

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/10/2020 5:24:45 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: NSD912/2020
File Title: CLIVE FREDERICK PALMER v MARK MCGOWAN
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 1/10/2020 7:51:57 PM 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Reply

No. NSD 912 of 2020

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

Clive Frederick Palmer

Applicant

Mark McGowan

Respondent

In Reply to the Defence filed 17 September 2020 (**the Defence**) the Applicant says:

- 1 Save as to the admissions therein, the Applicant joins issue with the Defence.
- 2 In reply to the defences of common law qualified privilege and/or statutory qualified privilege under section 30 of the *Defamation Act* 2005 and qualified privilege based on the implied constitutional freedom of political communication the Applicant says that the Respondent was actuated by express malice in publishing the matters complained of.

Particulars of Malice

- (a) The Respondent published the matters complained of for an improper purpose, that is, to hurt and harm the Applicant and his business, to damage his reputation, and to discredit him while at the same time improving the Respondent's own political and electoral position. That is to be inferred from the content of paragraphs (b) to (h) below.
- (b) The Respondent and his Attorney-General developed a strategy of deliberately distressing, provoking and distracting the Applicant, which strategy involved the Respondent taking repeated "jabs" at the Applicant by making statements of and

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concerning the Applicant with the use of insulting and intemperate language (**the Attack Plan**). The Attack Plan had these features:

- 1) It was devised by the Respondent and his Attorney-General, during a period of some six weeks in or about July-August 2020 in which they were secretly crafting proposed legislation which would eventually become the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020* (WA) enacted on 13 August 2020.
- 2) The proposed legislation was so secret that knowledge of its existence was restricted to the Respondent, his Attorney General and a few others. Even the State Solicitor was required to keep it secret from other employees in his office.
- 3) The intention of the Attack Plan was to ensure that the Applicant was so distressed, provoked and distracted by the repeated “jabs” so taken at him by the Respondent that the Applicant would fail to take steps, before the proposed legislation was introduced to the Legislative Assembly, to enforce 2014 and 2019 arbitral awards made in favour of two companies controlled and beneficially owned by him.
- 4) The Attack Plan was timed to ensure that the legislation was introduced on a Tuesday evening when all the courts in the nation were closed and when it would be too late for the Applicant to take steps to respond or to enforce the awards.
- 5) The Respondent’s Attorney-General, the Hon. John Quigley MLA, actually boasted about the Attack Plan during an interview on ABC Radio Perth on the morning of 13 August 2020, describing it as having two components, the first of which was a series of “right jabs” involving the Respondent “jab, jabbing away with insults” directed against the Applicant and the second of which (described as the “left hook”, to “knock him down”) was the proposed legislation.
- 6) The Respondent and his Attorney General knew there was at least a risk that they were proceeding in an unlawful manner as is evidenced by Mr Quigley’s remark “*We’ve got to knock him down and knock him down today. There is too much at risk for all Western Australians for namby*

pamby inquiries. What does this word mean? What does that word mean?"

That is, the Attorney General of Western Australia deliberately set out to abolish the possibility of a judicial or other inquiry because of the appreciable risk that it would reach a conclusion adverse to the interests of him and the Respondent and their plans.

- 7) Further particulars of the Attack Plan and its purposes will be provided following discovery and the taking of other interlocutory steps.
- (c) The Respondent's knowledge of, or alternatively reckless indifference to, the falsity of the allegations contained within the matters complained of giving rise to each of the imputations particularised in the proceedings. The Applicant relies on 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 pointing out the falsities in the allegations, including the fourth, fifth and sixth matters complained of. The Applicant also relies on the Respondent's conduct in publishing the sixth matter complained of after a further letter was sent to the Respondent by the Applicant's solicitor on 10 August 2020, complaining about the publication of the fifth matter complained of.
- (d) The failure of the Respondent to contact the Applicant, or put any of the allegations to him, or give him any opportunity to respond to any of the allegations.
- (e) The extreme and sensational language adopted by the Respondent including for instance the use of words such as "enemy", "dangerous", "war" and "unthinkable".
- (f) 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.
- (g) The Respondent's conduct in persisting in making further insulting and derogatory statements of and concerning the Applicant of a kind calculated to expose the Applicant to further hatred, ridicule and contempt and to increase the indignity already suffered by the Applicant, the loss and damage to the Applicant's reputation and the injury to the Applicant's feelings, including:
- 1) a statement on or about 2 August 2020 that the Applicant is "*Australia's greatest egomaniac*"; and

2) a statement on or about 2 August 2020 that the Applicant is “*an Olympic scale narcissist*”.

(h) Further and better particulars will be provided after discovery, subpoenas and interrogatories.

Date: 1st October 2020

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Applicant

This pleading was prepared by Michael Sophocles, lawyer, and Matthew Richardson of Counsel.

Certificate of lawyer

I Michael John Sophocles certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 1st October 2020

Michael J. Sophocles

Signed by Michael John Sophocles
Lawyer for the Applicant