

SUPREME COURT OF QUEENSLAND

CITATION: *Whyte & Anor v Clough Limited & Ors* [2020] QSC 53

PARTIES: **MEL WHYTE**
(first plaintiff)

DAVID HUNDT
(second plaintiff)

v

CLOUGH LIMITED ACN 008 678 813
(first defendant)

CLOUGH PROJECTS PTY LTD ACN 109 444 831
(second defendant)

CLOUGH SEAM GAS PTY LTD ACN 129 610 656
(third defendant)

FILE NO: BS4573/2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 30 March 2020

DELIVERED AT: Brisbane

JUDGE: Dalton J

ORDERS: **Application Dismissed**

Costs in the Cause

- [1] This is an application to have the proceeding placed on the commercial list. Because of the Covid-19 Pandemic, it has been heard on the papers with the consent of the parties. For the same reason it is the subject of a written judgment, rather than being dealt with in Court ex tempore.
- [2] Although both parties supported the proceeding being placed on the Commercial List, the matter is not really commercial in nature. The plaintiffs sue primarily for breach of an employment contract. It is true that as an alternative they allege they were in a joint venture with the defendants, but this is very much a second string position: it is alleged that one of the terms of the Joint Venture was to have the defendants comply with the terms of the employment contracts which are relied upon in the primary claim. The same can be said for the recasting of the employment claim as a breach of fiduciary duty case and as a misleading and deceptive conduct case.

- [3] As well, the Commercial list is for parties who want a quick passage through the interlocutory steps of a proceeding and an early, usually short, trial. This proceeding was commenced in April 2018. The claim was not served until the last day of the ensuing year. Now, two years after filing the claim, the parties foreshadow interlocutory disputes about the pleadings. They have no extant applications on foot to deal with their various complaints, or to obtain the leave to withdraw admissions which it is accepted is necessary.
- [4] I must say I doubt that the recasting of the plaintiffs' claims as several different causes of action, described at [2] above will assist in the quick or clear determination of the case.
- [5] Against this background of delay the parties say that the matter might benefit from management. So it might. Alternatively the parties might simply assert their rights to have steps carried out in accordance with the UCPR and the times limited in the UCPR in the applications jurisdiction so that the matter moves forward at a reasonable speed. However, I am not convinced that the proceeding belongs on the commercial list, both because of its subject matter and because of the delay shown by the parties to date.
- [6] The parties agree that the costs of this application should be costs in the cause so that is the order I make.