SUPREME COURT OF QUEENSLAND

CITATION: *Carrigan v Hill* [2025] QSC 34

PARTIES:

FIONA MARIE CARRIGAN
(First Plaintiff)

And

JOSHUA ALEXANDER CARRIGAN
(Second Plaintiff)

v

PETER DONALD HILL
(First Defendant)

And

CATHERINE BRIDGET HILL
(Second Defendant)

And

BLOOMFIELD LAND PTY LTD (ACN 164 309 362) AS TRUSTEE OF THE BLOOMFIELD LAND TRUST
(Third Defendant)

And

BLOOMFIELD COTTON PTY LTD (ACN 164 309 326) AS TRUSTEE OF THE BLOOMFIELD COTTON TRUST
(Fourth Defendant)

And

GOORAROOMAN PTY LTD (ACN 010 044 238) AS TRUSTEE OF THE PETER HILL FAMILY TRUST
(Fifth Defendant)

And

HASTINGS LAND PTY LTD (ACN 678 882 654) AS TRUSTEE OF THE HASTINGS TRUST
(Sixth Defendant)

And

WALDOR GRAZING PTY LTD (ACN 664 377 404) AS TRUSTEE FOR THE RIVERSDALE TRUST
(Seventh Defendant)

And

BLOOMFIELD LAND PTY LTD (ACN 164 309 362)
(Eighth Defendant)

FILE NO/S:	15501/24
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 March 2025
DELIVERED AT:	Brisbane
HEARING DATE:	30 January 2025
JUDGE:	Martin SJA
ORDER:	**1. Paragraphs 181, 182, 185, 189 and 190 of the Statement of Claim are struck out.** **2. The plaintiffs have leave to replead.** **3. The plaintiffs must pay the defendant's costs of the application.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – GENERALLY – where the plaintiffs commenced proceedings against the defendants by way of claim and statement of claim – where the statement of claim was comprised of 196 paragraphs written in "narrative style" – where paragraphs 181, 182, 185, 189 and 190 of the statement of claim purported to rely on the matters pleaded in the preceding 166 or 180 paragraphs to support their pleaded conclusions – where the relevant paragraphs did not otherwise identify any particular alleged facts which supported each pleaded conclusion – where the defendants applied for the relevant paragraphs to be struck out on the general basis that they did not state the case which must be met in a clear fashion – whether the relevant paragraphs state with sufficient clarity the case that must be met – whether the relevant paragraphs comply with the rules of pleading – whether the relevant paragraphs should be struck out
COUNSEL:	D de Jersey KC and K Gaston for the applicants/defendants D Marks KC and S Carius for the respondents/plaintiffs
SOLICITORS:	Fox and Thomas for the applicants/defendants Hamilton Locke for the respondents/plaintiffs

[1] The applicant defendants seek an order striking out five identified paragraphs in the Statement of Claim. The respondent plaintiffs oppose the application. They raise the preliminary point that, as the applicants have not filed a notice of intention to defend,

r 135 of the *Uniform Civil Procedure Rules* 1999 requires that leave is needed to proceed.

The events leading to this application

[2] The plaintiffs claim that, for more than 40 years, Fiona Carrigan (the daughter of Peter Hill, the first defendant) lived and worked on properties owned or controlled by Peter. This was done "for the furtherance of the family agricultural enterprise". It is also alleged that Fiona, her husband Josh (the second plaintiff) and their children worked for the Hill Family Group. She complains that:

(a) she was promised a share of the Hill Family Group,

(b) that she relied upon assurances from her father,

(c) that she made "irreversible life changing decisions" to contribute to the family properties for little or no remuneration, and

(d) that in August 2024 Peter tried to evict Fiona and Josh from their family home and he began marketing that property for sale.

[3] This proceeding was then commenced. It was served on 13 November 2024. The UCPR required that a notice of intention to defend be filed by 12 December 2024. On that day, the applicants' solicitors wrote to the respondents' solicitors and said that they took issue with the form of the pleading. The broad complaint concerned the "narrative style" of the statement of claim and, in particular, paragraphs 181,182, 185, 189 and 190. The respondents replied and pointed out that a defence was due. Further correspondence ensued and, on 23 December 2024, this application was filed.

Do the applicants need leave to bring this application?

[4] Mr Marks KC submitted that, because the applicants had not filed a notice of intention to defend, r 135 prevented them from taking a step in the proceeding unless they had the court's leave. Rule 135 provides:

> "(1) Except with the court's leave, a defendant may take a step in a proceeding only if the defendant has first filed a notice of intention to defend.
>
> (2) In this rule—
>
> *notice of intention to defend* includes a conditional notice of intention to defend."

[5] Mr de Jersey KC argued that leave was unnecessary because the rule under which the applicants moved was r 171 and it provides:

> "(1) This rule applies if a pleading or part of a pleading—
>
> (a) discloses no reasonable cause of action or defence; or
>
> (b) has a tendency to prejudice or delay the fair trial of the proceeding; or

(c) is unnecessary or scandalous; or

(d) is frivolous or vexatious; or

(e) is otherwise an abuse of the process of the court.

(2) The court, **at any stage of the proceeding**, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.

..." (Emphasis added)

[6] A proceeding starts when the originating process is issued by the court – r 8. It follows, the applicants say, that a strike-out application may be brought before a notice of intention to defend has been filed. I am inclined to accept that. Rule 5(2) provides that the rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality. That objective can be satisfied if a strike-out application is brought with, at least, the purpose of having a properly pleaded statement of claim. It would seem to be contrary to the philosophy of r 5 for a defendant to be required to file a defence which, for example, simply asserted a general incapability of pleading a defence because of the inadequacy of the statement of claim. That would lead to unnecessary expense. On that basis, leave is not needed.

[7] If I should be wrong in the conclusion that leave is unnecessary then I would have granted leave consistent with the reasoning in *Markan v Queensland Police Service*[1]. In that decision, Jackson J (with whom Holmes and Fraser JJA agreed) agreed with the primary judge's view as to the operation of r 135. The primary judge, Applegarth J, said in his *ex tempore* reasons that the fact that the plaintiff was aware of the application, the address for service of the defendant and that the defendant had legal representation was a sufficient basis for granting leave. In the Court of Appeal, Jackson J said:

> "[17] ... In my view, his Honour's view as to the operation of UCPR r 135 is correct. The primary judge exercised his discretion to grant leave because the respondent had given reasonable notice of its intention to make the application, a notice of address for service showing the respondent's address for service and legal representatives had been filed and emailed and posted to the appellant and the appellant was not prejudiced by the absence of notice of the defendant's request for leave."

The nature of the statement of claim

[8] The statement of claim consists of 196 paragraphs, 3 annexures and 16 claims for declarations, equitable compensation, injunctions and appointment of a receiver. It is in the "narrative" style.

The applicants' complaints

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1 [2015] QCA 22

[9] The defendants ask that paragraphs 181,182, 185, 189 and 190 be struck out on the general basis that those paragraphs do not state the case which must be met in a clear fashion because they simply rely on all the allegations made in the preceding 30 pages of the statement of claim.

[10] It is necessary to set some of them out in order to understand the complaint.

[11] Paragraph 181 pleads:

> "By reason of the matters pleaded in paragraphs 1 to 180 above, Peter and Cathy, by themselves and for and on behalf of Bloomfield Land and Hastings Land, made representations and assurances that encouraged Fiona to adopt the following assumptions as to her proprietary rights in the Hill Family Group:
>
> (a) Fiona and her family would receive an equitable share of the net value of the Hill Family Group as it stood at the time of the division of the Group as part of the Hill Family Succession process;
>
> (b) Fiona and her family would receive a share of the net value of the Hill Family Group in proportion to the work done in maintaining and growing the Hill Family Group;
>
> (c) any debts of the Hill Family Group would be shared equitably across the Hill Family Properties such that the properties received by Fiona would be commercially viable and the net value received by members of the family would be equitable; and
>
> (d) Fiona's equitable entitlements from the Hill Family Group would include Bloomfield and Hastings."

[12] Paragraph 182 pleads:

> "By reason of the matters pleaded in paragraphs 1 to 180 above, between 1984 and 2023, Fiona relied on the representations and assurances pleaded above and acted to her detriment."

[13] The other paragraphs complained of each commence in a similar way:

> "185. In the premises of paragraphs 1 to 184, it would be unconscionable for Peter, Cathy, Bloomfield Land or Hastings Land to depart from the assurances ...
>
> 189. By reason of the matters pleaded [in] paragraphs in (sic) 1 to 166 above, Fiona and Josh were engaged with Peter and Cathy ... in a joint endeavour .... .
>
> 190. By reason of the matters pleaded in paragraphs 1 to 166 above, Fiona and Josh have made financial and non-financial contributions towards the acquisition, maintenance and growth of [named properties]."

[14] Each of the conclusions alleged in those paragraphs advances a different proposition. Some concern representations, some concern actions taken at particular times, some allege the assumption by the plaintiffs of certain things, and some allege that the

plaintiffs were told certain things by the first and second defendants. Other allegations include the defendants having engaged in unconscionable conduct. All of those are drawn from the preceding 166 or 180 paragraphs without any distinction, identification or connection. For the reasons which follow, I find that the paragraphs sought to be struck out do not comply with the rules of pleading because they do not identify the particular alleged facts which support each pleaded conclusion.

[15] The pleading is too long to list all the matters which generate the complaints made by the defendants. It will suffice if I provide some examples.

[16] Paragraphs 35 – 37 plead:

> "35. On or about 3 August 2024, Peter caused Bloomfield Land to issue a Notice to Leave to Fiona, Josh and their children, requiring Fiona and her family to vacate the Bloomfield House by 3 October 2024.
>
> 36. In or about August 2024, Peter caused Bloomfield to be marketed for sale by tender.
>
> 37. As at the date of this pleading, there is no contract of sale on foot in respect of Bloomfield".

[17] Those paragraphs (along with the other 177 paragraphs relied on) are pleaded as giving rise to an allegation that Peter and Cathy made the representations and assurances set out in paragraph 181. They do not because they concern matters allegedly occurring after the representations are said to have been made.

[18] The statement of claim also contains allegations of different categories of assurances. These appear to be separate from those pleaded in the paragraphs complained of. The categories include: the Succession Assurances, the Hastings Assurances, the Goorarooman Assurances, and the Bloomfield Assurances.

[19] The plaintiffs pleaded that there were three Succession Meetings concerned with the succession of properties and business interests in the Hill Family Group. An example of the type of pleading can be seen in paragraph 155 which relates to the Third Succession Meeting:

> "155. The meeting was run in the following manner:
>
> (a) each of the children of Peter and Cathy were required to meet with Mr Fisher separately and alone; and
>
> (b) the interested parties met with Mr Fisher in the following order:
>
> (a) Peter and Cathy;
>
> (b) Fiona;
>
> (c) Ben;
>
> (d) Matthew; and
>
> (e) Rebecka".

[20] Paragraph 155 is relied upon to support allegations of assurances made by Peter and Cathy and, at the same time, to support the allegation that Fiona relied on representations and assurances pleaded in paragraphs 1 to 180. It cannot do either of those things.

[21] The way in which the pleading is currently structured suggests that the plaintiffs might rely on anything in any of the 166 – 180 paragraphs referred to in the impeached paragraphs.

[22] In addition to allegations of fact, there are conclusory paragraphs scattered throughout the pleading. For example, paragraph 86 pleads:

> "86. By reason of the matters pleaded in paragraphs 64 to 85 above:
>
> (a) Hastings Land is estopped in equity from exercising its legal rights in any manner incompatible with Fiona's equitable interest in Hastings; and
>
> (b) from the time of its acquisition, the legal ownership of Hastings was impressed with a constructive trust for the benefit of Fiona, or alternatively, was charged with payment of a sum necessary to make good the Succession Assurances and the Hastings Assurances."

[23] Mr de Jersey submitted that the impugned paragraphs fail the tests identified in *Barr Rock Pty Ltd v Blast Ice Creams Pty Ltd*[2]:

> "27. … Considerations relevant in deciding if a pleading is deficient include whether it fails to fulfil the function of pleadings, which are "to state with sufficient clarity the case that must be met" and thus define the issues for decision thereby ensuring procedural fairness … A pleading will lack sufficient clarity if it is "ambiguous, vague or too general, so as to embarrass the opposite party who does not know what is alleged against him"… Likewise a pleading will be deficient if the pleader's case is not "advanced in a comprehensible, concise form appropriate for consideration both by the court, and for the purpose of the preparation of a response" …see r 149 UCPR.
>
> 28. A pleading must contain all the material facts relied upon (r 149(b) UCPR) and a deficiency in pleading material facts needed to establish a cause of action may not be remedied through the use of particulars, which are intended to meet a further and quite separate requirement (r 157 UCPR, ...). On the other hand, a pleading may be liable to be struck out where it includes irrelevant allegations which, by their nature, will affect the expeditious determination of the proceeding … ." (citations omitted)

[24] According to Mr de Jersey, another example of the deficiency in the pleading is that, while paragraph 181 alleges that "representations and assurances" were made, only five of the preceding paragraphs (54, 80, 92, 142 and 165) appear to allege any representations.

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2 [2011] QCA 252

[25] Similarly, the acts of reliance relied on in paragraph 182 are said to be "by reason of the matters pleaded in paragraphs 1 to 180", but there is no identification of the matters which gave rise to the alleged reliance, only reliance on all the matters previously pleaded. That would, taken to the extreme, include reliance on the date on which Fiona's mother was born – see paragraph 5(b).

[26] He also argued that the impugned paragraphs did not state the case which the defendants had to plead to in a form which would allow procedural fairness at trial because the asserted conclusions simply relied on the entire factual narrative.

[27] Mr Marks argued that the pleading was in a permissible form and referred me to the decision of Martin CJ in *Barclay Mowlem Construction Ltd v Dampier Port Authority*[3] where his Honour said:

> "[4] It is, I think, important when approaching an issue of that kind to bring to mind the contemporary purposes of pleadings. The purposes of pleadings are, I think, well known and include the definition of the issues to be determined in the case and enabling assessment of whether they give rise to an arguable cause of action or defence as the case may be, and apprising the other parties to the proceedings of the case that they have to meet.
>
> [5] In my view, the contemporary role of pleadings has to be viewed in the context of contemporary case management techniques and pre-trial directions. In this Court, those pre-trial directions will almost invariably include; first, a direction for the preparation of a trial bundle identifying the documents that are to be adduced in evidence in the course of the trial; second, the exchange well prior to trial of non-expert witness statements so that non-expert witnesses will customarily give their evidence-in-chief only by the adoption of that written statement; third, the exchange of expert reports well in advance of trial and a direction that those experts confer prior to trial; fourth, the exchange of chronologies; and fifth, the exchange of written submissions.
>
> [6] Those processes leave very little opportunity for surprise or ambush at trial and, it is my view, that pleadings today can be approached in that context and therefore in a rather more robust manner, than was historically the case; confident in the knowledge that other systems of pre-trial case management will exist and be implemented to aid in defining the issues and appraising the parties to the proceedings of the case that has to be met.
>
> [7] In my view, it follows that provided a pleading fulfils its basic functions of identifying the issues, disclosing an arguable cause of action or defence, as the case may be, and apprising the parties of the case that has to be met, the court ought properly be reluctant to allow the time and resources of the parties and the limited resources of the court to be spent extensively debating the application of technical pleadings rules that evolved in and derive from a very different case management environment.
>
> [8] Most pleadings in complex cases, and this is a complex case, can be criticised from the perspective of technical pleading rules that evolved in a very different case management environment. In my view, the advent of

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3 [2006] 33 WAR 82

> contemporary case management techniques and the pre-trial directions, to which I have referred, should result in the court adopting an approach to pleading disputes to the effect that only where the criticisms of a pleading significantly impact upon the proper preparation of the case and its presentation at trial should those criticisms be seriously entertained."

[28] I do not quibble with the notion that case management has led to a change in approach such that, provided the rules of pleading are met, courts do not engage in unduly technical or restrictive approaches. As Martin CJ observed: "the advent of contemporary case management techniques and the pre-trial directions, to which I have referred, should result in the Court adopting an approach to pleading disputes to the effect that only where the criticisms of a pleading significantly impact upon the proper preparation of the case and its presentation at trial should those criticisms be seriously entertained." The criticisms in this case do significantly impact upon the proper preparation of the case.

[29] But, whatever the "style" of pleading engaged in by the party, it must comply with the mandated rules. This was the subject of helpful analysis by Vaughan J in *National Australia Bank Limited v Rowe*[4] where his Honour referred to O 20 r 8(1)[5] of the *Rules of the Supreme Court* 1971 (WA) and said:

> [2] It is said that this rule is applied in a more flexible way than was the case in earlier times in view of the principles of positive case flow management.
>
> [3] **Equally, referring to case management authorities as to the modern function of pleadings, it is often sought to justify an overly lengthy pleading by reference simply to whether it identifies the issues, discloses an arguable claim and informs the parties of the case that has to be met**. The strictures of O 20 r 8(1) are ignored. Evidence is pleaded, either under the guise of being a material fact or by way of particulars, and the particulars themselves go beyond that which is necessary.
>
> [4] **It is simply wrong to read decisions such as *Barclay Mowlem Construction Ltd v Dampier Port Authority* as in any way condoning this approach.** To the contrary, the goal in O 1 r 4A of the *Rules of the Supreme Court 1971* (WA) and the objects of O 1 r 4B are best achieved through conscientious adherence to O 20 r 8(1). Prolixity obscures identification of the true issues in contention and adversely impacts on the proper and efficient preparation of a case and its presentation at trial. Where this style of pleading must be responded to a vast number of false issues will be raised. It places a significant burden on the parties, in terms of costs, and also the resources of the court.
>
> [5] The requirements of O 20 r 8(1) should be observed in preparing a pleading. Practitioners may do so confident in the knowledge that a summary statement of the material facts — and only such a *summary* statement — is what

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4 [2018] WASC 330

5 "Subject to the provisions of this rule, and rules 11, 12 and 13 every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits."

> is required by the rules. The true significance of the case management authorities in this area is that it is unnecessary to encumber a pleading with unnecessary particulars, and all the more so evidence, as it is inevitable that there will be subsequent pre-trial disclosure of the evidence to be adduced at trial.
>
> [6] **A pleading must identify the issues, disclose an arguable claim or defence, and inform the parties of the case to be met. In doing so it should be clear and complete but concise. That standard is not met by over-complicating the pleading with unnecessary particulars and evidence.**
>
> [7] A prolix pleading, offending the requirements of O 20 r 8(1) by its incorporation of unnecessary or irrelevant material, may be struck out on the ground that it will prejudice, embarrass or delay the fair trial of the action. Doing so, approaching the pleading as a whole rather than requiring the other party and the court to undertake the oppressive task of surgical excision to remove all but the material facts, will often be the means most conductive to meeting the goal in O 1 r 4A and the objects of O 1 r 4B." (emphasis added)

[30] In an appeal from Vaughan J's decision in *Rowe v National Australia Bank Limited*[6] Murphy JA and Sofronoff AJA (with whom Quinlan CJ agreed) said;

> "[165] ... The judge's observations with respect to pleadings generally at [1]–[7] of the primary decision are to be endorsed."

[31] The fact that a pleading might be lengthy is not a cause for complaint if it is otherwise compliant with the rules. The problem which arises from this type of pleading was eloquently identified by Jackson J in *Mio Art Pty Ltd v Macequest Pty Ltd*[7]:

> "[62] But where a pleading alleges a lengthy historical account of facts that occurred over an extensive period of a commercial relationship, then particular specific causes of action are pleaded on the basis that the reader is invited to find the relevant material facts for any cause of action in all that has gone before, the price for the death of that hero, brevity, is not paid in the valuable coin of precision. Instead, the reader is invited on a would-be treasure hunt, with the unlikely satisfaction that after looking in every nook and cranny, and trying every combination possible, there will be an Archimedian "Eureka" moment.
>
> [63] Where a pleader has fallen into this error, **there is a remedy. It is to require that the pleading identify the material facts for each cause of action. That will exclude those facts which go to another cause of action, as well as any "narrative" non-material facts. A direction can be made, for example, that the pleader separately plead the material facts for each cause of action alleged. But that is not often a remedy which will lead to expedition or a minimum of expense, and so must be used in sparing measure**." (emphasis added)

[32] To similar effect are the remarks of Bowskill J in *Quinlan v ERM Power Ltd*[8]:

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6 (2019) 56 WAR 1
7 [2013] QSC 211; (2013) 95 ACSR 583
8 (2021) 7 QR 377

> "[65] It is not sufficient for a plaintiff simply to plead facts somewhere in the statement of claim; later to plead in a conclusory way that a party(ies) had a particular motive, intention or other state of mind; and contend that the other party(ies) are on notice, because of the general pleading, of what is to be alleged against them. It is incumbent on the plaintiff to be specific about the basis upon which they allege the motive, intent or other state of mind was held by each particular defendant. Contrary to the plaintiff's submissions, what r 150(1)(k) and (2) UCPR require *is* the "explicit linking" of facts to inferences; the drawing of an inference is not a matter of law for the court, but a matter of fact; and a party *is* required to "spell out in the statement of claim" the precise manner in which underlying facts are to be deployed so as to establish a matter alleged to be available as a matter of inference from those facts. That is the point of r 150(2). **It is not appropriate to plead a whole lot of facts, and leave it for the other parties to guess which are relied upon to support the pleaded inference, and for the court ultimately to "reach the correct decision", irrespective of the parties' arguments: it is for the party making the allegations to identify the case which it seeks to make and to do that clearly and distinctly".** This is all the more essential where the allegations are of fraudulent or serious misconduct, in respect of which more precision is required than in other cases." (emphasis added)

Conclusion

[33] The plaintiffs have not, in paragraphs 181, 182, 185, 189 and 190, descended to the level of detail necessary to properly identify the case they seek to bring against the defendants. The plaintiffs argue that they rely upon the entire course of conduct pleaded in support of the conclusions they draw in those five paragraphs. In the examples given above, there are paragraphs which could not, on their face, support the conclusions promoted by the plaintiffs. The defendants should not be put in a position where they have to separate the wheat from the chaff in order to know what it is that is alleged against them. A pleading should not, in the words of Jackson J, require the opposing party to engage in a treasure hunt or to have to consider every possible permutation or combination of allegations.

Orders

[34] Paragraphs 181, 182, 185, 189 and 190 of the Statement of Claim are struck out.

[35] The plaintiffs have leave to replead.

[36] The plaintiffs must pay the defendant's costs of the application.