

# SUPREME COURT OF QUEENSLAND

CITATION: *Walter v Premier of Queensland* [2018] QSC 237

PARTIES: **DAVID JOHN WALTER & ANORS**  
*(Plaintiff/Respondent)*  
and  
**PREMIER OF QUEENSLAND THE SMART STATE  
ANNASTACIA PALASZCZUK MP**  
*(Defendant/Applicant)*

FILE NO/S: SC No 349 of 2018

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 15 October 2018

DELIVERED AT: Cairns

HEARING DATE: 12 October 2018

JUDGE: Henry J

ORDERS:

**PART A:**

1. **Application granted.**
2. **The statement of claim is struck out in its entirety.**
3. **I will hear the parties at 11.30 am today as to:**
  - a. **whether the claim should be set aside or stayed;**
  - b. **the relevance, if any, of the restraining order against David John Walter;**
  - c. **costs.**

**PART B:**

4. **The claim is permanently stayed.**
5. **David John Walter will pay the defendant's costs of and incidental to the application and the proceeding generally, fixed in the sum of \$16,000.**

**CATCHWORDS:** PRACTICE – ACTION – STRIKING OUT – STATEMENT OF CLAIM – STRIKING OUT – application by defendant to strike out plaintiff’s statements of claim and stay the claim – where plaintiff fails to seek any recognisable lawful relief – where the claim fails to state the available cause of action or relief sought – where documents filed do not comply with the Uniform Civil Procedure Rules forms – where the statement of claim is incoherent – whether the claim should be set aside or stayed.

*Uniform Civil Procedure Rules 1999* (Qld) r 15, r 16, r 22, r 171.

*Legal Services Commissioner v Walter* [2011] QSC 132, cited.

*Von Risefer v Permanent Trustee Company Ltd* [2005] 1 Qd R 681, cited.

**COUNSEL:** J Trevino for the defendant

**SOLICITORS:** Mr Walter appeared self-represented for the plaintiff  
Crown Law for the defendant

## **PART A**

1. The defendant’s filed application was for the striking out of the plaintiff’s claim, summary judgment or such other order as the Court considers necessary. As argued, the application sought orders setting aside the claim, striking out the statement of claim and permanently staying the proceeding.
2. The named plaintiff, Mr Walter, appeared for himself and, inferentially, whoever else is intended to be described by the plaintiff’s title, “David John Walter & Anors” (sic).
3. Turning to the claim, r 22 *Uniform Civil Procedure Rules* (Qld) (“UCPR”) provides that a plaintiff must state briefly in the claim the nature of the claim made or relief sought in the proceeding.
4. The present claim begins with a chain of assertions which are literally and legally insensible. It then moves to the personal life travails of Mr Walter, referring to his bankruptcy, his loss of weapons, a warrant for the arrest of his deceased wife, his imprisonment for contempt, an alleged assault upon him by police, reputational damage done to him, his social isolation and his affected health and well-being. Finally, it asserts:

“I have made a total of 9 claims.

The defendant is to immediately upon receipt of this claim, forward all documents, it to the Chief Justice of the High Court of Australian, Canberra,

to have numerous constitutional matters addressed in the statement of claim.  
(sic)”

5. The “9 claims” are not stated briefly or at all within the claim.
6. The nature of the claim is not apparent. Its complaints about past acts of officialdom, whether involving bankruptcy, loss of weapons, imprisonment, police assault or reputational damage, are complaints which, depending on their substance, might each attract separate proceedings, indeed it appears some may have. However, an amalgam of the complaints alluded to in the purported claim does not constitute a separate cause of action pursuable before this Court.
7. To the extent the purported claim could be said to seek any relief by implication, it appears to be the forwarding by the defendant, on receipt of the claim, of undescribed documents to the Chief Justice of the High Court, in order to have numerous unspecified constitutional matters addressed. An order that the defendant do so is not specifically sought and such an order would be unlikely to fall into any recognisable category of lawful relief.
8. The claim fails to state the nature of any claim or form of relief sought. To the arguable extent its content implies the claim or form of relief it might have been intended to advance or seek, it is not a claim or form of relief which can be lawfully advanced or sought in this Court.
9. It follows that the claim should at least be set aside pursuant to r 16(e) *UCPR*. Whether the preferable course is to instead stay the proceeding entirely is a topic to which I will return.
10. Before leaving the claim, it is appropriate to emphasise the utility of r 15 *UCPR* in a case such as the present. That rule provides that if a Registrar considers an originating process appears to be an abuse of process of the Court or frivolous or vexatious, the Registrar may refer the originating process to the Court before issuing it. The Court may then determine whether it will direct the Registrar to issue the originating process or refuse the issue of the originating process without leave of the Court. When a claim is issued it issues under the cover of the authority of the Supreme Court of Queensland. Rule 15 represents a useful safeguard against apparent misuse of that authority. The claim’s failure to, in any articulate way, state the nature of the claim or the relief sought, and its content generally, were strong indicators the claim was an abuse of the processes of the Supreme Court of Queensland. It is a good example of the type of case in which Registrars should consider a r 15 referral.
11. In turning to the statement of claim, I record at the outset that the circumstances surrounding the filing of it and other documents filed by the plaintiff are unsatisfactory. The Court file index records that document 1 is the claim. There is no reference in the index to the statement of claim. Perhaps that is because the Court file copy of the statement of claim is stapled to the claim. Court file documents 2 to 27 inclusive and Court file documents 31 and 32 – which are a physically enormous set of documents – are each recorded in the index by type as “exhibit” and described by reference to “Book DJW 1”, “Book DJW 2” and so on. Inspection of those documents reveals they are purported exhibits to an affidavit by the plaintiff which has never been filed. They are documents which should not have been received for filing. I acknowledge that in declining to entertain litigants’ attempts to file documents which

are not in proper form for filing, Registry counter staff sometimes encounter unpleasant, insistent reactions. It can be a difficult and sometimes confronting task to perform. But it is, unavoidably, part of a core Registry task. The performance of that task should attract such training, support and supervision as is necessary to ensure it is performed by reference to whether the form of a filing party's document is compliant with the *UCPR*, not to how unpleasantly or insistently the filing party behaves.

12. The Court file copy of the present plaintiff's statement of claim is deficient for want of compliance with the form for such a document. The *UCPR* form for a statement of claim requires that after the setting out of all material facts, there should appear the words, "the plaintiff claims the following relief", followed by the setting out in full of the relief claimed. Those words and the setting out of the relief claimed are not present in the Court's copy of the filed statement of claim.
13. The Court's copy of that document, which is numbered pages 1 to 82 inclusive, is missing pages 69 and 81 and ends at p 82 in the midst of a proposition which is obviously incomplete. I was informed in argument by the defendant's counsel that the defendant had been served with a statement of claim, bearing the Court's seal, which went longer than 82 pages. I received, as exhibit C for identification, Mr Walter's copy of what he said was his copy of the statement of claim he had filed – it also bears the Court's stamped seal. It goes to 92 pages. Counsel for the applicant informed the Court Mr Walter's copy was not completely identical in formatting to the document served on the defendant but on a cursory inspection was likely the same in content. It is unclear how there came to be discordance between sets of what should be the same document. For the sake of the present discussion of the statement of claim I will take the course most favourable to the plaintiff of referring to the exhibit C version of the statement of claim.
14. The statement of claim is incoherent. It is a rambling mixture of assertions which are literally and legally insensible and purported quotes of legislation, proceedings and other publications. Some of what is pleaded seems to go to whether our system of government is lawful but the link between that existential debate and a legitimate cause of action is not apparent. Nor is such a cause of action identified. Moreover, there is no pleading of facts of a kind likely to support a legitimate cause of action.
15. As the statement of claim arrives at its 169<sup>th</sup> paragraph by page 80, it becomes apparent the plaintiff would have this Court "immediately forward this file to the Chief Justice of the High Court of Australia". The purpose of such a referral, which is not a cause of action or form of relief within this Court's jurisdiction, emerges in the ensuing paragraphs. That purpose is for the Chief Justice to in turn put a series of questions to Her Majesty the Queen and, when they are answered, convene a sitting of the High Court which the plaintiff can attend, so as to request that orders be made of the Queen, depending on her answers.
16. The statement of claim then culminates in the purported pleading of nine claims, the content of which does not make sense. It does not identify, in any comprehensible way, the nature of any of the claims. There is nothing in the preceding statement of claim which in the premises gives rise to or helps to identify what the claims are.

17. The final page of exhibit C carries an assertion that the plaintiff claims \$210,000,000. Whether that extraordinary amount is claimed as damages or on some other basis is not indicated. The factual foundation for the quantum of that figure or why the Court ought to order it to be paid is not identified in the pleadings.
18. In short, the statement of claim is incoherent. It should be struck out in its entirety pursuant to r 171, at the very least because its incoherence means the statement of claim discloses no reasonable cause of action and has a tendency to prejudice or delay the fair trial of the proceeding.
19. Before dealing with the consequences of these findings I note the claim and statement of claim does not correctly name the defendant. More concerning it names the plaintiff as “David John Walter & Anors” (sic). The so-called “Anors” are not named. The statement of claim does refer to some other persons on whose behalf Mr Walter may be acting. Mr Walter appears to have a concerning history of repeat involvement in litigation for others, espousing what were described as “peculiar” and “mistaken” notions of the law in *Legal Services Commissioner v Walter* [2011] QSC 132, [24-25]. In that case Daubney J granted an injunction, restraining David John Walter inter alia, from appearing in Court on behalf of other litigants to proceedings and from drawing documents including pleadings on their behalf. A breach of that injunction of the Supreme Court of Queensland would have serious consequences. The incoherence of what Mr Walter is seeking to do in this action, for himself or anyone else, may mean his actions fall short of such a breach. This is not a topic on which any submissions have been made in this application so far. I will hear further submissions on the point.
20. Having concluded the claim should at least be set aside and the statement of claim struck out, the next question to be determined is whether the plaintiff should be afforded an opportunity to redraft the claim and statement of claim in this proceeding or whether the proceeding should be permanently stayed. The latter order is within the inherent jurisdiction of the Court, see for example *Von Risefer v Permanent Trustee Company Ltd* [2005] 1 Qd R 681. It is also contemplated by r 16(g) as an alternative to setting aside a claim under r 16(e).
21. In adjourning this matter on Friday afternoon to this morning, I did so in circumstances where it had become clear the plaintiff was either unwilling or unable to sensibly articulate the nature of his claim and the relief he was seeking. Left to his own devices he would invariably divert from the issue at hand and when asked questions by me his responses provided no real answers. In bringing the hearing to an end and adjourning, I indicated I would give my decision this morning, noting the possibility my decision might prompt the need to entertain submissions. The plaintiff’s petulant response was to announce he would not be here. I note he is here this morning. My associate informs me he has sent an email to the Registrar to be brought to my attention but it being an attempted ex parte communication the email’s content has deliberately not been brought to my attention.
22. It now remains for me to determine whether there is any real point in affording the plaintiff another opportunity to draft his claim and statement of claim. I detected no indication in the content of the first attempt at those documents nor in the oral submissions that Mr Walter made on Friday that there was any such point but will nonetheless give the parties an opportunity to be heard on the issue later this morning, once they have had the benefit of reading my reasons.

23. My orders are:

1. Application granted.
2. The statement of claim is struck out in its entirety.
3. I will hear the parties at 11.30 am today as to:
  - a. whether the claim should be set aside or stayed;
  - b. the relevance, if any, of the restraining order against David John Walter;
  - c. costs.

## **PART B**

24. Having now heard the parties further I turn to the question of whether the claim ought be set aside or stayed. Given the opportunity today to make further submissions on this issue Mr Walter urged he ought be afforded the opportunity to redraft his claim and statement of claim with the assistance of a person he identified and who was present in Court. No explanation was given as to why Mr Walter would not have previously sought such assistance or whether he had assistance previously in order to draft his claim and statement of claim. It is not suggested that person is a lawyer. Mr Walter implied he would not think highly of the advice of lawyers.
25. In submissions today I again sought to focus Mr Walter's responses in order to ascertain whether there actually exists some form of legally viable cause of action or relief sought which it is within the jurisdiction of this Court to hear and determine. Ignoring the various non-responsive submissions it appears, as anticipated by paragraph 6 of these reasons, that Mr Walter seeks to amalgamate the various complaints alluded to in the claim. However, as already explained, such an amalgam does not constitute a separate cause of action pursuable before this Court.
26. The content of the claim and statement of claim do not hint at the prospect of a cause of action or form of relief which is within the jurisdiction of this Court to provide. When that consideration is coupled with their incoherent state and such submissions as have been advanced it is clear that this is not a case where a self-represented litigant has pleaded poorly but might nonetheless have a potentially viable case.
27. The claim and the statement of claim are, objectively, frivolous and vexatious. Whether the plaintiff means them to be and is grandstanding or whether he genuinely lacks insight into their deficiencies need not be decided by me. That is because, either way, the claim and statement of claim are abuses of the Court's processes. Seeking to initiate a proceeding with a claim and statement of claim which are incoherent and do not identify a cause of action or form of relief capable of being sought in this Court unfairly uses the Court's processes to put the defendant to inconvenience. Furthermore, it is a waste of the Court's resources and, if allowed, will only delay the disposition of the properly instituted cases of other litigants. It is, from every prospective, an abuse of the Court's processes.
28. The proper course therefore is to end the proceeding forthwith by permanently staying it.

29. In respect of the restraining order against Mr Walter the defendant's counsel did not press the potential issue arising, fairly acknowledging the incoherency of the claim and statement of claim tends against pursuing breach action. Mr Walter asserted the only person he intended to refer to by his use of the term "Anors" was his deceased wife. He indicated he was the beneficiary of her estate. At the highest, on his version, the inclusion of "Anors" was effectively an ill-conceived moral flourish. I will take the issue no further. That Mr Walter has in this instance put himself in jeopardy of breach action means he is well and truly on notice of the need for more care in complying with the restraining order.
30. Finally as to costs, they should follow the event. Mr Walter was written to by the defendant's legal representative. The defective state of his claim and statement of claim were alluded to and he was invited to discontinue his proceeding. He did not do so. His pursuit of a proceeding doomed to fail was objectively unreasonable. This would therefore be an appropriate case in which to order costs on the indemnity basis. However, the defendant instead simply seeks a fixed-cost order based on counsel's fees and matters itemised by reference to the *UCPR*'s cost schedule. Rounding the total sought down, I fix costs at \$16,000.
31. For completeness I record it has not been necessary to further delay the disposition of this matter by enquiring about the relevance of Mr Walter's past bankruptcy to his status as a litigant.
32. My further orders are:
  4. The claim is permanently stayed.
  5. David John Walter will pay the defendant's costs of and incidental to the application and the proceeding generally, fixed in the sum of \$16,000.