under the sale agreement and as the contractor under the contractor agreement. The plaintiffs do refer to some pre-contractual communications in which the second defendant describes the business sold as “my accounting practice” and as “operated by Anthony Blake”. The problem for the plaintiffs is that the contracts which they claim to have been breached were prepared by them and each contains a standard clause to the effect that the contract contains the entire agreement and supersedes all prior negotiations, understandings and agreements.
- [4] The assertions made otherwise on behalf of the plaintiffs were not completely clear. In their written submissions they argue that the first defendant, acting appropriately, would seek to join the second and third defendants as they have joint and several liability for the damages sought by the first and second plaintiffs. No argument was advanced to justify this assertion. They also relied on what they claimed to be a variation of the sale agreement whereby the settlement proceeds were to be paid to the second defendant. It is, of course, always open to a party to a contract to direct the purchaser to pay the settlement monies by direction. It does not mean without more that the recipient of the settlement proceeds is in any way liable under the sale contract.
- [5] This is a case in which it has been demonstrated that there is no viable cause of action pleaded by the plaintiffs against the second and third defendants and they are entitled to judgment on the claim against them.

- [6] I now turn to the application by the plaintiffs. The plaintiffs seek orders for disclosure and for orders that the defence be struck out and that judgment be entered against the first, second and third defendants for both the first and second plaintiffs. Given the order I have made with respect to the second and third defendants, the application can only continue against the first defendant.
- [7] As with the other application, it is difficult to discern what the plaintiffs contend. It appears that underlying this application is the apprehension by the plaintiffs that the first defendant must provide material in support of any denial made. That, of course, is not correct. Apart from that I can see no basis for the application for disclosure. With respect to the application that the defence be struck out, the plaintiffs have not identified any issue with the defence which would justify such an order. In any event, there are a number of triable issues which emerge on the material. Many of them concern a misapprehension by the plaintiffs of the meaning and effect of clauses in the sale agreement. For example, in paragraph 3 of the amended statement of claim it is alleged that the defendant is in breach of special condition 8.1 of the sale agreement and clause 18.1 of the contractor agreement because of a failure to disclose to the plaintiffs what was said to be referral arrangements involving a Ms Kolijn and Ms Smith. Issues which arise upon that allegation include whether the dealings involving those two people were "referral arrangements" within the meaning of the two agreements and whether any non-disclosure by the first defendant produced any loss suffered by the plaintiffs.
- [8] Mr Grindal, who appeared for the plaintiffs, took me in some detail to documents obtained from what I understand to be the Australian Taxation Office Portal. He asserted that these documents supported his argument, but was not able to convey to me any argument which justified the assertions he was making with respect to those documents.
- [9] There are also triable issues which arise with respect to the performance by the defendant of certain services required under the contractor agreement and the manner in which they were provided. These are matters which will call for evidence and, in a number of instances, expert evidence as to whether or not the work performed by the defendant fell short of the standard that ought reasonably be expected. Many of the other allegations of breach require evidence that was not forthcoming on this application. I'm satisfied that there are triable issues which demonstrate that there is a need for a trial with respect to the claims made against the first defendant. The plaintiffs' application is dismissed.

[10] On each application the plaintiffs will pay the appropriate defendants' costs, and on each application they will be on the standard basis.