

Pigozzo v Mineral Resources Ltd [2022] FCA 1166 (29 September 2022)

legal professional privilege - privilege not waived - paragraphs struck out of statement of claim - statement of claim not to be published

Mr Pigozzo asserted causes of action for alleged contraventions of the *Fair Work Act 2009* (Cth), *Corporations Act 2001* (Cth) and Australian Consumer Law and for breaching employment contracts. The defendants sought to restrict inspection and publication of the statement of claim and to keep it confidential because it contained allegations of communications that were subject to legal professional privilege.

Judgment

Feutrill J ordered that parts of the statement of claim be struck out but that Mr Pigozzo could apply to amend and re-plead allegations (at [8]). The Federal Court reviewed relevant principles about strike-out applications (at [16]-[33]). Certain paragraphs of the statement of claim were struck out because the allegations concerning primary facts were evasive, ambiguous or likely to prejudice, embarrass or delay the proceedings (at [89]). However, some pleading deficiencies could be cured by reasonable amendment.

Although there was no affidavit evidence about the circumstances in which any communications occurred, there was evidence which alleged waiver. The Court considered its power to restrain or prohibit the publication of information (at [135]-[145] as well as client legal privilege (at [146]-[159]) and without prejudice privilege (at [160]-[165]). To permit allegations founded on communications that prima facie a pleading party had no right to disclose and to which privilege attached would bring the administration of justice into disrepute (at [170], [206]-[207]). Certain paragraphs of the statement of claim were struck-out as vexatious or an abuse of process (at [186], [195]). Waiver was not established because the defendants sought to maintain the confidentiality of the communications pleaded in the statement of claim (at [199]-[200], [202]). A non-publication order was made over certain paragraphs but not those struck out, and a suppression order was unnecessary (at [209]).

Implications

Certain paragraphs in a statement of claim were struck out as an abuse of process because they were founded on a misuse of confidential information that was subject to legal professional privilege and without prejudice privilege. Although there was no evidence on whether the pleaded conversations occurred or their dominant purpose, to permit disclosure undermined the public interest in the administration of justice.

CHAPTER III



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