

MacFarlane and Ors v Northern Territory of Australia [1999] NTSC 18

PARTIES: **ANTHONY STUART MACFARLANE**
First Plaintiff

AND

PATRICIA MACFARLANE
Second Plaintiff

AND

PATRICIA ANNE MACFARLANE
Third Plaintiff

v

NORTHERN TERRITORY OF AUSTRALIA
Defendant

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: APPEAL FROM THE MASTER EXERCISING
TERRITORY JURISDICTION

FILE NO: 221 of 1997

DELIVERED: 5 March 1999

HEARING DATES: 4 February 1999

JUDGMENT OF: Bailey J

REPRESENTATION:

Counsel:

First, Second and Third Plaintiff: First Plaintiff, in person
Defendant: S Southwood

Solicitors:

First, Second and Third Plaintiff: In person
Defendant: Solicitor for the Northern Territory

Judgment category classification: C
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IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

MacFarlane and Ors v Northern Territory of Australia [1999] NTSC18
No 221 of 1997

BETWEEN:

ANTHONY STUART MACFARLANE
Plaintiff

PATRICIA MACFARLANE
Second Plaintiff

AND

PATRICIA ANNE MACFARLANE
Third Plaintiff

AND

**NORTHERN TERRITORY OF
AUSTRALIA**
Defendant

CORAM: BAILEY J

REASONS FOR JUDGMENT

(Delivered 5 March 1999)

- [1] This matter comes before me by way of an appeal from Master Coulehan's decision of 21 January 1999 to refuse an application by the plaintiffs for summary judgment against the defendant. The plaintiffs' application was advanced on the ground that the defendant has no defence to the plaintiffs' claim (set out in their amended substituted statement of claim, filed on 25 September 1998) except as to the amount of the claim.

- [2] In accordance with Rule 77.05 (7) of the Supreme Court Rules, the appeal is by way of re-hearing *de novo* of the plaintiffs' application. The plaintiffs were represented by Mr Anthony MacFarlane, the first plaintiff, appearing in person. Mr MacFarlane relied upon his own affidavits (22 October, 30 October and 21 December 1998) and affidavits (each dated 21 December 1998) of the second and third plaintiffs. The defendant, represented by Mr Southwood, relied upon affidavits of Brian Leslie Radunz (17 December 1998) and John James Trezona (16 December 1998).
- [3] The plaintiffs' claim is that at all material times they were the registered owners of the brands "PAT" and "FAT" and the owners of cattle so branded. It is alleged that the defendant entered into agreements under the brucellosis and tuberculosis eradication campaign ("BTEC") with the owners of Moroak station and that pursuant to such agreements cattle owned by the plaintiffs were removed without compensation being paid to the plaintiffs.
- [4] The plaintiffs rely upon causes of action in negligence, conversion and acquisition of property otherwise than on just terms contrary to section 50 of the *Northern Territory (Self-Government) Act*.
- [5] The oral submissions of Mr Anthony MacFarlane on behalf of the plaintiffs focussed almost exclusively on the plaintiffs' alleged ownership of cattle branded FAT and PAT. No submissions were directed at the legal bases of the plaintiffs' claims in negligence, conversion or acquisition of property otherwise than on just terms. The absence of such submissions was not

surprising given Mr MacFarlane's lack of legal training or experience. Mr MacFarlane, in practical terms, adopted the stance that if he could prove that the plaintiffs were the owners of cattle removed by (or at the direction of) the defendant then the defendant was bound to pay compensation and the only issue was quantum. For present purposes, and in the absence of submissions, it is unnecessary for me to address the question of whether summary judgment should be entered in favour of the plaintiffs even if the plaintiffs' claim to ownership of the relevant cattle was unarguably established. In that context, I emphasise that nothing in these reasons should be taken to concede or support the validity of the causes of action relied upon by the plaintiffs.

- [6] The reason why it is unnecessary to canvass the validity of the plaintiffs' causes of action is that the present application for summary judgment must be refused simply on the narrow issues advanced by Mr MacFarlane.
- [7] Summary judgment should not be ordered unless it is clear that there is no real question to be tried (*Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 and *ANZ Banking group v David* (1991) 1 NTLR 93).
- [8] The affidavit of Ms Patricia Anne MacFarlane (21 December 1998), the third plaintiff simply states that she has not received any compensation under BTEC. There is no claim that the third plaintiff owned the registered brand FAT or PAT let alone the cattle so branded. The affidavit of Ms Patricia MacFarlane (21 December 1998), the second plaintiff, states that

she jointly owned the brand PAT and Moroak Station with John Leslie Stuart MacFarlane and that she does not recall having received any compensation for cattle destocked under BTEC. There is no express claim to ownership of cattle branded FAT or PAT. I also note that there is evidence in the affidavit of Mr Radunz that John Leslie Stuart MacFarlane – the first plaintiff’s father – was paid compensation under BTEC.

[9] The affidavits of Mr Anthony MacFarlane, the first plaintiff, are handwritten, barely legible in parts and generally confusing. At some points the content is incomprehensible, irrelevant or a commentary of no evidential value. Insofar as I have been able to understand these affidavits, supplemented by oral submissions from Mr MacFarlane, it appears that plaintiffs rely on section 29A of the *Brands Act* which provides that proof that an animal is branded with a registered brand is prime facia proof that the animal is the property of the owner of the registered brand. Mr MacFarlane also relies on an alleged concession by the defendant that the plaintiffs are eligible for a freight rebate under BTEC for 1200 cattle. The significance of such a concession is said to lay in the fact that eligibility for such a rebate (a form of financial assistance available to assist in restocking after cattle have been removed under BTEC) is dependant upon removal of 1200 cattle under BTEC. The inference is said to be that the plaintiffs must be the owners of cattle removed under BTEC or they would not have been offered such a rebate.

[10] In support of the defendant's case Mr Southwood relies upon the affidavit of Mr Trezona. Mr Trezona was an accountant in Katherine from 1980 to 1990. His clients included Mr "Les" (John Leslie Stuart) MacFarlane (the first plaintiff's father) and "Peg" (Patricia) MacFarlane (the second plaintiff and mother of the first plaintiff) who owned Moroak station between 1980 and 1985. He also acted for Mr Tim MacFarlane (the first plaintiff's brother) and his wife, Ms Judy MacFarlane, who purchased Moroak Station in 1985. He also acted for the first plaintiff from around 1980 to 1990. Mr Trezona states that the first plaintiff has never instructed him to claim income for cattle sold by Tim MacFarlane and nor did the first plaintiff instruct him that he was the owner of any cattle on Moroak Station. He further states that no one has ever queried or disputed with him that Les and Peg MacFarlane owned all the cattle on Moroak Station prior to 1985 or that Tim and Judy MacFarlane owned all such cattle after 1985.

[11] Mr Southwood also relies on the affidavit of Mr Radunz, a principal veterinary officer employed by the defendant. Mr Radunz states that he was the manager of BTEC from 1993 to 1997. He refers to (continuing) inquiries made of persons concerning the plaintiffs' claims to be entitled to compensation under BTEC. In particular, Mr Radunz refers to inquiries made of the following employees or former employees of the defendant:

- (a) Geoffrey Thomas Chubb, a veterinary officer in 1978 and again from June 1982 until December 1984, at Katherine;

- (b) Ross Ainsworth, a veterinary officer and subsequently the District Veterinary officer in Katherine from 1981 to 1986;
- (c) Keith William de Witte, a veterinary officer employed in Katherine between 1984 and 1987;
- (d) Keith Joseph Lunn, a regional stock inspector for East Katherine district between 1976 and 1990; and
- (e) Christine Mary Trefry, an information systems officer.

[12] It is not necessary for present purposes to describe in detail the affidavit evidence of Mr Radunz. It is sufficient to indicate that the effect of his evidence is that:-

- (i) during the relevant period, it was common for a family operating a cattle station to have a number of brands held by individual family members (because of a former restriction in the *Brands Act* allowing a person to hold only one brand in relation to a station) to differentiate different groups of cattle, eg commercial herds and stud herds;
- (ii) arrangements for BTEC were negotiated with the owners of Moroak Station – originally Les MacFarlane (on behalf of Les and Peg MacFarlane) and later Tim and Judy MacFarlane (and their family company Yuma Pty Ltd.);
- (iii) compensation under BTEC was paid to Les MacFarlane, Yuma Pty Ltd and persons authorised in writing to be paid compensation;

- (iv) in relation to BTEC, the defendant's employees dealt with Les MacFarlane and later Tim MacFarlane on the basis that such persons had the authority to deal with all cattle on Moroak Station as owners of the cattle;
- (v) prior to the implementation of the present proceedings, no relevant employee of the defendant can recall any objection or complaint regarding either destocking and ownership of cattle at Moroak Station or who was entitled to compensation under BTEC;
- (vi) in relation to the plaintiffs' alleged eligibility for freight rebate under BTEC for 1200 cattle destocked from Moroak Station, Mr Radunz states that at no stage has he admitted that any of the plaintiffs owned cattle on Moroak Station; Mr Radunz states that he was prepared to consent to the transfer of freight rebate (from Moroak Station to the first plaintiff's property) because Tim MacFarlane, one of the present owners of Moroak Station was prepared to consent to such a transfer (which is said to be permissible under the national guidelines for BTEC financial assistance).

[13] The defendant's evidence clearly raises issues as to the ownership of any cattle branded FAT or PAT removed from Moroak Station under BTEC and may displace the prima facie proof of ownership provided by section 29A of the *Brands Act*. Such evidence also clearly raises issues as to the authority of Les MacFarlane and subsequently Tim and Judy MacFarlane to deal with

any cattle on Moroak Station under the BTEC. Accordingly, quite aside from any issues as to the validity of the plaintiffs' causes of action, I am satisfied that there are questions to be tried and summary judgment in favour of the plaintiffs should therefore be refused.

[14] The plaintiffs' application for summary judgment was without any merit and in the circumstances, notwithstanding the interlocutory nature of the present proceedings, the plaintiffs should also pay the costs of the defendant in the present appeal.

Orders

- (a) The plaintiffs' appeal against the decision of 21 January 1999 by the Master to refuse an application for summary judgment against the defendant is dismissed.
- (b) The plaintiffs are to pay the costs of the defendant in this appeal.