

**J Hutchinson v Strata Community Insurance Agencies ; Proprietors for the
Residences at the Peninsula Group Titles Plan No 107425 v J Hutchinson - [2020]
QDC 105**

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DISTRICT COURT OF QUEENSLAND

CITATION: *J Hutchinson Pty Ltd v Strata Community Insurance Agencies Pty Ltd & Ors; Proprietors for the Residences at the Peninsula Group Titles Plan No 107425 & Ors v J Hutchinson Pty Ltd* [2020] QDC 105

PARTIES:

In Claim No 3519 of 2019:

**PROPRIETORS FOR THE RESIDENCES AT THE PENINSULA GROUP
TITLES PLAN NO. 107425**

(first plaintiff/first respondent)

and

PENINSULA GOLD COAST DEVELOPMENT PTY LTD ACN 167 882 822

(second plaintiff/second respondent)

v

J HUTCHINSON PTY LTD ACN 009 778 330

(defendant/applicant)

In Claim No 1034 of 2019:

J HUTCHINSON PTY LTD ACN 009 778 330

(plaintiff/respondent)

v

STRATA COMMUNITY INSURANCE AGENCIES PTY LTD ACN 165 914 009

(first defendant/applicant)

and
**RENNURB PTY LTD CAN 120 063 345 AS TRUSTEE FOR THE RENNURB
NO. 2 TRUST TRADING AS EMERSONS AUSTRALIA**
(second defendant)
and
COLIN JAMES BRUNNER
(third defendant)

FILE NO/S.: 1034/2019
3519/2019

DIVISION: Civil Applications

PROCEEDING: Application

DELIVERED ON: 5 June 2020

DELIVERED AT: Brisbane

HEARING DATE: 11 February 2020

JUDGE: Rosengren DCJ

ORDER: *In Claim No 3519 of 2019 :*

1. The defendant's application for summary judgment is dismissed.
2. Paragraph 66 of the statement of claim is struck out with a direction to re-plead it.
3. Unless a party wishes to submit to the contrary, the plaintiffs are to pay the defendant's costs of the application filed on 24 January 2020.

In Claim No 1034 of 2019:

1. The application for the two proceedings to be heard together is adjourned to the registry for separate determination pending the filing of the amended statement of claim and any consequent pleadings.
2. The costs of the application filed on 5 February 2020 are reserved.

The parties are given leave to make further submissions as to the form of the orders.

CATCHWORDS:

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – SUMMARY JUDGMENT FOR THE DEFENDANT – r 293 – where Hutchinson as the defendant applied for summary judgement against the whole of the plaintiffs claim – where the plaintiffs claim damages for breach of contract and negligence – where it alleges that the plaintiffs have suffered loss and damage because they were legally required to expend money to rectify a residential unit block following a pipe failure – whether triable issue – where plaintiffs have stated an intention to amend the statement of claim

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – STRIKING OUT – if summary judgment should not be entered in respect of the plaintiffs' claim, whether part of it should be struck out

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – APPLICATION TO HEAR MATTERS TOGETHER – whether making such an order is appropriate

Legislation

Competition and Consumer Act 2010 (Cth) sch 2 s 236

Uniform Civil Procedure Rules 1999 (Qld), r 5, r 79, r 149, r 171, r 292, r 293, r 375, r 378

Cases

Agar v Hyde (2000) 201 CLR 552, cited

Barr Rock Pty Ltd v Blast Ice Creams Pty Ltd [2011] QCA 252, applied

Chen v Australian & New Zealand Banking Group Ltd & Anor [2001] QSC 43, applied

Dey v Victorian Railway Commissioners (1949) 78 CLR 62, cited

Executor Trustee Aust Ltd v Peat Marwick Hungerfords (1994) 15 ACSR 556, cited

Fancourt v Mercantile Credits Ltd (1983) 154 CLR 87, cited

Gray v Morris [2004] 2 Qd R 118, cited

Melisavon Pty Ltd v Springfield Land Development Corporation [2015] 1 Qd R 476, cited

National Insurance Company of New Zealand Limited v Espagne (1961) 105 CLR 59 ,
cited

Queensland Taxi Licence Holders v State of Queensland [2020] QSC 94, cited

Queensland University of Technology v Project Constructions (Aust) Pty Ltd (in liq) [2003] 1 Qd R 259, applied

Theseus Exploration NL v Foyster (1972) 126 CLR 507, cited

COUNSEL: **In Claim No 3519 of 2019:**
J Baartz for the applicant
D Pyle for the respondents

In Claim No 1034 of 2019:
D Pyle for the applicant
J Baartz for the respondent

SOLICITORS: **In Claim No 3519 of 2019:**
Carter Newell Lawyers for the applicant
Holman Webb Lawyers for the respondents

In Claim No 1034 of 2019:
Holman Webb Lawyers for the applicant
Carter Newell Lawyers for the respondent

[1] In May 2017 Peninsula Gold Coast Development Pty Ltd ('Peninsula Development') as principal entered into a contract with J Hutchinson Pty Ltd ('Hutchinson') as contractor to construct a three story building to be known as the 'Residences' comprising 40 units and common property at Harbourview Drive, Hope Island ('the Contract'). Hutchinson performed building works in relation to the construction of the Residences pursuant to the Contract. Proprietors for the Residences at the Peninsula Group Titles Plan No. 107425 ('the Body Corporate') is the body corporate for the Residences.

[2] The certificate of practical completion was issued on 13 June 2018. Within weeks, a leak occurred at the Residences when a hydraulic riser pipe disconnected ('the pipe failure'). This resulted in water damage to a range of common areas and units requiring repair and rectification works. Hutchinson was notified of this in late July 2018 and had the work carried out in August and September 2018 at a cost of \$572,954.22 ('the Rectification Work'). It has not received payment for any of this sum.

[3] By Claim Number 3519 of 19 the Body Corporate and Peninsula Development claim against Hutchinson a sum not less than the \$572,954.22 incurred by or on behalf of Hutchinson for the Rectification Work. This claim is by way of damages for breach of contract and/or negligence.

[4] Hutchinson has instituted separate proceedings (Claim Number 1034 of 2019) to recover from Strata Community Insurance Agencies Pty Ltd ('the Body Corporate insurer'), the cost of the Rectification Work. The second defendant to this proceeding ('Emersons') is asserted to be the agent of the insurer and the third defendant is a director of Emersons. The claim is for damages for breach of contract or alternatively, damages pursuant to s 236 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

[5] On 24 January 2020 an application seeking summary judgment with respect to Claim Number 3519 of 2019 was filed by Hutchinson as the defendant to the proceeding. The application is made pursuant to r 293 of the *Uniform Civil Procedure Rules 1999 (Qld)* ('UCPR'). Alternatively Hutchinson seeks that the statement of claim be struck out pursuant to r 171 of the UCPR.

[6] In the application at paragraph 3 and as a further alternative, Hutchinson sought summary judgment or a strike out in respect of the claims advanced in paragraphs 59 to 61 of the statement of claim ('the indemnity claim'). This paragraph of the application is no longer pressed in circumstances where the Body Corporate and Peninsula Development informed the court that those paragraphs will be abandoned and the pleading will be amended to reflect this.

[7] A separate application has been made by the Body Corporate insurer for Claim Numbers 1034 of 2019 and 3519 of 2019 to be heard together. Hutchinson contend that even if its application for summary judgment is dismissed, that it is premature to determine this application because it is foreshadowed that the Body Corporate and Peninsula Development will amend their statement of claim.

Summary judgment and strike out principles

[8] The principles of summary judgement are well established and are not controversial. For Hutchinson to succeed, it must satisfy the Court that the Body Corporate and Peninsula Development have no real prospect of succeeding on all or part of their claim and that a trial is unnecessary. [\[1\]](#)

[\[1\]](#) UCPR r 293.

[9] Recently in *Queensland Taxi Licence Holders v State of Queensland* [2], Bradley J said at [9]:

“A plaintiff’s prospects and the need for a trial are separate questions. The first question has been posed as: whether there exists a real, as opposed to a fanciful, prospect of success. The court may consider the need for a trial arises for various reasons. The most obvious is where the facts upon which the parties’ respective rights depend are disputed, so there should be a trial to determine those facts. There may be other instances where the matters in issue should be determined only after the parties have an opportunity to complete interlocutory steps, adduce evidence, and test the evidence of witnesses in the usual way.”

[2] [2020] QSC 94.

[10] It is trite that the power to summarily dismiss a proceeding should be treated with caution and only if it is clear that there is no real question to be tried. [3]. It requires a high degree of certainty as to the ultimate determination of the proceeding if it were allowed to go to trial in the ordinary way. [4]. Summary judgment should not be granted where a viable cause of action arises on the material which, although pleaded in a deficient way, could be legitimately advanced by amendment of the pleadings. [5]. However, summary disposition is appropriate where the pleadings disclose no reasonable cause of action and their deficiency is incurable. The appropriate enquiry is whether there exists a real, as opposed to a fanciful prospect of success. [6]. While there will be cases where difficult questions of law ought to be decided on an application for summary judgment, there may be cases where the question of law raised is so difficult and the rights of the parties depend upon it, with the consequence that it ought not to be decided summarily. [7]. This is because there may be some piece of evidence that might be of great significance in interpreting the facts to which the law is to be applied. [8].

[3] *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87, 99; *Gray v Morris* [2004] 2 Qd R 118, 125 [11].

[4] *Agar v Hyde* (2000) 201 CLR 552, 575–6 [57].

[5] *Chen v Australian & New Zealand Banking Group Ltd & Anor* [2001] QSC 43, [1].

[6] *Queensland University of Technology v Project Constructions (Aust) Pty Ltd (in liq)* [2003] 1 Qd R 259, in which Holmes J said (with whom Davies JA and Mullins J agreed), at 264–5.

[7] *Theseus Exploration NL v Foyster* (1972) 126 CLR 507, 515 and see also *Melisavon Pty Ltd v Springfield Land Development Corporation* [2015] 1 Qd R 476, 510; *Dey v Victorian Railway Commissioners* (1949) 78 CLR 62, 91.

[8] *Executor Trustee Aust Ltd v Peat Marwick Hungerfords* (1994) 15 ACSR 556, in which Bollen J said, at [29].

[11] In relation to the strike out application, Hutchinson relies upon r 171 of the UCPR, which confers a discretion on the court to strike out all or part of the statement of claim if it, relevantly, discloses no reasonable cause of action; has a tendency to prejudice or delay the fair trial of the proceeding; or is otherwise an abuse of the process of the court.

[12] While the power to strike out should also be used sparingly, if it is on the ground of a deficiency in the pleading which may be remedied by re-pleading, the particularly cautious approach otherwise required does not apply. [9] A pleading will be deficient if it is “ambiguous, vague or too general”, such that the other party does not know what is alleged against them.

[9] *Barr Rock Pty Ltd v Blast Ice Creams Pty Ltd* [2011] QCA 252 at [24]–[26].

[13] Given that the relevant limitation periods applicable to the claim have not expired, pursuant to r 375 of the UCPR, the Court may allow a party at any stage of a proceeding to amend a pleading even if the effect of the amendment would be to include a cause of action arising after the proceeding was started. Rule 378 of the UCPR provides that, before a request for trial date is filed, “a party may, as often as necessary” make any amendment for which leave is not required.

Determination

[14] The statement of claim relevantly pleads in paragraphs 1 to 58 and 62 to 68 the following:

- (i) Peninsula Development and Hutchinson were the parties to the Contract and the Body Corporate is deemed to have been a party to it pursuant to s 27(7) of the *Building Units and Group Titles Act 1980 (Qld)*;
- (ii) Hutchinson performed works relating to the construction of the Residences;
- (iii) the documents which comprised the Contract;
- (iv) Hutchinson’s obligations under the Contract and alleged duty of care;
- (v) the role of the plumbing sub-contractor;
- (vi) the pipe failure;
- (vii) the alleged defects in the works; and
- (viii) Hutchinson’s alleged breach of contract and negligence.

[15] For the purposes of the summary judgement and strike out applications, Hutchinson accept that the facts pleaded in those paragraphs will be established at

trial. Paragraphs 59 to 61 plead the indemnity claim. This claim is to be abandoned and the statement of claim is to be amended accordingly.

[16] At the commencement of oral submissions it became clear that paragraph 66 in the statement of claim is the focus of the summary judgment and strike out applications. As currently pleaded it reads as follows:

“66. The first and second plaintiffs suffered that loss and damage because they were and are required to expend that money to restore the premises following the loss and damage as a consequence of it.”

[17] The solicitors for the Body Corporate and Peninsula Development have foreshadowed amending this paragraph of the pleading by deleting the words “and are ...to expend the money ...”.

[18] In paragraph 66 of the defence, Hutchinson denies the allegation on the basis that the Rectification Work was completed at no cost to either the Body Corporate or Peninsula Development.

[19] It is pleaded in response in paragraph 5 of the reply, that the Body Corporate has a legal obligation to pay Hutchinson for the costs of the Rectification Work and that Hutchinson can enforce that legal obligation at any time. It is further pleaded that by an invoice dated 4 February 2019 addressed to the Body Corporate, Hutchinson requested part payment in the sum of \$502,503.22 including GST.

[20] The basis of the asserted legal obligation on the part of the Body Corporate and/or Peninsula Development is deficiently pleaded. There are two fundamental reasons for this.

[21] First, in paragraph 66 and in reliance on the preceding paragraphs of the statement of claim, the cost of the Rectification Work is claimed as damages in reliance on the Contract. Yet in paragraph 5 of the reply, it is pleaded that the Body Corporate has a legal obligation to pay Hutchinson for the costs of the Rectification Work under some other contract.

[22] Second, the material terms of the other contract are not adequately pleaded. As to this, there is correspondence from the solicitors for the Body Corporate to the solicitors for Hutchinson dated 1 October 2019 that relevantly reads as follows:

“The first plaintiff (the Body Corporate) entered into a contract to repair the damage with your client and is now obligated to pay your client in respect of that work. We understand your client requires that money to be paid, but has sued the incorrect entity for payment as the insurer did not enter into that contract and is not obliged to pay. As you know, this is the issue in dispute in District Court claim 1034 of 2019, J Hutchinson Pty Ltd v SCI and others.”

We have pleaded a material fact, which is the Body Corporate were and are required to expand the sum claimed to repair the damage. If you want further and better particulars of that allegation, by all means we will provide them. No doubt your client is familiar with the work it did. Your client is also familiar with the circumstances in which that obligation to pay on the part of the Body Corporate arises but interprets those circumstances in a manner that suits it.

In those circumstances a loss has been suffered.

...” [10]

[10] ‘MJE-2’ to the affidavit Michael Elliott.

[23] This invitation by the solicitors for the Body Corporate for Hutchinson to request further and better particulars of the allegation is clearly misconceived. The purpose of the [UCPR](#) is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. The [UCPR](#) are to be applied with the objective of facilitating this purpose. [11]. The provision of proper and adequately pleaded claims goes towards facilitating this purpose. To this end a statement of claim is required to contain a statement of all material facts and state specifically any matter that if not specifically pleaded may take the other party by surprise. [12]. Paragraph 66 in its current form and when considered with paragraph 5 of the reply falls well short of this.

[11] [UCPR](#) r 5.

[12] [UCPR](#) r 149.

[24] Further, the pleaded assertion that the Body Corporate and Peninsula Development have a legal obligation to pay Hutchinson for the cost of the Rectification Work is a conclusion of law. The [UCPR](#) require the material facts in support of this to be pleaded in the statement of claim. This requires the pleading to allege the fact of the contract, the parties to the contract, its relevant terms, that a particular term or terms were breached and the loss suffered as a result of the breach.

[25] In short, the obligation is on a plaintiff to comply with the pleading requirements, and not wait for a defendant to request that they be complied with by seeking further particulars. Further, the assertion in the correspondence to the effect that Hutchinson is familiar with the circumstance which give rise to the obligation to pay on the part of the Body Corporate, seems to be inconsistent with its own claim which pleads that Hutchinson is liable for the cost of the Rectification Work. It is also in conflict with the separate proceedings (Claim Number 1034 of 2019) in which Hutchinson has alleged that the legal

obligation rests with the Body Corporate insurer and the other defendants in that proceeding, pursuant to an agreement between it and the Body Corporate insurer.

[26] The affidavit material in support of the two applications is somewhat voluminous. It provides no clear answer as to whether the Body Corporate and/or Peninsula Development have a legal obligation to pay for the cost of the Rectification Work.

[27] It is apparent from the material that the Body Corporate insurer was notified of the need for the Rectification Work in late July 2018 after a claim was made by the Body Corporate. The insurer then engaged Emersons to attend and inspect the damage.

[28] On 2 August 2018, the solicitors for Peninsula Development wrote to Hutchinson asserting that the pipe failure constituted a breach of the Contract and demanded that Hutchinson rectify all damage as expeditiously as possible and confirm in writing that it accepted liability in relation to the matter. The insurer for Hutchinson responded that the damage occasioned by the pipe failure rested with Peninsula Development. Hutchinson (by its insurer) denied liability in full and contended that any damage had been caused by works performed by a sub-contractor and that Hutchinson was not a proper respondent to the claim. [\[13\]](#)

[\[13\]](#) 'RJD22' to the affidavit Robert Doyle dated 10 February 2020.

[29] Mr Kennedy deposes that he was told that there was a meeting at the Residences. The date of this is not clear. It seems that there were a number of people at this meeting, including representatives of the Body Corporate and of Hutchinson. The damage to the premises from the pipe failure was inspected. Apparently an agreement was reached in broad terms as to the work that was required to rectify the damage caused by the pipe failure. The details of this agreement are not known. It seems that after the inspection, Emersons requested Hutchinson to provide an estimate of the cost to repair and rectify the damage caused by the pipe failure.

[30] The solicitors for Peninsula Development forwarded an email to Hutchinson dated 6 August 2018 attaching the abovementioned correspondence from Hutchinson's insurer (dated 2 August 2018). The correspondence referred to warranties given by Hutchinson pursuant to the Contract which it was said applied irrespective of whether Hutchinson had engaged a sub-contractor to perform the subject work. It was reiterated that Peninsula Development held Hutchinson entirely liable for all loss and damage caused by the pipe failure. [\[14\]](#)

[14] 'RJD23' to the affidavit Robert Doyle dated 10 February 2020.

[31] Mr Hart, on behalf of Hutchinson, provided the following response by email:

"I understand the emotion that our Insurers [sic] response to Hickey Lawyers has created. Rest assured that our efforts on the ground have not been influenced by the position taken by our insurers.

The team have been diligent and respectful of this very awkward situation. Robert Doyle, James Karch and Greg Dent are doing everything within our control to expedite repair works. Recent discussions with Kone have suggested that the turn-around time may be reduced to 2-3 weeks once an order is placed.

I am free to discuss our efforts and help wherever possible. Please do not hesitate to call." [15]

[15] 'RJD24' to the affidavit Robert Doyle dated 10 February 2020.

[32] Robert Doyle was Hutchinson's project manager for the construction of the Residences. He has deposed to the fact that he was not prepared to allow Hutchinson to undertake any of the repair works until he had clear instructions from the Body Corporate insurer to do so. It was after these instructions were provided that Hutchinson carried out these works.

[33] By an email dated 14 November 2018, Emersons informed the Body Corporate that the invoice for the Rectification Work undertaken by or at the request of Hutchinson would be made out to the Body Corporate and its insurer would reimburse it the sum less GST and an excess of \$300.

[34] In January 2019, Emersons informed Hutchinson that the Body Corporate insurer was not prepared to pay the full amount being claimed and requested that an invoice be forwarded to it from Hutchinson in the amount of \$552,753.54. It was said that Emersons would then be in a position to recommend a payment to the Body Corporate's nominated bank account for this amount less the GST and the excess. This initial invoice was issued to the Body Corporate insurer.

[35] The Body Corporate and Peninsula Development rely on the fact that subsequent invoices were issued by Hutchinson in the name of the Body Corporate and not the Body Corporate's insurer. It is said on behalf of Hutchinson that this was done at the request of the Body Corporate insurer and was forwarded to the insurer.

[36] It seems from the affidavit material that there is a legitimate issue between the parties concerning the party with the legal obligation to pay for the costs of the Rectification Work.

[37] The present and insuperable problem with Hutchinson's summary judgment point that neither the Body Corporate nor Peninsula Development have suffered a loss, is that the material facts relevant to the claimed loss have not been adequately pleaded in the statement of claim. It is true that a court may consider granting summary judgment on an unpleaded case, however this would be in circumstances where it can be demonstrated that there is no possibility of injustice to the other party. That might occur where the point is a purely legal one and it can be convincingly demonstrated that no factual matter could possibly address it. I am not persuaded that this is such a case. At the very least, one would think that the court would need to hear evidence regarding the meeting referred to in paragraph 29 above and the circumstances in which Hutchinson came to issue the two invoices in the name of the Body Corporate. For this reason alone, summary judgment ought not to be granted.

[38] In Hutchinson's written submissions reliance is placed on what Windeyer J said in *National Insurance Company of New Zealand Limited v Espagne* [\[16\]](#), namely:

“In assessing damages for personal injuries, benefits that a plaintiff has received or is to receive from any source other than the defendant are not to be regarded as mitigating his loss, if: (a) they were received or are to be received by him as a result of a contract he had made before the loss occurred and by the express or implied terms of that contract they were to be provided notwithstanding any rights of action he might have; or (b) they were given or promised to him by way of bounty, to the intent that he should enjoy them in addition to and not in diminution of any claim for damages ...”

[\[16\]](#) (1961) 105 CLR 569, 136–137 .

[39] It is said on behalf of Hutchinson that none of the above elements exist in the present case. The "source" of the benefit is said to be Hutchinson having undertaken the

Rectification Work after being put on notice in August 2018 that Peninsula Development held it responsible for the loss. It is further contended that the benefit was not provided in pursuance of a contract made before the loss occurred and was not provided as a "bounty".

[40] The solicitors for the Body Corporate and Peninsula Development say that the material facts relevant to the issue of whether Hutchinson was the source of a benefit to its clients by performing the Rectification Work has not been pleaded and was first raised in the written submissions on behalf of Hutchinson. In these circumstances, it has been taken by surprise and may require further disclosure relating to this issue. This is another relevant consideration in dismissing the summary judgment application. This is because significant caution needs to be exercised in granting such an application when the other side has not been given a full opportunity to consider the point in the way it would if it had the opportunity to see it properly pleaded and to take instructions. Further, it raises some complex legal issues.

[41] While I am not persuaded that summary judgment for Hutchinson's should be granted, in my view paragraph 66 of the statement of claim should be struck out. There has been no undue delay in this matter in that the proceeding was only instituted in September last year. Requiring the Body Corporate and Peninsula Development to re-plead facilitates the just and expeditious resolution of the real issues at a minimum of expense. It is appropriate to direct that an amended statement of claim is filed, which makes amendments necessary to address the striking out of the paragraph, whatever they might be.

[42] I am told that additional amendments are required to the statement of claim. Peninsula Development have allegedly provided instructions to amend it to plead a loss of profits claim based on the negligence and breaches of contract currently pleaded. Mr Kennedy deposes to having received instructions from Peninsula Development to increase the quantum of its claim by approximately \$250,000 for losses relating to delayed settlement of sales of units at the Residences and expenses incurred in resolving acoustic issues consequential upon the pipe failure. This would of course take it outside the monetary jurisdiction of the District Court.

[43] While r 79 of the UCPR confers a broad and unfettered discretion upon a court to order two or more proceedings to be heard together, I agree that it would be premature to do this given the abovementioned amendments to be made to the statement of claim. It would prima facie appear to be an appropriate order to make when considering the convenience to the parties and the court, the desirability of avoiding a multiplicity of actions and a saving of time and expense. However, it is necessary to ensure that the interests of Hutchinson in its claim against the Body Corporate insurer are not going to be unduly delayed or otherwise prejudiced by the making of an order for the two proceedings to be heard together. This determination cannot be made without a proper consideration of the pleading to be amended.

Conclusions

[44] For the above reasons I dismiss Hutchinson's application for summary judgment but grant the application to strike out paragraph 66 of the statement of claim. I direct that an amended statement of claim be filed addressing the pleading deficiencies in that paragraph.

[45] As to the costs of the application, Hutchinson have been substantially successful. While I have not granted summary judgement, the principal reason for this relates to the deficiency in the pleaded claim by the Body Corporate and Peninsula Development. Further, the deficiency is such that I have struck out paragraph 66, which is central to the claim. After the filing of the application the Body Corporate and Peninsula Development abandoned their indemnity claim which comprised the remaining orders sought. In these circumstances there will be an order that the Body Corporate and Peninsula Development pay Hutchinson's costs, unless another order is sought. If this is to be contested, the party advancing the contest should file and serve a written outline on the issue, not exceeding two pages, within seven days of delivery of the judgment, with the opposing party to have seven days to respond.

[46] As to the application for the two proceedings to be heard together, it is appropriate that it be adjourned to the registry pending the filing of the amended statement of claim and any consequent pleadings. The costs of this application are to be reserved.