

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD912/2020
File Title: CLIVE FREDERICK PALMER v MARK MCGOWAN
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 31/05/2021 9:10:39 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Amended Statement of claim

No. NSD 912 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

Clive Frederick Palmer

Applicant

Mark McGowan

Respondent

Respondent

1. The Respondent is the Premier of the State of Western Australia.

First matter complained of

2. On or about 31 ~~30~~ July 2020, the Respondent published the following statements of and concerning the Applicant:

“Let Mr Palmer fight his own fights. Let him fight his own fights. I’m happy to have a blue with Mr Palmer. He’s the enemy of West Australia. He’s the enemy of the State. I think he’s the enemy of Australia”.

Particulars of Publication

- (a) The Respondent spoke these words in the course of a media briefing which he held in Western Australia on or about 31 ~~30~~ July 2020 with reporters and/or persons holding sound and camera equipment including at least one person from Sky News Australia. The Applicant does not know the identity of other media organisations and persons present.
- (b) The Respondent intended that the first matter complained of would be republished by the TV, radio, print media and online. Alternatively he authorised

Filed on behalf of (name & role of party) Clive Frederick Palmer, plaintiff
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its republication and/or its republication was the natural and probable consequence of the words being spoken during the course of a media briefing. The Applicant relies on the republication as to damages only.

- (c) The words were in fact republished on YouTube at <https://www.youtube.com/watch?v=E8QsZEr1Vus> and, as at the date of this pleading, that republication had had more than 10,000 views. They were also substantially republished on the *Sydney Morning Herald* website at <https://www.smh.com.au/national/i-think-he-s-the-enemy-of-australia-mcgowan-ramps-up-war-of-words-with-palmer-on-wa-border-battle-20200731-p55hdj.html>.
 - (d) Further particulars of publication and republication will be supplied following discovery and interrogatories.
3. The first matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the whole of the first matter complained of as giving rise to each of the following imputations:

- (a) The Applicant is a traitor to Australia.
- (b) The Applicant intends to harm the people of Western Australia.
- (c) The Applicant intends to harm the people of Australia.
- (d) The Applicant represents a threat to the people of Western Australia and is dangerous to them.
- (e) The Applicant represents a threat to the people of Australia and is dangerous to them.

Second matter complained of

4. On or about 31 July 2020, the Respondent published the following statements of and concerning the Applicant:

“Mr Palmer is the enemy of the State. He is the enemy of Western Australia. He has shown over his time that he is only focused on himself. He is not focused on

the health or wellbeing of people in this state. I'd urge people to take no notice of whatever letters he might publish".

Particulars of Publication

- (a) The Respondent spoke these words in the course of a media briefing which he held in Western Australia on or about 31 July 2020 with reporters and/or persons holding sound and camera equipment including at least one person from Sky News Australia. The Applicant does not know the identity of other media organisations and persons present.
 - (b) The Respondent intended that the second matter complained of would be republished by the TV, radio, print media and online. Alternatively he authorised its republication and/or its republication was the natural and probable consequence of the words being spoken during the course of a media briefing. The Applicant relies on the republication as to damages only.
 - (c) The words were in fact republished on the ABC website at <https://www.abc.net.au/news/2020-07-31/clive-palmer-wa-border-legal-bid-backed-by-attorney-general/12511212> and substantially republished on the AAP website at <https://www.aap.com.au/palmers-wa-border-challenge-to-wrap-up/>.
 - (d) Further particulars of publication and republication will be supplied following discovery and interrogatories.
5. The second matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the whole of the second matter complained of as giving rise to each of the following imputations:

- (a) The Applicant intends to inflict harm on the health and wellbeing of the people of Western Australia for his own selfish gain.
- (b) The Applicant represents a threat to the people of Western Australia and is dangerous to them.

Third matter complained of

6. On or about 3 August 2020, the Respondent made the following statements of and concerning the Applicant:

"Mr Palmer had other intentions when he initially submitted his application to come to Western Australia. He Look, just so you know, he wanted to come to Western Australia to promote Hydroxychloroquine to the people of the State as some sort of cure for COVID. All the evidence is not only is it not a cure, it's actually dangerous. Him coming to Western Australia to promote a dangerous drug I don't think was a good thing for our State and I'm pleased the Police rejected him".

Particulars of Publication

- (a) The Respondent spoke these words in the course of a media briefing which he held in Western Australia on or about 3 August 2020 with reporters and/or persons holding sound and camera equipment. The Applicant does not know the identity of the persons and media organisations present.
- (b) The Respondent intended that the third matter complained of would be republished by the TV, radio, print media and online. Alternatively he authorised its republication and/or its republication was the natural and probable consequence of the words being spoken during the course of a media briefing. The Applicant relies on the republication as to damages only.
- (c) The words were in fact republished on the AAP and Perth Now websites at <https://www.aap.com.au/wa-premier-lashes-palmer-over-covid-cure/> and <https://www.perthnow.com.au/news/coronavirus/wa-premier-mark-mcgowan-says-billionaire-clive-palmer-wanted-to-enter-wa-to-promote-coronavirus-cure-ng-b881627900z>. The first two sentences were also republished on the Channel Seven website at <https://7news.com.au/lifestyle/health-wellbeing/wa-premier-mark-mcgowan-lashes-clive-palmer-over-covid-cure-c-1212139>.
- (d) Further particulars of publication will be supplied following discovery and interrogatories.
7. The third matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the whole of the third matter complained of as giving rise to each of the following imputations:

- (a) The Applicant promotes a drug which all the evidence establishes is dangerous.
- (b) The Applicant is seeking to harm the people of Western Australia by providing them with a drug he knows is dangerous.
- (c) The Applicant is dishonestly promoting hydroxychloroquine as a cure for COVID-19 when he knows it is not a cure.
- ~~(d) The Applicant lied when he claimed his purpose for seeking to enter Western Australia was a purpose other than promoting a dangerous drug.~~

Fourth matter complained of

8. On or about ~~5~~ 6-August 2020, the Respondent published the following statements of and concerning the Applicant:

“Mr Palmer is very selfish to pursue this High Court action. He uses money generated in Western Australia, through Western Australian mining projects, to try and bring down our borders and damage the health of West Australians. It’s very very selfish”.

Particulars of Publication

- (a) The Respondent spoke these words in the course of a media briefing which he held in Western Australia on or about ~~5~~ 4-August 2020 with reporters and/or persons holding sound and camera equipment including at least one person from the Nine Network. The Applicant does not know the identity of other media organisations and persons present.
- (b) The Respondent intended that the first matter complained of would be republished by the TV, radio, print media and online. Alternatively he authorised its republication and/or its republication was the natural and probable consequence of the words being spoken during the course of a

media briefing. The Applicant relies on the republication as to damages only.

(c) The words were in fact republished on the WA today Facebook page at <https://www.facebook.com/WAtoday/videos/live-premier-mark-mcgowan-on-covid-19-and-the-wa-recovery-plan/1206878303009685/>. They were also substantially republished in the print edition of the *West Australian* newspaper in a front page article (spread over three pages) on 6 August 2020, written by Peter Law and Josh Zimmerman and headed “*Law and Border*” (on the front page) and “*It’s trial and error*” (on pages 4 and 5).

(d) Further particulars of publication and republication will be supplied following discovery and interrogatories.

9. The fourth matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the whole of the fourth matter complained of as giving rise to each of the following imputations:

- (a) The Applicant deliberately intends to damage the health of Western Australians for his own personal gain.
- (b) The Applicant selfishly uses money he has made in Western Australia to harm West Australians.

Fifth Matter Complained Of

10. On or about 7 August 2020, the Respondent made the following statements of and concerning the Applicant:

“As I said, we’re in a war with Clive Palmer. And it’s a war we intend to win”.

Particulars of Publication

- (a) The Respondent spoke these words in the course of a media briefing which he held in Western Australia on or about 7 August 2020 with reporters and/or persons holding sound and camera equipment. The Applicant does not know the identity of the persons and media organisations present.

- (b) The Respondent intended that the fifth matter complained of would be republished by the TV, radio, print media and online. Alternatively he authorised its republication and/or its republication was the natural and probable consequence of the words being spoken during the course of a media briefing. The Applicant relies on the republication as to damages only.
- (c) The words were in fact republished on the Canberra Times website at <https://www.canberratimes.com.au/story/6868290/wa-at-war-with-clive-palmer-over-borders/?cs=14231>.
- (d) Further particulars of publication will be supplied following discovery and interrogatories.
11. The fifth matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the whole of the fifth matter complained of as giving rise to each of the following imputations:

- (a) The Applicant intends to harm Australians.
- (b) The Applicant represents a threat to Australians and is dangerous to them.

Sixth matter complained of

12. On or about 14 August 2020 there was published on the Mark McGowan MP Facebook page (**the FB page**) a posting of and concerning the Applicant beginning with the words "*If you've turned a radio on*", a copy of which is set out in Annexure "A" to this Statement of Claim.

Particulars of Publication

- (a) The Respondent's employees or agents authored ~~is the author of~~ the post on the Respondent's behalf and uploaded the post to the Mark McGowan MP Facebook page with the Respondent's approval.
- (b) The Respondent is the creator and/or administrator and/or manager of the FB page which appears at the URL <https://www.facebook.com/MarkMcGowanMP/>.

- (c) The post was uploaded on or about 14 August 2020 and was downloaded and read across Australia.
 - (d) The post remains online as at the date of this pleading.
 - (e) Further particulars of publication will be supplied following discovery and interrogatories.
13. The sixth matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The Applicant relies on the following parts of the sixth matter complained of as giving rise to the following imputations:

- (a) The Applicant intends to steal \$12,000 from every man, woman and child in Western Australia (which imputation arises from the words in paragraph 11 of Annexure "A").
- (b) The Applicant is prepared to bankrupt a state merely because he is unhappy with standard conditions set on a project by the state government that apply to all mining projects (which imputation arises from the words in paragraphs 8 to 13 of Annexure "A").
- (c) The Applicant is so dangerous a person that legislation was required to stop him making a claim for damages against the State of Western Australia (which imputation arises from the words in paragraphs 8 to 16 of Annexure "A").

Loss and damage

- 14. By reason of the publication of the matters complained of, the Applicant has been brought into hatred, ridicule and contempt and has suffered and continues to suffer loss and damage to his reputation and injury to his feelings.
- 15. The Applicant also intends to adduce evidence of any special damage caused by the matters complained of.
- 16. The Applicant claims the relief set out in this statement of claim.

Particulars of Aggravated Damages

- (i) The Respondent's failure or refusal to apologise to the Applicant, despite the fact that the Applicant's solicitors, Sophocles Lawyers, sent a letter seeking such an apology on or about 4 August 2020.
- (ii) The Respondent's conduct in continuing to make grossly defamatory publications of and concerning the Applicant after the letter sent by his solicitor on 4 August 2020, including the fourth, fifth and sixth matters complained of, which aggravated the damage already caused by the first and second matters complained of.
- (iii) The extreme and sensational language adopted by the Respondent including for instance the use of words such as "enemy", "dangerous", "war" and "unthinkable".

Date: 28 May 2021

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Applicant

This pleading was prepared by Michael John Sophocles, lawyer

Certificate of lawyer

I, Michael John Sophocles, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 28 May 2021

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Applicant

Annexure "A"

Mark McGowan

14 August at 6.02 PM

1. If you've turned a radio on or opened the paper this morning you've probably already caught Mr Palmer's ads.
2. I want to take a moment here to clear up the facts about what the laws we have just passed mean.
3. I'll be extremely clear:
4. These laws are not about stopping him from proceeding with a project.
5. The iron ore at Balmoral South is still there. Mr Palmer still has his right to make a proposal to dig it up, or to sell that right to someone else.
6. The laws we passed last night do not change that.
7. The laws also don't stop Mr Palmer from collecting, as he has said publicly, over a million dollars per day in royalties from other projects in WA.
8. They are about protecting WA from him potentially claiming around \$30 billion from us - because he CHOSE not to proceed with the project because of the conditions he was required to operate under.
9. All mining projects in Western Australia have conditions that they are required to operate under - and those conditions are fundamental to the operation of our mining industry.
10. The only difference here is that Mr Palmer decided that adhering to those conditions was too hard and that he wouldn't proceed with the project.
11. So instead of choosing to make his profits by establishing a potentially job-creating project at Balmoral South - as is his right - he decided to just make his profits by taking \$12,000 from every man, woman and child in Western Australia.
12. No one has ever attempted to do this before.
13. It would be unthinkable to allow a precedent that anyone could bankrupt a State just because they weren't happy with conditions set by the State Government.
14. Allowing Mr Palmer's claim to proceed was too dangerous for our State.
15. It would destroy our State's finances.
16. So we put a stop to it.
17. My conscience is clear, I know we have done the right thing.