

SUPREME COURT OF QUEENSLAND

CITATION: *Collins v State of Queensland* [2019] QSC 57

PARTIE: **Kenneth Charles COLLINS**
(plaintiff)
v
STATE OF QUEENSLAND

AS

**QUEENSLAND POLICE SERVICE (BRISBANE
WATER POLICE)**

**QUEENSLAND DEPARTMENT OF TRANSPORT AND
MAIN ROADS (MARITIME SAFETY QUEENSLAND)**
(defendant)

FILE NO/S: No BS8473 of 2018

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 14 March 2019

DELIVERED AT: Brisbane

HEARING DATE: 14 February 2019

JUDGE: Boddice J

ORDER: **I shall hear the parties as to the form of order and costs.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – where the plaintiff’s vessel ran aground near Stradbroke Island and lost – where the plaintiff pleads a number of facts said to give rise to causes of action against the defendant for negligence and breach of statutory duty – where the defendant makes application for orders striking out aspects of the plaintiff’s claim and statement of claim – whether parts of the claim are properly brought – whether parts of the statement of claim have a tendency to delay a fair trial of the proceeding, are irrelevant to any pleaded cause of action or are frivolous or otherwise an abuse of the court process

Personal Injuries Proceedings Act 2002 (Qld)

Uniform Civil Procedure Rules 1999 (Qld)

COUNSEL: K Collins (self-acting), for the plaintiff
B R McMillan, for the defendant

SOLICITORS: Crown Law for the defendant

- [1] By Claim, filed 7 August 2018, Kenneth Charles Collins claims damages for negligence and breach of statutory duty against the State of Queensland in its capacity as the Queensland Police Service (Brisbane Water Police) and Queensland Department of Transport and Main Roads (Maritime Safety Queensland).
- [2] The Claim arises from an incident on 4 December 2016 when the plaintiff's recreational vessel ran aground near Stradbroke Island and was completely lost. The plaintiff claims damages for the total loss of that vessel as well as future economic loss and general compensatory damages "for loss of amenity; physical injury to the plaintiff; disruption to life; pain and suffering; loss of personal possessions (of in determinant value)".
- [3] In his Statement of Claim, the plaintiff pleads a number of facts said to give rise to causes of action against the defendant in negligence and breaches of statutory duty. A central fact relied upon in support of those causes of action is the defendant's failure to place a navigational aid in the area, as well as its failure to attempt to salvage the vessel in an adequate or timely manner, or at all.
- [4] The defendant makes application for orders striking out aspects of the plaintiff's Claim and Statement of Claim. The basis for the application, brought pursuant to r 171 of the *Uniform Civil Procedure Rules 1999* (Qld), is that the offending parts of the Claim are not properly brought and that the offending parts of the Statement of Claim have a tendency to delay a fair trial of the proceeding, are irrelevant to any pleaded cause of action or are frivolous or otherwise an abuse of the court process.
- [5] At the hearing of the application the plaintiff conceded that, to the extent his Claim sought damages for personal injury for pain and suffering, it ought to be struck out as any proposed claim for those damages was invalid because it had not been made in accordance with the *Personal Injuries Proceedings Act 2002* (Qld). The plaintiff submitted the claim for "disruption to life, loss of amenity and loss of personal possessions" is an appropriate claim having regard to the loss of his vessel.
- [6] Whilst it may be accepted that the loss of personal possessions does not constitute a claim for damages for personal injuries, the present pleading, insofar as it seeks to claim damages for disruption to life and loss of amenity, is vague and ambiguous. Its present wording is entirely consistent with a claim for loss associated with personal injuries. For that reason, those additional words ought properly to also be struck out of the claim.
- [7] These conclusions also support orders striking out paragraphs 70, 139 and the words "loss of amenity, physical injury to plaintiff, disruption to life, pain and suffering" in paragraph 163(3) of the Statement of Claim.
- [8] The remaining complaints about paragraphs in the Statement of Claim do not pertain to a claim for personal injuries. It is appropriate to deal with them individually.

- [9] The defendant applies to have paragraph 14(b) of the Statement of Claim struck out on the ground it is vague and too imprecise to inform the defendant of the case to be met at trial. The defendant submits if not struck out, it will prejudice and delay a fair trial.
- [10] Paragraph 14 pleads that at the relevant time Brisbane Water Police had certain responsibilities and obligations. Whilst the duties and obligations are pleaded in general terms, the pleading does inform the defendant of the case to be met at trial. Any vagueness in the allegations can be addressed by a request for further and better particulars. A question of striking out can be revisited if those particulars do not rectify that vagueness.
- [11] The application to strike out paragraph 14(b) of the Statement of Claim is refused.
- [12] The defendant applies to strike out paragraph 28 of the Statement of Claim on the ground it is vague and does not plead any particular statutory or other duty that is alleged to have been breached or is otherwise insufficiently precise to enable the defendant to know the case to be met at trial. If not struck out, it will prejudice and delay the fair trial.
- [13] The plaintiff submits the paragraph is neither vague nor objectionable. Further, the defendant has not identified which part of the paragraph is objectionable. The plaintiff submits the paragraph is a summary of allegations in other paragraphs in the Statement of Claim.
- [14] Whilst paragraph 28 may contain within it, allegations which are the subject of specific allegations in other paragraphs of the Statement of Claim, there is substance in the defendant's contention that paragraph 28 in its present form is vague and does not plead any particular statutory or other duty. To the extent the matters contained in paragraph 28 are relied upon for that purpose, they have already been pleaded in other paragraphs in the Statement of Claim.
- [15] Paragraph 28 of the Statement of Claim is objectionable in its present form. It will have a tendency to prejudice or delay a fair trial of the proceeding. I order that paragraph 28 of the Statement of Claim be struck out.
- [16] The defendant applies to strike out paragraphs 74(b), 74(c), 74(d), 78, 79, 80, 81, 82, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159 of the Statement of Claim on the ground they are objectionable as they appear to relate to an alleged breach of duty to salvage the plaintiff's vessel so as to prevent a marine pollution event, in circumstances where the existence of such a duty is not pleaded by the plaintiff. At most, the plaintiff's case pleads a different duty on the part of the defendant, to respond to an incident that threatens the marine environment with pollution. The paragraphs are also vague and do not allege material facts relevant to any proper cause of action. If not struck out, they will prejudice and delay a fair trial of the proceeding.
- [17] The plaintiff submits the pleading is not vague. These paragraphs plead specific facts relevant to obligations pursuant to an international convention and other statutory obligations. Each is relevant to the plaintiff's claim for damages for breach of duties.

- [18] Paragraph 74 pleads specific facts said to arise by reason of matters pleaded earlier in the Statement of Claim. Read in that context, it could not be said to be vague or that it does not inform the defendant of the case to be met at trial. It also cannot be said the paragraph is irrelevant or would otherwise delay a fair trial of the proceeding. The application to strike out paragraph 74(b), 74(c) and 74(d) of the Statement of Claim is refused.
- [19] Paragraphs 78 to 82 of the Statement of Claim are in a different category. They specifically relate to obligations of the Queensland Parks & Wildlife Service agency in respect of marine national parks. It alleges that one of the obligations on that authority was to establish a contingency plan to respond to a marine incident. It alleges the authority did not have a contingency plan and was not alerted of the emergency involving the plaintiff's vessel. Read in the context of the Statement of Claim, paragraphs 78 to 82 have no relevance to the pleaded claims for breach of duty made against the State of Queensland in its capacity of Queensland Police Service (Brisbane Water Police) or Queensland Department of Transport and Main Roads (Maritime Safety Queensland).
- [20] These paragraphs being irrelevant to the proceedings, their continued presence in the Statement of Claim will prejudice and delay a fair trial of the proceeding. Paragraphs 78 to 82 inclusive of the Statement of Claim are struck out.
- [21] Paragraphs 147 to 159 of the Statement of Claim plead duties to respond to a marine pollution incident. For the reasons previously given, those paragraphs are irrelevant when the Statement of Claim is read as a whole. Their presence will prejudice a fair trial of the proceedings. Paragraphs 147 to 159 (inclusive) of the Statement of Claim are struck out.
- [22] The defendant applies to strike out paragraphs 88 and 89 of the Statement of Claim on the ground they are irrelevant to any properly pleaded cause of action. Their presence will prejudice and delay the fair trial of the matter.
- [23] The plaintiff submits these paragraphs provide a necessary outline of the proceeding for investigation of maritime incidents. Those factual bases are relevant to subsequent pleadings of fact and law, including the pleas of duty and breach.
- [24] Paragraphs 88 and 89 of the Statement of Claim plead that enforcement guidelines published by Maritime Safety Queensland in relation to the procedures in the event of a maritime incident, explain how the agency determines its enforcement action and lists the primary objectives of an investigation into marine incidents. When read in isolation, those paragraphs appear to have limited relevance. However, when read in the context of the Statement of Claim as a whole, it cannot be said the facts outlined in those paragraphs are completely irrelevant to the claims for damages brought against the State of Queensland in its capacity as Queensland Department of Transport & Main Roads (Maritime Safety Queensland). The application to strike out paragraphs 88 and 89 of the Statement of Claim is refused.

- [25] The defendant applies to strike out paragraphs 97 to 120 inclusive of the Statement of Claim on the grounds they do not allege any relevant fact. They relate to correspondence between the plaintiff and the defendant after the incident, in respect of the plaintiff's assertion the relevant areas should be marked with a light or other aid to navigation. These paragraphs do not allege any express or implied admission by the defendant as to any facts or legal issue in dispute. Their presence in the pleading will prejudice and delay a fair trial of the proceeding.
- [26] The plaintiff submits the correspondence is relevant to establishing the defendant's lack of regard to its obligations and to establish its breach of duty in failing to mark the area.
- [27] The matters pleaded in paragraphs 97 to 120 (inclusive) of the Statement of Claim do not contain any facts relevant to the existence of a duty to have placed a navigational light in the area or to establish a breach of that duty. At best, the allegations relate to post incident concerns raised by the plaintiff and alleged inadequate responses to those concerns. None of those matters constitute facts properly to be contained within a pleading of the plaintiff's claim. Their presence will delay and prejudice a fair trial of the proceeding. Paragraphs 97 to 120 (inclusive) of the Statement of Claim are struck out.
- [28] The defendant applies to strike out paragraphs 125 to 130 (inclusive) of the Statement of Claim on the ground they relate to the placement of an aid to navigation on an entirely separate location in about 1996. There is no allegation it constitutes an express or implied admission as to the existence or breach of any duty owed to the plaintiff in respect of the area in issue. These paragraphs will prejudice and delay a fair trial of the proceeding.
- [29] The plaintiff submits these paragraphs are relevant as they evidence an example of a navigation light being installed after repeated lobbying by private organisations where no navigation light was installed at the relevant location, the subject of the proceeding, despite a history of groundings and fatalities. These events are relevant to the plaintiff's claim of breach of duty.
- [30] Paragraphs 125 to 130 relate, at best, to an allegation that the defendant had an obligation to install a light at another location. In their present form, they bear no relevance to the allegation of the existence of a duty and breach of that duty in respect of the different location, the subject of the proceeding. They raise issues irrelevant to a determination of the plaintiff's claim. Those paragraphs will prejudice and delay a fair trial of the proceeding. Paragraphs 125 to 130 (inclusive) of the Statement of Claim are struck out.

Conclusion

- [31] The defendant's application to strike out part of the Claim and paragraphs 28, 70, 78, 79, 80, 81, 82, 97-120, 125-130, 139, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 and 159 of the Statement of Claim is granted. It was conceded by the defendant that in those circumstances the plaintiff ought to be given leave to re-plead.

[32] I shall hear the parties as to the form of orders and costs.