

**COURT OF APPEAL
SUPREME COURT OF QUEENSLAND**

CA NUMBER: 2850/20

DC NUMBER: 165 of 2017

Appellant : **Gordon James Craven**

v

First Respondent : **Commercial & Process Services Australia Pty Ltd**

AND

Second Respondent : **Warren Nigel Russ**

AMENDED NOTICE OF APPEAL

To the Respondents,

And to the Registrar, District Court Maroochydore

TAKE NOTICE that the appellant appeals to the Court of Appeal against all of the Order 1 of Judge Cash made on 21 February 2020 in the District Court Maroochydore.

1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE –

Date of Judgment: 21 February 2020

Description of Proceedings: 165 of 2017
CRAVEN -V- COMMERCIAL & PROCESS
SERVICES AUSTRALIA PTY LTD & another

Description of parties involved in the proceedings:

Plaintiff/Appellant: Gordon James Craven

First Respondent : Commercial & Process Services Australia Pty Ltd

Second Respondent : Warren Nigel Russ

Name of Primary Court Judge: Judge Cash QC, District Court Judge

Location of Primary Court: MAROOCHYDORE

NOTICE OF APPEAL
Filed on Behalf of the Appellant
Form 64, Version 4
Uniform Civil Procedure Rules 1999
Rule 747(1)

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2. GROUNDS -

GROUND 1

His Honour has erred by failing to provide **Procedural Fairness** to the Plaintiff in assessing the merits of the Plaintiff's claim. His Honour has stated in his judgement :

- “I do not consider his claim to have a great chance of success”⁽¹⁾; and
- alleging the Plaintiff was “obsessive”⁽¹⁾;

and in doing so, did not address or take critical issues that were before him into consideration, which included but were not limited to :

- i. the Second Defendant's introduction of Fabricated Evidence;
- ii. his lawyer wrongly using the Fabricated Evidence as a valid issue in dispute;
- iii. the Defendants failing to comply with a court order made in August 2018;
- iv. the Plaintiff's Application pursuant to UCPR 374 regarding that failure;
- v. the Plaintiff's Application pursuant to UCPR 163 regarding a failure to provide particulars;
- vi. the substantial amount of deemed admissions in the defence pleadings, and that a competent perusal of the pleadings would reveal :
 - that the defence was obviously untenable and a sham; and
 - accordingly, there were zero issues for trial;
- vii. the Plaintiff's Application pursuant to UCPR 190 regarding the deemed admissions;
- viii. given the untenable defence, the security for costs application was :
 - not in good faith; and
 - not justified for a defence that was so obviously untenable;because its sole purpose was to stifle the Plaintiff's proceedings; and
- ix. given the Plaintiff cannot pay the security, stifling the Plaintiffs proceedings in such a way, was a deliberate misuse of legal procedure.

(1) Paragraph 13 of judgement, lines 2 & 3.

GROUND 2

His Honour has erred in finding that the Plaintiff had not made a “rational assessment”⁽²⁾ when in fact the Plaintiff was labouring under a lack of previous **Procedural Fairness** by his Honour at the hearing on 29 March 2019. The Plaintiff had concluded from :

- i. the Defence being so obviously untenable;
- ii. the Plaintiff giving notice of a summary judgement application to the Defendants;
- iii. the Defendants declining an invitation from the Plaintiff to amend their Defence;
- iv. the Defence clearly having no real prospect of successfully defending all or a part of the Plaintiff's claim;

that the Defence was not deserving the time of the Court to progress the matter to trial and that a partial summary judgement for DECLARATIONS ONLY, was appropriate.

(2) Paragraph 12 of judgement, line 2.

GROUND 3

His Honour has erred in finding that the Defendants were “entitled”⁽³⁾ as of right, to join the Trustee as a Third Party, when at the time of the hearing there was no such entitlement as of right, because of :

- i. the untenable state of the defence pleadings; and
- ii. the deemed admissions; and
- iii. the UCPR procedural issues, presenting substantial hurdles for the Defendants.

(3) Paragraph 10 of judgement, line 9.

GROUND 4

In erroneously assuming that the Trustee can be joined to these proceedings as of right, his Honour has further erred in finding that it was relevant to consider if the Defendants acted within the “scope”⁽⁴⁾ of the Trustee’s instructions, when it was not relevant.

(4) Paragraph 11 of judgement lines 5 & 8.

GROUND 5

His Honour has erred in concluding that the resolution of previous costs orders against the Plaintiff, was not relevant⁽⁵⁾ to the application for security for costs by the Defendants.

(5) Paragraph 8 of judgement, lines 4 & 5.

GROUND 6

His Honour erred in finding that there had been factors to supplement the Plaintiff’s impecuniosity, so as to satisfy a finding of “justice of the case”⁽⁶⁾ as had been found in, *Robson v Robson & Anor* [2008] QCA 36 at 34 where Muir JA stated :

“Accordingly, the impecuniosity of a natural person plaintiff will not, without more, fulfil the requirements of paragraph (h)”; i.e. 671(h).

(6) Paragraph 13 of judgement, line 5.

GROUND 7

By reason of the Defendants providing fabricated evidence together with false and misleading submissions to the District Court regarding issues that in fact had never been pleaded, his Honour was led into error in making his judgment and in doing so has breached Plaintiff’s Human Rights namely; sub-sections 25(b) and 31(1) of the Human Rights Act 2010 (Queensland).

GROUND 8

His Honour has erred in his reliance on the findings and judgement of Justice Philippides in the Court of Appeal matter 4246/2019, when the hearing before her Honour was also infected with the same fabricated evidence and false and misleading submissions, as had been made to the District Court regarding issues that in fact had never been pleaded.

GROUND 9

The fabricated evidence and / or false and misleading submissions, amount to Fraud on the Court causing an unjust result.

3. ORDERS SOUGHT -

1. The order for the Plaintiff to provide security for costs be set aside.
2. The judgement published at :
<https://archive.sclqld.org.au/qjudgment/2020/QDC20-012.pdf>
be removed from publication, or prominently be amended so as to remove or rectify the false and derogatory findings about the Plaintiff / Appellant.

LEAVE TO APPEAL

- 4.
- 5.
- 6.

7. RECORD PREPARATION

I undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and practice directions and any order or direction in the proceedings.

PARTICULARS OF THE APPELLANT:

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PARTICULARS OF THE RESPONDENTS:

Names: Commercial & Process Services Australia Pty Ltd
Mr. Warren Nigel Russ (Director)
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Respondent's solicitor's name: Mr. Chris Toogood
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Signed:



Description: Appellant / Applicant

Dated: 25 May 2020

This Application is to be served on:

Chris Toogood Legal Lawyers for the Respondents.

BY EMAIL: chris@christoogoodlegal.com.au

AND

The Respondents, because it is unknown if Chris Toogood
Legal is to continue representation.

Commercial & Process Services Australia Pty Ltd

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