SUPREME COURT OF QUEENSLAND

CITATION:	*Mathews v Morgan & Ors* [2005] QSC 222
PARTIES:	**RUSSELL GORDON HAIG MATHEWS** (plaintiff) **v** **REV PROFESSOR DR JOHN MORGAN** (first defendant) **BRISBANE CITY COUNCIL** (second defendant) **HUGH DOUGLAS MCVEAN** (third defendant) **CORAL LOUISE MCVEAN** (fourth defendant)
FILE NO/S:	BS No 4337 of 2005
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	12 August 2005
DELIVERED AT:	Brisbane
HEARING DATE:	10 August 2005
JUDGE:	White J
ORDER:	**1. The statement of claim be struck out and the plaintiff have leave to plead a fresh statement of claim against Mr and Mrs McVean and Dr Morgan in conformity with the *Uniform Civil Procedure Rules* but not against the Brisbane City Council which is removed as a defendant in these proceedings.** **2. The fresh statement of claim must be filed and served within eight weeks of 12 August 2005 unless by earlier agreement or order of the court that time is extended.** **3. The orders on the application of Mr Mathews are** **1. Adjourned to a date to be fixed** **2. No order made** **3. No order made** **4. Refused** **5&6. Refused**

7&8. Leave given

9. Dismissed

10. Refused

11. Refused

12. Adjourned to a date to be fixed

13&14. Refused

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – PLEADING – STATEMENT OF CLAIM – application to strike-out – where specific damages in relation to some of the allegations not claimed – where the damages not identified – where some of the allegations require the setting out of clear and concise supporting facts

PRACTICE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – PARTIES – OTHER MATTERS – application for joinder – where conspiracy alleged – whether common question of law or fact – whether relief sought arose out of the same transaction or event or series of transactions or events

Uniform Civil Procedure Rules 1999 (Qld), r 149, r 150, r 157-163, r 171

Dare v Pulham (1982) 148 CLR 658, cited
Ebner v Official Trustee (2000) 2005 CLR 337, applied
Madden v Kirkegard Elwood & Partners [1975] Qd R 363, cited
Wentworth v Rogers No 5 (1986) 6 NSWLR 534, cited

COUNSEL: Mr J Peden for the first and second defendants
Mr F Dawson for the third and fourth defendants
Mr Russell Mathews for himself as plaintiff and cross-applicant

SOLICITORS: Robertson O'Gorman for the first defendant
Brisbane City Legal Practice for the second defendant
Butler McDermott & Egan for the third and fourth defendants

[1] The first, second and third and fourth defendants have brought applications, the third and fourth defendants jointly, to strike out the plaintiff's statement of claim pursuant to r 171(1)(a)-(d) of the *Uniform Civil Procedure Rules*. The plaintiff, Mr Mathews, has brought an application seeking to have those applications struck out and for other diverse relief to which I shall refer in due course.

[2] Mr Mathews appears for himself. It is not in dispute that he is not a well man having suffered brain injury in several episodes, the earliest of which seems to have been in 1967 just after he had completed his secondary schooling. He is in receipt of a disability support pension. Notwithstanding these serious setbacks, Mr Mathews has proceeded to obtain a number of tertiary qualifications from the

University of Queensland. Mr Mathews has exhibited a lengthy psychological report from Dr Brian Hazell dated 30 July 1999 in which the opinions of other psychiatrists and psychologists about Mr Mathews are quoted. Dr Hazell has treated Mr Mathews from time to time over many years. Mr Mathews has placed the report before the court to demonstrate his disability and vulnerability. A passage from that report may assist in understanding some the difficulties under which Mr Mathews labours.

> "Russell Mathews fits the criteria for a mild neurocognitive disorder DSM-IV, (pp 706-708) with associated personality changes. At best when things are going well he has an organic personality syndrome with associated social incompetence and paranoid ideation. This condition has been longstanding and dates from his fall from a horse in 1967. This is a man of very superior intelligence with a concrete literally minded view of data. Under stress he decompensates, can become delusional and has socially inappropriate responses to the perceived stresses based on his rigid interpretation of his studies in law."

[3] Mr Mathews has brought proceedings against Reverend Dr John Morgan, Warden of St John's College at the University of Queensland. The Corporation of the Synod of the Diocese of Brisbane of the Anglican Church of Australia is the registered proprietor on behalf of St John's College of a property called "Barrett House" situated at 256 Hawken Drive, St Lucia which it acquired in about 1992. The College accommodates students in that house which are unable to be accommodated in the College proper.

[4] Mr Mathews lives in the house next door at 254 Hawken Drive, St Lucia. It is located on the corner of Hawken Drive and Boomerang Road. It is owned by the third defendant, Mr McVean, who is married to the fourth defendant, Mrs McVean, who is Mr Mathews' sister. Mr McVean is a qualified and registered pharmacist. He alleges that in about early 1994 he purchased that property and holds it as to one quarter in his individual capacity and three quarters as the trustee with his wife of the Howard Street Pharmacy Superannuation Fund. At about that time Mr Mathews entered into occupation of the property. Mr Mathews contends that he and Mr McVean entered into an oral agreement whereby he was given an option to buy the house property. He was at that time bankrupt but proposed that when he was discharged from bankruptcy in 1996 he would be able to purchase the house from Mr McVean. He proposed to do this by renovating the house and modifying it so that he could sublet bedrooms to students as share tenants.

[5] Mr Mathews contends, in broad terms, that the agreement between himself and Mr and Mrs McVean was that

- he would pay what he describes as "a weekly stipend equivalent to the amount short term student tenants had been paying in rent for that house," and
- when he was in a position to do so, he would pay the current market price for the house in return for the transfer of title to himself by Mr and Mrs McVean.

To that end Mr Mathews signed a standard REIQ Tenancy Agreement to pay $210 per week to Mr and Mrs McVean. It has no expiry date. Mr and Mrs McVean commenced proceedings in the Small Claims Tribunal on 10 January 2005 for termination of the tenancy. Mr Mathews commenced these proceedings by claim and statement of claim on 27 May 2005.

[6] Mr Mathews contends that Mr McVean, encouraged by Dr Morgan, is seeking to deny the agreement giving him the option to buy the property and have him evicted from the house, so it can be sold to St John's College. To that end he alleges that Dr Morgan has encouraged the students who live next door to make numerous complaints to the Brisbane City Council. Mr Mathews further complains that the fence built behind the two residences at the sole cost to St John's College is defective.

[7] Various events have occurred over the years. The Brisbane City Council constructed a round-about at the intersection of Hawken Drive and Boomerang Road in or about 1989 adjacent to 254 Hawken Drive. Mr Mathews alleges that the round-about was improperly constructed. After complaints by Mr Mathews in or about March 2000 the Brisbane City Council caused to be constructed a fence along the Hawken Drive and Boomerang Road boundary alignment of 254 Hawken Drive at its own cost. Mr Mathews alleges that it was incompetently built in a number of respects.

[8] In November 2004 the Brisbane City Council issued a Vermin Control Notice to Mr Mathews. The Council contended that he did not comply with the notice and about a month later entered onto his property and over several days carried out clean-up operations. Members of the Queensland Police Service attended. Mr Mathews alleges they dealt with him unlawfully, inter alia, assaulting him.

Apprehended bias

[9] Mr Mathews did not contend that I ought not to hear this matter because of actual bias, although subsequent to the hearing he made submissions that might suggest that he now does. He was concerned that there is an appearance of bias but did not advance any fact which might suggest that I would not decide the applications impartially. After Mr Peden for the first and second defendants had given a brief overview of the issues raised in Mr Mathews' pleading I indicated that there were some matters which needed to be addressed to establish whether I ought to disqualify myself from hearing the matter. I indicated that I was, and had been for many years, a member of the Senate of the University of Queensland; that I regarded Reverend Dr John Morgan as a friend, although not a close one; and that my husband, Dr Michael White QC, had been a lecturer and reviewing examiner of Mr Mathews' examination paper in the subject Maritime Law in the TC Beirne School of Law in the University of Queensland. Mr Mathews elaborated his concerns that he had not been treated fairly by my husband in respect of that examination. Mr Mathews has now graduated with a law degree.

[10] Mr Mathews detailed events in his past particularly relating to a matter in the Human Rights and Equal Opportunity jurisdiction. He mentioned persons associated with those proceedings who are my close personal friends but I have no familiarity with those proceedings. He said inflammatory material had been filed in the Federal Court of Australia in the Brisbane Registry which would incline any

person to think poorly of him. He conceded that his statement of claim needed to be revised indicating that he felt unable to attend to it without legal assistance.

[11] Since reserving my decision, my associate has received a letter from Mr Mathews sent by email transmission in which he submits that in light of certain comments made by me in the course of the hearing on Tuesday I ought disqualify myself from proceeding to deliver my decision. The comments to which Mr Mathews has taken exception were made in the course of his submissions in response to a proposal from Mr Dawson, counsel for Mr and Mrs McVean, that the statement of claim would be rendered more comprehensible if it were confined to a suit against Mr and Mrs McVean only for breach of the alleged agreement to sell the house or breach of trust or other relief directly relating to those allegations. Mr Dawson had proposed that separate proceedings could be commenced against the other parties were Mr Mathews so inclined. Mr Mathews sought to explain that all the parties and those he was desirous of suing were linked in their unlawful conduct towards him and it would be impossible and not right to have separate proceedings. In the course of his narrative Mr Mathews referred to the events of 29 November 2004 when employees of the Brisbane City Council allegedly unlawfully entered 254 Hawken Drive in reliance upon the failure to comply with the notice to clean up the property. He said that he had been assaulted by police in attendance and proposed suing them for malicious arrest and prosecution. I intervened saying that it was not relevant to the issues of strike out and Mr Mathews should not be distracted by it.

[12] Mr Mathews now contends that I had suggested that as a vulnerable person others, particularly those in authority, could bully, cheat or otherwise act unlawfully towards him with impunity. That is plainly a misunderstanding by Mr Mathews of my purpose in suggesting he discontinue his elaboration of his grievances against one or more members of the Queensland Police Service. It is a matter for his decision as to whether he takes proceedings against the service or members of it. Mr Mathews is unlikely to be daunted by any perceived views he thinks I might have about the matter – Mr Peden informed the court, without protest or denial from Mr Mathews, that an electronic search reveals that Mr Mathews has commenced 16 matters in the Supreme and District Courts and 30 matters in the Federal Court. It is unreasonable to construe my comment as indicating some disqualifying state of mind on my part. I am concerned only to adjudicate on the applications before the court.

[13] The majority judgment in *Ebner v Official Trustee* (2000) 2005 CLR 337 sets out the approach that should be taken to a question of apprehended bias. Gleeson CJ, McHugh, Gummow and Hayne JJ said at paras 7 and 8

> "The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial. So important is the principle that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. There are, however, some other aspects of the apprehension of bias principle which should be recognised. Deciding whether a judicial officer (or juror) *might* not bring an impartial mind to the resolution of a question that has not been determined requires no prediction about how the judge or juror will in fact approach the matter. The question is one of possibility (real and not remote), not probability. Similarly, if the matter has

> already been decided, the test is one which requires no conclusion about what factors *actually* influenced the outcome. No attempt need be made to inquire into the actual thought processes of the judge or juror.
>
> The apprehension of bias principle admits of the possibility of human frailty. Its application is as diverse as human frailty. Its application requires two steps. First, it requires the identification of what it is might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. The bare assertion that a judge (or juror) has an "interest" in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision making, is articulated. Only then can the reasonableness of the asserted apprehension of bias be assessed."

[14] Because Mr Mathews is self-represented and vulnerable I initially thought at the hearing it prudent that I disqualify myself from hearing this application in light of the various matters to which I have made reference. However, Mr Mathews did not positively seek that I do so, even when invited, maintaining that it was a matter for me to decide. He did not put content into either of the steps described by the High Court in *Ebner*. I was urged by Mr Peden and Mr Dawson, counsel for the defendants respectively, to hear the matter, largely on the basis that it was a technical interlocutory application relating to pleadings and that no substantive rights would be affected since the defendants did not seek to have the proceedings struck out. In part because Mr Mathews frankly admitted that his pleading was deficient I formed the view that there was no basis for an objective conclusion that I might decide this case other than on its legal and factual merits. Nothing has been identified which could lead to the conclusion that I would be other than impartial in making this decision. I have dealt with Mr Mathews' email submission that I disqualify myself.

[15] Accordingly I proceeded to hear the applications and to determine them.

The rules about pleadings

[16] Mr Mathews has proposed an amended statement of claim but he does not contend and neither do the defendants accept that it cures the defects in the original statement of claim. But to the extent that it purports to amend, in some relatively minor ways, the existing claim and statement of claim, those amendments are not opposed. Accordingly, these remarks will be directed to the original statement of claim. Rule 149 of the *UCPR* sets out the requirements for any pleading.

> "149 Statements in pleadings
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> (1) Each pleading must—
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> (a) be as brief as the nature of the case permits; and

(b) contain a statement of all the material facts on which the party relies but not the evidence by which the facts are to be proved; and

(c) state specifically any matter that if not stated specifically may take another party by surprise; and

(d) subject to rule 156 [that the court may grant general relief or relief other than that specified in the pleadings] state specifically any relief the party claims; and

(e) if a claim or defence under an Act is relied on—identify the specific provision under the Act.

(2) In a pleading, a party may plead a conclusion of law or raise a point of law if the party also pleads the material facts in support of the conclusion or point."

In *Dare v Pulham* (1982) 148 CLR 658 the High Court put it thus, at 664

> "Pleadings and particulars have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it (*Gould and Bibeck and Bacon v Mount Oxide Mines Ltd (In liq)* (1916) 22 CLR 490 at 517); they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial (*Miller v Cameron* (1936) 54 CLR 572) ..."

It has also been observed, see the annotations to r 149 in the Butterworths' Service, that a further purpose of pleadings is to obtain admissions of undisputed relevant facts so that the trial of issues is limited to what is truly in dispute between the parties.

[17] Rule 150 sets out certain matters which must be specifically pleaded.

[18] The role of particulars is set out in rr 157-163.

[19] Where there are deficiencies in a pleading then r 171 provides that that the court may strike out all or part of the pleading. It provides

"171 Striking out pleadings

(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."

Where objectionable matter is mingled with other matter so that the pleading as a whole become difficult to understand and to plead to, then the whole statement of claim may be struck out, *Madden v Kirkegard Elwood & Partners* [1975] Qd R 363.

[20] For a litigant in person these rules and the body of authority which has grown up about them may seem formidable. Mr Mathews has a law degree but he does not purport to have any skill in drafting a pleading. Of such a person Kirby P said in *Wentworth v Rogers No 5* (1986) 6 NSWLR 534

> "... the appellant being a litigant now appearing in person, care must be taken to ensure that this significant disadvantage does not deprive her of the opportunity to have her claim, if any, determined according to law. Persons unfamiliar with the rules of pleading and the technicalities which surround the drafting of a statement of claim in adequate and permissible legal form are inevitably, if unrepresented, at a disadvantage."

Nonetheless, an opposite party is entitled to a concise statement of material facts and not a discursive setting out of the relationship between the parties with no or little regards to relevance or conciseness. Background or context often included by the inept or untutored has no or little role in a properly drafted pleading.

[21] The defendants have defended but express their difficulties in joining issue.

The pleadings

[22] Clauses 1-17 of the claim concern relief against Mr and Mrs McVean in respect of the property at 254 Hawken Drive with the exception of clause 12 wherein Mr Mathews seeks a declaration that Mr and Mrs McVean have acted in contravention of Australian Taxation legislation as trustees of the superannuation fund.

[23] The allegations in paragraphs 6-18 of the claims refer to allegations against Mr and Mrs McVean about 254 Hawken Drive. Whilst the paragraphs contain allegations of fact relating to the terms of the oral agreement, allegations of a trust of various descriptions and part performance of the contract those paragraphs also contain irrelevant background material. Those paragraphs might be described by a lay person as "filling in the picture". The statement of claim is not the place for them. They constitute, at best, the evidence by which the claim may be sought to be proved. Whether Mr and Mrs McVean have acted in breach of the taxation laws about superannuation is not relevant to Mr Mathews' claim against them and should not be included.

[24] As against the Brisbane City Council Mr Mathews seeks various relief set out in clauses 18-26 of the claim including for declarations that the round-about built on the intersection of Hawken Drive and Boomerang Road, St Lucia has been unlawfully constructed in defiance of sound engineering principles or not in accordance with relevant by-laws and regulations. Mr Mathews extends his condemnation of the engineering practices of the Brisbane City Council to a 40m section of road on Hawken Drive towards the University of Queensland. This, he contends, has led to unwanted rainwater flooding 254 Hawken Drive which has not

been rectified by a cross-drain installed by the Council across Mr Mathews' driveway.

[25] He alleges various breaches by the Brisbane City Council in the construction of the fence built by them on his boundary line.

[26] He seeks a declaration that the entry onto his property on 29 November 2004 was illegal and seeks damages by way of compensation for the loss of material and his toil to improve the quality and fertility of his yard by the removal of material from the yard.

[27] Paragraphs 82-139 are various allegations relating to the Brisbane City Council although Mr McVean is involved by virtue of allegations that he has had secret dealings with the Brisbane City Council in order to have Mr Mathews evicted from the property. It is possible to discern an allegation of private nuisance in the construction of the round-about and the road levels to allege water flooding on 254 Hawken Drive. Mr Mathews complains about the quality of the boundary fence constructed by the Brisbane City Council to deal with various complaints about the users of the Council buses, the stop before which is it seems outside 254 Hawken Drive, although it appears that the fence now complies with his demands. Mr Mathews accuses the Brisbane City Council of extreme dilatoriness in completing the work and alleges, as a consequence, he became fixated and obsessed with having the Council complete the work efficiently and competently and thereby became dysfunctional. No specific damages are claimed.

[28] In order for the Brisbane City Council to respond appropriately it is necessary for Mr Mathews to identify the facts which would support a cause of action in private nuisance in respect of the construction of the round-about and/or the road outside his house. He must necessarily identify the damage which he suffers over and above that which may be suffered by other members of the public.

[29] Mr Mathews then makes allegations about the entry of Council employees into 254 Hawken Drive on 29 November. Although discursive, those paragraphs are less difficult to untangle that others even though they obtain much evidentiary material. However Mr Mathews needs to bring some coherence into them such that the facts supporting the allegation of trespass and conversion of the contents of the yard are clearly and concisely set out.

[30] By clauses 27-29 of the claim Mr Mathews seeks declarations that Dr Morgan caused the dividing fence between 254 and 256 Hawken Drive to be built incompetently in that it did not have end posts; or that Dr Morgan caused unnecessary delay in its construction; and that he interfered in Mr Mathews' quiet enjoyment of his home by causing him to be removed from it. Those claims for relief are supported by the allegations of facts in paras 140-161 of the statement of claim which alleged, inter alia, that Dr Morgan had secret dealings with Mr and Mrs McVean with the intention of evicting Mr Mathews, demolishing the house and selling the property to the Anglican Church.

[31] Is it, then, appropriate that the Brisbane City Council be joined in the same proceedings as those against Mr and Mrs McVean? Rule 65 provides that two or more persons may be defendants if a common question of law or fact arises or the relief sought arises out of the same transaction or event or series of transactions or

events. It may be accepted that there are links between Mr Mathews, Mr and Mrs McVean, the Brisbane City Council and Dr Morgan revolving around Mr Mathews' occupation of 254 Hawken Drive. But that is not a common question of fact to which the rule refers. The alleged causes of action and the facts to support them, if they are supportable, are quite distinct. The only link is an allegation of conspiracy amongst the defendants to defeat Mr Mathews' rights in a variety of ways but the conspiracy does not provide the necessary link. The Brisbane City Council is not a necessary party to Mr Mathews' proceedings against Mr and Mrs McVean. Those allegations are, to my mind, the most important of all those alleged in this proceeding and are independent of any cause against the other defendants.

[32] It is oppressive for the Brisbane City Council and Dr Morgan to be required to be concerned in Mr Mathews' litigation with Mr and Mrs McVean over his entitlements to 254 Hawken Drive.

[33] Similarly Mr and Mrs McVean need not be distracted by the entirely distinct allegations against the Brisbane City Council.

[34] The complaints against Dr Morgan are of a most shadowy kind in so far as Mr Mathews alleges a conspiracy with Mr and Mrs McVean to deprive him of the property. It is, however, convenient that Dr Morgan remain a defendant in these proceedings with Mr and Mrs McVean provided facts can be alleged to support a recognisable cause of action. The complaints about the fence construction do not seem to have consequences. Some damage which is compensable needs to be alleged for it to remain.

[35] I have concluded that Mr Mathews cannot bring proceedings against the Brisbane City Council in the present proceedings. He must commence separate proceedings if he wishes to maintain his suit against it. Should he do so, it can be heard following these proceedings against Mr and Mrs McVean and Dr Morgan should this proceeding go to trial and be heard by the same judge.

[36] The orders in respect of the two applications to strike out are

1. The statement of claim be struck out and the plaintiff have leave to plead a fresh statement of claim against Mr and Mrs McVean and Dr Morgan in conformity with the *Uniform Civil Procedure Rules* but not against the Brisbane City Council which is removed as a defendant in these proceedings.

2. The fresh statement of claim must be filed and served within eight weeks of 12 August 2005 unless by earlier agreement or order of the court that time is extended.

Mr Mathews' application

[37] Mr Mathews seeks the following relief in his application filed on 3 August 2005

> "1. That the firm of Lawyers styled Butler McDermott and Egan, [BME], a firm of Lawyers of Nambour be joined as defendants in this Claim. [Rule 70 UCPR.]

2. That the Court formally note that the plaintiff is disabled and vulnerable for the course of the pleadings and proceedings in this claim.
3. That for the course of this Claim BS4337/05 the right enjoyed by the disable and vulnerable plaintiff Russell Gordon Haig Mathews to be accompanied by his two assist dogs in court be recognised by the court and that the recognition be conveyed to TRANSLINK AND the defendant Brisbane City Council [BCC] in respect to the Applicant's travel on BCC buses to Court, accompanied by his assist dogs. [**Sections 6 and 9, Disability Discrimination Act 1992 (Cth) [DDA]]**
4. That BME be instructed to provide a copy of the will of Russell Gordon Haig Mathews Snr, the deceased father of the plaintiff, to the plaintiff.
5. That the First Defendant, Morgan provide the plaintiff with details of the Real Estate Agents and their sales representatives, of Hugh McVean, with whom he, Morgan, has had contact on the subject of the possible purchase of the property at 254 Hawken Drive since 25 February, 1994.
6. That the Third Defendant, Hugh McVean provide the plaintiff with details of the Real Estate Agents and their sales representatives with whom he, Hugh McVean, has had contact on the subject of the sale of the property at 254 Hawken Drive since 25 February, 1994.
7. That the paragraphs numbered 30 to 39 inclusive in the document Headed "Amended [Additional] Statement of Claim" and exhibited to the accompanying affidavit of Russel Gordon Haig Mathews as Exhibit RGHM5 be included in the Claim in this matter BS4337/05.
8. That the paragraphs numbered 166 to 219 inclusive in the document Headed "Amended [Additional] Statement of Claim" and exhibited to the accompanying affidavit of Russell Gordon Haig Mathews as Exhibit RGHM6 be included in the Statement of Claim in this matter bS4337/05.
9. That each Application by each of the defendants to strike out the whole or part of the plaintiff's original Statement of Claim be itself struck out.
10. That the COPYRIGHT in all the photos and video taken by BCC of the Plaintiff's home and yard and of the Plaintiff during the gutting of his yard on 29, 30 November, and 1 December, 2004, including the ones showing the great mounds of soil removed, and photos taken at all other times, be transferred to the Plaintiff.
11. That the plaintiff be given the leave of the court to amend this claim further to include the matters of Malicious arrest, Malicious prosecution, abuse of process and related matters, connected with the same police officer who attended the gutting of the yard of 254 Hawken Drive, where and when he arrested the plaintiff on 29 November 2004;

12. That the Plaintiff be given the leave of the court to serve documents both originating and subsequent process on existing and new defendants to be joined, by the process of sending facsimile scans, which is the intermediate step in photocopying, by electronic transmission attached to email transmission, with the safeguards as instructed by the Court, such as requesting a reply, both in the email and automatically by the email sending program;
13. Such further or other Orders as the Court Deems appropriate;
14. That Butler McDermott and Egan, a firm of Lawyers, and each of the defendants pay the costs of the plaintiff of the application."

[38] Taking each of those requests in order, the allegation against Butler McDermott & Egan relates to their part in advising Mr and Mrs McVean about the alleged agreement over 254 Hawken Drive, the tenancy agreement; and their obligations to Mr and Mrs McVean. Butler McDermott & Egan are Mr and Mrs McVean's solicitors in respect of these proceedings. They were not represented on this application. Until the statement of claim is drafted satisfactorily against Mr and Mrs McVean it is premature to contemplate the joinder of the firm. That part of Mr Mathews' application should be adjourned.

[39] The material contained in Mr Mathews' affidavits, his own appearance and conduct make it clear that he is a person who is disabled and vulnerable.

[40] Mr Mathews wishes to be accompanied by his Assist Dogs (2) in court and that that recognition be conveyed to Translink and the Brisbane City Council in respect of the applicants travel on BCC buses to court. It will be a matter for the Registrar of the court and for each Judge before whom Mr Mathews appears as to whether he may be accompanied by his dogs. Neither counsel had any objection to Mr Mathews appearing in court with his dogs. Had they been present I would not have done so, subject to any concerns of the Registrar. Otherwise it is not possible to make general orders of the kind sought.

[41] The provision of a copy of the will of Mr Mathews' father is not relevant to these proceedings and no order will be made.

[42] Mr Mathews seek details of any contracts and dealing with real estate agents about 254 Hawken Drive. At this stage of the proceedings no such orders will be made. Should the production of those documents be relevant to the matters in issue between the parties they will be revealed by way of disclosure.

[43] Paragraphs 7 and 8 of Mr Mathews application deal with amendments which neither party objects to and those amendments are allowed.

[44] The relief sought in paragraph 9 of the application that the defendants' application to be struck out is refused.

[45] The relief sought in para 10, the copyright in the photos and video taken by the Brisbane City Council of the plaintiff's home be vested in the plaintiff is refused.

[46] By para 11 of his application Mr Mathews' seeks to join an unnamed police officers in order to alleged malicious arrest and malicious prosecution against him. That is a separate matter from these proceedings and that relief is refused.

[47] Mr Mathews seeks that he have the leave of the court to serve documents by facsimile scans. It appears that Mr Mathews already sends a quantity of material in this fashion to a great many recipients. It causes some difficulties for the recipients for example being sent to all the partners at Butler McDermott & Egan. I adjourned that matter for the legal representatives of the parties to discuss with Mr Mathews. If it is necessary to do so it can be re-listed for further consideration.

[48] Mr Mathews seeks costs from Butler McDermott & Egan and each of the defendants. That is refused.