

SUPREME COURT OF QUEENSLAND

CITATION: *Antai Solar Australia Pty Ltd v Towers* [2026] QCA 166

PARTIES: **ANTAI SOLAR AUSTRALIA PTY LTD**
ACN 646 440 173
(appellant)
v
JAMIE STUART TOWERS
ANTHONY ROGER HUNT
MATTHEW JAMES GREEN
MICHAEL ANGELO GEORGHIOU
MATTHEW PAUL BEASLEY
CLIVE MALCOLM TODD
JOHN MARK KOTZUR
TIMOTHY DAVID TAYLOR
CHERYL ANN LAIRD
SIN JUNG KWON
NATHANAEL MICHAEL LEE
DONAVIN VAN ROOYEN
(first respondents)
DA WEN
(aka Michael Wen)
(second respondent/not a party to the appeal)
HANRICK CURRAN INVESTMENTS PTY LTD
ACN 629 899 734
HANRICK CURRAN HOLDINGS PTY LTD
ACN 138 962 615
FORVIS MAZARS (QLD AND NT) PTY LTD
ACN 102 716 101
FORVIS MAZARS ADMINISTRATION (QLD & NT) PTY LTD
ACN 141952 972
FORVIS MAZARS EMPLOYMENT (QLD & NT) PTY LTD
ACN 158 971 012
FORVIS MAZARS CORPORATE FINANCE PTY LTD
ACN 165 488 620
FORVIS MAZARS FINANCIAL ADVISORY (QLD & NT) PTY LTD
ACN 652 563 016
FORVIS MAZARS SP (QLD & NT)
ACN 631 498 578
FORVIS MAZARS HR (QLD & NT) PTY LTD
ACN 625 954 289
FORVIS MAZARS SUPERANNUATION (QLD & NT) PTY LTD
ACN 010 749 550
FORVIS MAZARS WEALTH STRATEGISTS (QLD & NT) PTY LTD

ACN 121 011 363
FORVIS MAZARS ASSURANCE PTY LTD
 ACN 132 902 188
 (third respondents)
HOWARD YIN
 (fourth respondent)

FILE NO/S: Appeal No 847 of 2026
 SC No 1522 of 2025

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2026] QSC 10 (Freeburn J)

DELIVERED ON: 4 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 17 August 2026

JUDGES: Brown JA, Bradley JA, Doyle JA

ORDERS: **1. The appeal is allowed.**

2. The Order made setting aside the Claim against the defendants other than the third defendant, Mazars (Qld) Pty Ltd, the second defendant and the fourth defendant is set aside.

3. Order 4 is deleted and in its place, it is ordered that the plaintiff have leave to replead its claims against the defendants.

4. The parties are to provide submissions in writing as to the appropriate order as to costs, limited to 5 pages, within 7 days of the date of delivery of this judgment.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – STRIKING OUT – GENERALLY – where the originating process was set aside – where the statement of claim was struck out – whether the claims were so clearly untenable as to justify summary termination – whether the pleading deficiencies were capable of being cured

CONTRACTS – PARTICULAR PARTIES – PRINCIPAL AND AGENT – where the primary judge found a sole contracting party – whether that finding required summary termination of contractual claims against other respondents – whether alleged partnership or agency could support liability of other partners

TORTS – NEGLIGENCE – PROCEDURE AND EVIDENCE – PLEADINGS – where the alleged non-delegable duty fell outside the recognised categories – whether the pleaded relationship was incapable of supporting a non-delegable duty

– whether claim sufficiently untenable to justify summary termination

Competition and Consumer Act 2010 (Cth), Sch 2 (Australian Consumer Law), s 6, s 18, s 84

Partnership Act 1891 (Qld). s 8, s 12

Uniform Civil Procedure Rules 1999 (Qld), r 16, r 22, r 661

AA v Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle (2026) 100 ALJR 170; [2026] HCA 2, cited

Agar v Hyde (2000) 201 CLR 552; [2000] HCA 41, applied
Batistatos v Roads and Traffic Authority of New South Wales (2006) 226 CLR 256; [2006] HCA 27, applied

Dey v Victorian Railways Commissioners (1949) 78 CLR 62; [1949] HCA 1, applied

Lewis v Minister for Police and Corrective Services and Minister for Fire and Emergency Services [2022] QSC 70, cited

MAM Mortgages Ltd (in Liq) v Cameron Bros [2002] QCA 330, cited

Marginson v Ian Potter & Co (1976) 136 CLR 161; [1976] HCA 35, cited

McFaul v Green & White Freightlines Pty Ltd [2026] QCA 48, cited

Palmer v Magistrates Court of Queensland; Palmer Leisure Coolum Pty Ltd v Magistrates Court of Queensland (2020) 3 QR 546; [2020] QCA 47, cited

Robert Bax & Associates v Cavenham Pty Ltd [2011] QCA 53, cited

COUNSEL: R A Perry KC for the appellant
B D O'Donnell KC, with B W Wacker, for the first, third and fourth respondents

SOLICITORS: Hawthorn Cuppaidge & Badgery for the appellant
Wotton Kearney for the first, third and fourth respondents

- [1] **BROWN JA:** I agree that for the reasons set out by Doyle JA the appeal be allowed. I also agree with the commensurate orders proposed by Doyle JA.
- [2] **BRADLEY JA:** I agree with the reasons of Doyle JA and with the orders proposed by his Honour.
- [3] **DOYLE JA:** This is an appeal from an order striking out parts of the Claim and Statement of Claim and giving limited leave to replead the Statement of Claim.

Background

- [4] All of the defendants in the proceeding were in some way associated with the conduct in Australia of the business or businesses, which operated under the trade name “Mazars”.
- [5] The appellant (Antai Solar) is an Australian company, the ultimate owner of which is a company formed in China. Solar related products manufactured in China were imported and supplied in Australia by Antai Solar.

- [6] To facilitate its operations in Australia it engaged “Mazars” to provide services under two agreements described in the material as the Accounting Services Agreement and the Director Services Agreement. The second defendant (Mr Wen) principally had the dealings with Antai Solar in this regard. As a result of his recommendations, he was appointed the sole director of Antai Solar and was made a signatory on its bank account. It had been intended that by that means he would be able to pay creditors of Antai Solar by drawing upon funds received into its account.
- [7] Instead, however, it is alleged that Mr Wen, by a series of transactions over the period from 31 January 2023 to 11 September 2023, misappropriated \$9,264,721.66. Both he, and the money, cannot be located.
- [8] As a consequence, Antai Solar commenced proceedings to recover compensation for those lost funds. For this purpose, it sued four groups of defendants.
1. The first defendants are all natural persons who are identified as the “Director Partners” of Mazars. They are the first respondents in the appeal.
 2. Mr Wen is identified as the second defendant. It is pleaded that he was held out to be a partner of Mazars and that he was a salaried partner, an employee and agent. Mr Wen has not been served with the proceedings and played no part in the conduct of the application below. He is not a party to this appeal.
 3. A group of companies is identified as the third defendants. They include, Forvis Mazars (Qld and NT) Pty Ltd which was formerly called “Mazars (Qld) Pty Ltd” and for convenience will be referred to by its former name. Together with that company, the remaining third defendants are described as “the Practice Entities”. They are respondents to the appeal.
 4. Finally, the fourth defendant is a Mr Yin who was, it is alleged, a senior management accountant at Mazars performing the services under the Accounting Services Agreement. He too is a respondent to the appeal.

The Application and Order

- [9] The respondents applied below:
1. For an order that the Claim and the Statement of Claim be set aside as against the defendants other than Mr Wen, Mazars (Qld) Pty Ltd and Mr Yin and without leave to replead;
 2. Alternatively, that certain specific paragraphs of the Statement of Claim be struck out.
- [10] That application succeeded before the primary judge.¹ There is something of a divergence between the orders sought and those made. The orders made are, relevantly:
- “2. The claim and statement of claim be set aside as against the defendants other than Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin;
 3. The statement of claim be struck out as against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin;

¹ *Antai Solar Australia Pty Ltd v Towers and Ors* [2026] QSC 10 (Reasons or R).

4. Subject to further order of the court, the plaintiff have leave to replead limited to the claims against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin.”

Grounds of Appeal & Contention

- [11] There are 13 Grounds of appeal but in substance Antai Solar contends that in various respects the primary judge erred:
1. in striking out the Claim because it was wrong to conclude that the claims were not sufficiently arguable to be sustained;
 2. in striking out the statements of claim, both as to the consequential striking out of the Statement of Claim and also the separate striking out of the Statement of Claim against the remaining defendants, the primary judge’s conclusions were erroneous.
- [12] At the time the Notice of Appeal was filed (and indeed for some time thereafter) the order contemplated by the reasons of the primary judge had not been taken out and accordingly, leave to appeal was required pursuant to r 661(4)(b) of the UCPR. That leave is not opposed and should be granted. The Order has since been taken out.
- [13] The respondents have filed a notice of contention which identifies five contentions:
- “1. The Statement of Claim does not plead a reasonable cause of action against the first defendants that engages s. 6 of the *Competition and Consumer Act* (2010) (Cth), so as to extend the operation of that Act to the conduct of the first defendants that is alleged to have contravened s. 18 of the Australian Consumer Law.
 2. The Statement of Claim does not plead a reasonable cause of action against the third defendants (other than Mazars (Qld) Pty Ltd) that engages s. 84(2) of the *Competition and Consumer Act* (2010) so as to make the third defendants liable for the conduct alleged in the Statement of Claim to have contravened s. 18 of the Australian Consumer Law.
 3. The Statement of Claim does not plead any material facts in support of the pleas of causation in respect of the causes of action for breach of duty of care, misleading and deceptive conduct and breach of contract.
 4. The Statement of Claim pleads the loss of an opportunity without pleading the material facts as to what the appellant would have done but for the alleged breach, the percentage or proportion of the opportunity lost and, if a loss of the whole of the opportunity, the certainty with which that would have been achieved.
 5. The Statement of Claim pleads the same alleged loss and damage arising from each of the pleaded causes of action in circumstances where, on the pleaded case, different loss and damage arises from each cause of action.”

The Primary Judge's Reasons

- [14] The primary judge considered the Statement of Claim under various headings. The principal problem, his Honour identified, was the form of Antai Solar's pleading as to the existence of a "broad partnership": R [14]. His Honour concluded that pleading was a "fishing expedition": R [22] and that that described, rather than justified, various inadequacies in the pleadings lack of material facts and particulars: R [23] and [25].
- [15] The next problem the primary judge identified concerned the terms of the "retainer". The primary judge identified the vital issue being that Antai Solar did not identify in the pleading the party it contracted with. The primary judge concluded that the terms of the Director Services Agreement and the Accounting Services Agreement made it plain that the contracting party was Mazars (Qld) Pty Ltd. In particular, in the course of reasoning to that conclusion his Honour said:
- "[36] And so, whether or not there was some unidentified partnership, Antai Solar retained Mazars (Qld). Antai Solar did not retain any other entity. Looking at the Director Services Agreement and the Accounting Services Agreement nothing could be clearer."
- [16] The next matter the primary judge dealt with was the pleading of the "non-delegable duties". His Honour concluded that the Statement of Claim had not pleaded sufficient facts to support the claim that each of the "first defendants, in their own capacity and in their capacity as directors of each of the third defendants, owed a 'non-delegable duty' to the plaintiff": R [43].
- [17] Having regard to his reasons in relation to the various claims his Honour concluded at R [41] as follows:
- "[41] For those reasons the claims against the defendants other than Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin have no prospect of success. To use the language of the authorities discussed above, the court should not shrink from striking out a pleading which does not disclose a reasonable cause of action. Those claims should be set aside."
- [18] While in this paragraph his Honour identifies that he has concluded the claims have no prospect of success, as is apparent from consideration of the individual claims dealt with in the reasons, at no other place does his Honour express a view that the claim has no prospects of success. Moreover, at no point does his Honour conclude that the deficiencies in the nature of the claims relied on are such that they cannot be overcome by amendment to the facts pleaded.
- [19] As to the balance of the allegations, his Honour expressed his conclusions more briefly identifying the respondents' complaints as legitimate. These included:
1. that the Statement of Claim did not establish any arguable case for personal liability of the Directors of Mazars (Qld) in negligence: R [50];
 2. similarly, no material facts were pleaded to establish that the first respondents owed a duty to the appellant to take reasonable steps to effect compliance by Mr Wen of his obligations: R [51];

3. the misleading and deceptive character of certain representations was not pleaded: R [52];
4. that the pleading did not identify the alleged breaches of contract: R [53];
5. that in various places the pleading of the state of mind of relevant persons did not comply with UCPR r 150(1)(k): R [54];
6. that the pleadings fail to plead material facts (as distinct from mere assertion) as to the authority of individual defendants or that they had exercised control: R [55]–[56]. As to this, the primary judge described part of the pleading ([15] of the Statement of Claim) as a “perplexing jumble of words and concepts”: R [58].

[20] For those reasons his Honour concluded that the Statement of Claim was flawed. His Honour then went on to state:

“[60] The defendants seek orders that:

- (a) the claim and statement of claim be set aside as against the defendants other than Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin;
- (b) the claim and statement of claim be struck out as against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin; and
- (c) leave to replead be limited to the claims against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin.

[61] For the reasons stated above, I agree that the pleaded claims against the defendants other than Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin have no prospects of success. And, there are, in any event, some significant pleading issues with the claims against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin. That means that the claim and statement of claim should be re-drawn.

[62] Leave to replead should be limited to the claims against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin. If Antai Solar seeks wider leave to replead it can make such an application to the court – with its proposed new pleading.”

[21] The application filed by the respondents in fact did not seek an order that the Claim be struck out as against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin. Nothing turns on this as the order made was relevantly limited to striking out the Statement of Claim but not the Claim as against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin.

[22] Nor did the application as filed seek an order that the whole of the statement of claim against those particular defendants be struck out (though an order was sought striking out a significant number of particular paragraphs of the statement of claim). However, in the written submissions filed with the application on 3 October 2025 the respondents did seek that order: at [6] and [109]. Antai Solar was on notice of that case well before providing its submissions more than 3 weeks later. That the application did not in terms seek the order made by the primary judge is, in the circumstances, no bar to his Honour having made that order.

Summary

[23] For the reasons given below in my view the primary judge fell into error in setting aside the Claim.

- [24] On the other hand, the Statement of Claim is objectionable in many respects. It was and is appropriate that it be struck out with leave to replead.

Setting Aside the Claim

- [25] Generally proceedings must be commenced by a Claim: Rule 9. The Claim is required, *inter alia*, to state briefly the nature of the claim made or the relief sought: Rule 22(2)(a). It must be accompanied by a Statement of Claim: Rule 22(2)(b). Rule 149 sets out requirements for that statement of claim which include the familiar language of requiring that it contains a “statement of the material facts” relied on.
- [26] Rule 16(e) of the UCPR provides that a court may set aside an originating process (which includes a Claim). The circumstances in which that power might be exercised are not stated in the rule itself, but nonetheless must be exercised judicially and in circumstances where, in accordance with established practice, it is appropriate to bring the proceedings summarily to an end.² Rule 171 provides for a court to strike out the whole or part of a statement of claim in various situations including where it discloses no reasonable cause of action, or is vexatious or otherwise an abuse.
- [27] The qualitative difference between setting aside the Claim and striking out a statement of claim is that the former brings the proceedings to an end. The latter does not of itself do so because of the ability of a party to reformulate the pleading to overcome the deficiency (unless some further order is made to preclude that occurring). In exercising the power to set aside a Claim, a court will do so only in the clearest of cases. The circumstances where that might be established can vary. But relevant to the present case, for the case to be clear the position must be that the court is satisfied that the identified deficiency cannot (realistically) be overcome.
- [28] *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91 (Dixon J):
- “A case must be very clear indeed to justify the summary intervention of the court to prevent a plaintiff submitting his case for determination in the appointed manner by the court [with jurisdiction for that purpose] ... But once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.”
- [29] The plurality in *Agar v Hyde* (2000) 201 CLR 552 at [57] (Gaudron, McHugh, Gummow and Hayne JJ):
- “It is, of course, well accepted that a court whose jurisdiction is regularly invoked in respect of a local defendant ... should not decide the issues raised in those proceedings in a summary way except in the clearest of cases. Ordinarily, a party is not to be denied the opportunity to place his or her case before the court in the ordinary way, and after taking advantage of the usual interlocutory processes.”
- [30] Their Honours continued at [57] to explain that all of the different verbal formulations of the test were directed to the same requirement:

² *Lewis v Minister for Police and Corrective Services and Minister for Fire and Emergency Services* [2022] QSC 70 at [3].

“a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way.”

- [31] *Agar v Hyde* at [57] was quoted and affirmed again by the High Court in *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256 at [46] (Gleeson CJ, Gummow, Hayne and Crennan JJ).

- [32] *Palmer v Magistrates Court of Queensland; Palmer Leisure Cooloom Pty Ltd v Magistrates Court of Queensland* [2020] QCA 47 applied those High Court principles to an application made under r 16(e). Fraser JA observed that setting aside the claims under the rule at [26]:

“denied the appellants access to the usual interlocutory processes and a trial.”

- [33] As such his Honour (with Morrison and Boddice JJA agreeing), applied *Agar v Hyde* and *Batistatos v Roads and Traffic Authority* and found at [27]:

“that ‘a court whose jurisdiction is regularly invoked in respect of a local defendant ... should not decide the issues raised in those proceedings in a summary way except in the clearest of cases’; there must be such ‘a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way’ as to justify summary termination of the proceedings.”

Striking out a Statement of Claim

- [34] As mentioned, rule 171 of the UCPR authorises the Court to strike out the whole or part of a pleading if (relevantly) it discloses no reasonable cause of action, has a tendency to prejudice or delay the fair trial of the proceedings, is unnecessary, is vexatious or is an abuse of process of the court. Rule 171 operates in the context of rule 5(1) which provides:

“(1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.”

- [35] The power conferred by rule 171 (confirming the court’s inherent jurisdiction) is discretionary and can be exercised if the pleading does not articulate a reasonable cause of action. In that situation whether or not directions are made to permit or preclude repleading turns on whether it has been established that no reasonably arguable cause of action is able to be pleaded. The discretion might also be exercised to strike out a confusing pleading, one which fails to identify material facts, and in a variety of other circumstances: *Robert Bax & Associates v Cavenham Pty Ltd* [2011] QCA 53 at [16].

The Pleaded Causes of Action

- [36] The respondents accept that consideration of their application was and is to proceed on the assumption that the facts pleaded are correct. The respondents do not contend that the Claim ought to be set aside against Mr Wen, Mazars (Qld) Pty Ltd or Mr Yin. It can be taken that the respondents accept for these purposes that causes of action may be able to be pleaded against these respondents (though issue is taken with the form of the current statement of claim).

- [37] Issue is, however, taken with the Claims which extend liability to the other respondents.

The Partnership

- [38] The Claim seeks:

- “1. A declaration that each of the First Defendants, from a time prior to January 2021 to at least 13 October 2023, were members of a firm or partnership (**the Mazars Partnership**) within the meaning of those terms as used in sections 4 and 5 of the *Partnership Act 1891 (Qld)* (**Partnership Act**), in that:
 - (i) the firm or partnership carried on the business of providing accounting, consultancy and business advisory services in common with a view to profit in Queensland;
 - (ii) with such firm or partnership being constituted:
 - (i) by at least, the aforesaid First Defendants themselves;
 - (ii) further or alternatively, by the First Defendants carrying on such business in partnership with:
 - (A) the Practice Entities; and/ or
 - (B) the salaried Partners.
2. An order that such entities or persons who formed or carried on the business by way of the Mazars Partnership, and did so under the firm name style or title of Mazars, are liable, pursuant to the Partnership Act, 1981 (Qld) for the loss suffered by the Plaintiff namely:
 - (a) the sum of \$9,264,721.66 being the monies misappropriated by the Second Defendant;
 - (b) the sum of \$34,678.39 being the sums paid by the Plaintiff to the Mazars Partnership for and in relation to invoices rendered pursuant to the Director Services Agreement and Accounting Services Agreement.”

- [39] This is taken up in the statement of claim at Part VIII. By paragraph 64 it is pleaded in part:

- “(a) the First Defendants, and/ or
 - (b) the Second Defendant; and/ or
 - (c) one or more of the Practice Entities,
- were engaged in carrying on a single business in common with a view to profit under the firm name or style Mazars in Queensland, in that:
- (d) the Mazars Business offered and provided professional accounting and consulting services in Queensland for value;
 - (e) the director Partners were, and are, engaged in the carrying on of a single business, comprising multiple activities, divisions or entities.”

- [40] The allegations made in this paragraph are then relied on to allege the existence of the Mazars Partnership carrying on the Mazars Business: statement of claim paragraph 65. The primary judge was rightly critical of the language used being obscure as to the case being advanced. The drafter's use of "and/or" makes for a number of possibilities and a degree of uncertainty; if not absurdity. It cannot for instance, be thought that Mr Wen himself constituted a partnership, but the language in paragraph 64 would permit that construction. There is also a tension between the partnership identified in subparagraphs (a) to (c) and the language employed in (e). So again it permits an absurd possibility that the third respondents are partners, or Mr Wen was a partner, in the partnership, but because (in that) the first respondents were engaged in a single business enterprise.
- [41] Both paragraph 65 of the statement of claim and paragraph 1 of the Claim suggest that a somewhat more confined (but still ill-defined) partnership is intended to be pleaded. In those paragraphs the core partners are identified as the first respondents. The language of who else might be a partner is slightly different between the Claim and the statement of claim. Additionally, the Claim refers to a partnership as possibly including Salaried Partners, which is adopted in the statement of claim in paragraph 65, but in paragraph 64 only Mr Wen is selected as a possible partner being a salaried partner.

The Natural Persons

- [42] A fair reading of the statement of claim is that the core case which is sought to be made is that the first respondents were carrying on a business as a partnership, even if other and in some instances, absurd, possibilities are also open. The material facts relied on for this allegation are however sparse. They include:
1. By paragraph 6: that those conducting the business utilised the Mazars trade mark; the Mazars webpage represented inter alia that each of the first respondents and Mr Wen held the name, status and title of "Partner"; that the business "[operated] a united partnership as one integrated team from, inter alia, Mazars Business Premises (Brisbane)" ;
 2. By paragraph 7: that the fee arrangements stated in the Terms and Conditions of Engagement used in the business identified the level of fees charged by someone who was a Partner;
 3. By paragraphs 24 and 34: it is identified that those Terms of Engagement differentiated between fees charged by someone who was a "Partner" from someone who was a Director, Manager or Senior Associate;
 4. By paragraphs 25 and 35: it is recited that the Terms of Engagement also defined Mazars as referring, as appropriate to Partners, Directors and Employees;
 5. By paragraph 17: it is stated that the China Brochure by which it is alleged Mazars held it out as a "globalised and unified integrated partnership".
- [43] It is alleged that the first respondents (at least) were engaged in carrying on business in common with a view to profit under the firm name Mazars in Queensland: paragraph 64. However, no facts beyond that are identified.
- [44] The primary judge, when dealing with this pleaded case:

1. Identified that Antai Solar had submitted that at this preliminary stage it is not possible for [it] to plead, with specificity, which individuals and/or entities constituted an operative partnership: R [16];
 2. Rejected the notion that interlocutory processes could be used to fish for a case: R [22];
 3. Stated that given the state of the pleading “there is unlikely to be any improvement in the particularity of the pleading”: R [23].
 4. Concluded the present pleading and particulars of the alleged partnership were inadequate and that conclusion is not excused nor lessened by identifying the early stage of the proceedings: R [25].
 5. The multiplicity of the possible combinations of the partners in the partnership and that respondents on one of those combinations were alleged to be partners of the companies of which they were directors was “an unlikely partnership”: R [32].
- [45] Much of this can be accepted. There are at least two deficiencies in the pleaded case. The first is that little in the way of material facts are pleaded. The second arises from the way Antai Solar has expressed the class and potential variations of the class of entities who form that partnership. The primary judge however referred to improvement of the pleading being “unlikely”, and to one of the possible identified partnerships as being “unlikely”. These conclusions fall short in my view of the application of the high test required to summarily set aside the Claim. Even if it is accepted that the appellant could not plead with specificity all of the entities in the partnership that does not preclude it being able to plead a case more precisely and significantly more narrowly than it has presently done based on the material facts of which it is aware at this stage.
- [46] Similarly, the primary judge’s conclusion that the present pleading is ‘fishing’ ought in my view to be understood as a description of the broad net cast to try to catch many participants, rather than there being no demonstrable case against some identifiable partners.

The Corporate Entities

- [47] The possible case for the partnership including (or comprising only) the third respondents should be separately considered. They are identified in the pleading as the “Practice Entities”; paragraph 1. While it is pleaded that they employ the trademark, unlike the first respondents and Mr Wen, they do not use and are not identified by the descriptor “Partner”. The first respondents are pleaded as having control of the Mazars Business “through the corporate structure” (which identifies the third respondents): paragraph 15. The references on the website and Chinese Brochure are capable of referring to them as part of the partnership mentioned. The Terms of Engagement, however, which differentiate between the rates of fees charged for work performed by a Partner, Director, Manager or Senior Accountant are not suited to refer to something done by a corporate entity at all.
- [48] Given the terms of paragraph 65 it may be that Antai Solar does not seek to make out a case of the third respondents alone comprising the partnership. Beyond that and in any event, it seems unlikely that Antai Solar would be able to plead material facts sufficient to assert a partnership involving the third respondents. The primary judge

described the conclusion of the partnership including them and their directors (favourably) as “unlikely”. Nonetheless, I do not believe it can be said, and the primary judge did not find, that (to adopt the language in *Palmer*) this is one of those “clearest of cases”; and that there is such “a high degree of certainty about the ultimate outcome of the proceeding if it were allowed to go to trial in the ordinary way” as to justify summary termination of the proceedings.

The Significance of the Director and Accounting Services Agreement

- [49] Senior Counsel for the respondents urged that the primary judge was correct to find that the only respondent contracting party to the Director Services Agreement and to the Accounting Services Agreement was Mazars (Qld) Pty Ltd (noting that even as to this there was no appeal from the finding in relation to the Accounting Services Agreement). I shall return to these agreements again in relation to a contractual claim made in the Claim. But it was urged that apart from the making and performance of those agreements by Mazars (Qld) Pty Ltd, no material facts were pleaded to identify any entity conducting business. Accordingly it is said the only entity for whom any material facts are pleaded as to carrying on a business is Mazars (Qld) Pty Ltd.
- [50] I have already identified the facts currently pleaded, apart from the terms of those two agreements which are relied on by Antai Solar. I should add, however, that I do not read his Honour as doing more than stating that on their face the two agreements identify Mazars (Qld) Pty Ltd as the contracting counterpart to Antai Solar. His Honour should not be understood as making a finding that the agreements were not in fact entered into as part of a business conducted by a partnership consisting of Mazars (Qld) Pty Ltd and others, or potentially even by a partnership of the first respondents causing Mazars (Qld) Pty Ltd to make those agreements as their undisclosed agent. The conclusion that on the face of the agreements as to the identified contracting party does not lead to the conclusion that it is not possible (albeit by amendment to the statement of claim) to plead those possible partnerships or agency.

The Contractual Claim

- [51] The Claim seeks damages for breach of contract against the first respondents and the third respondents (paragraph 5 of the Claim); and separately from Mr Wen (paragraph 6), but not against the fourth respondent.
- [52] The contracts referred to in the pleadings are the Director Services Agreement and the Accounting Services Agreement. As discussed, the primary judge considered the terms of each and concluded that the sole respondent party to those agreements was Mazars (Qld) Pty Ltd: see R [35]–[36]. Indeed his Honour said that “whether or not there was some unidentified partnership [the appellant] retained Mazars (Qld)” and not any other entity. His Honour concluded “nothing could be clearer”: R [36]. The claim against the respondents other than Mazars (Qld) was said to have “no prospect of success”: R [41].
- [53] The grounds of appeal only challenge the conclusion about the contracting party for the Director Services Agreement: see Ground 2 of the Notice of Appeal.
- [54] The Director Services Agreement is only identified in the statement of claim as a written document: paragraphs 21 and 33. Having regard solely to the form of the

Director Services Agreement and the covering Engagement Letter I would tentatively agree with the conclusion that the identified contracting party is Mazars (Qld) Pty Ltd.

1. The Engagement Letter itself bears the Mazars trademark but at the foot of the first page Mazars (Qld) Pty Ltd (only) is identified.
2. The Engagement Letter asks the recipient to sign and return an attached page “appointing Mazars (Qld) Pty Limited as tax agent and accepting the terms and conditions enclosed”. The attached page also refers to that company’s appointment.
3. The attached Terms and Conditions authorise “outsourcing” by Mazars (Qld) Pty Ltd. It would be an odd construction for this to appear in a services agreement where other entities are also contracted to provide the services.

[55] On the other hand, there are contrary indicators: the use of the trademark; the use of a Mazars signature block on the letter; the differentiation between that signature block on the Director Services Agreement, and the signature block on the Accounting Services Agreement which is explicitly signed by Mazars (Qld) Pty Ltd; and the definition of “Mazars” which refers “as appropriate to Mazars, any of its practice entities, Partners, Directors and employees” and so on. These are ambiguous. That said last of these, for instance, could be contended to lead to the conclusion that the Director Services Agreement was also made by or on behalf of employees. That would seem so unlikely as to lead me to conclude the definition is not to be given the operation *Antai Solar* urges but rather serves the purpose at least of extending the provisions limiting liability to all such entities. But it is not necessary to express a concluded view at this early stage of the proceedings or to dispose of the appeal.

[56] It is alleged that a partnership existed of which Mazars (Qld) Pty Ltd was a member. The statement of claim in numerous paragraphs makes, allegations which at least imply that the Director Services Agreement was made in the course of the business conducted by that partnership: for example statement of claim paragraphs 6(c)(ii) (H), 7(b)(viii), 7(c)(ii)(B) and (iii), 8(g), 15. Accordingly Mazars (Qld) Pty Ltd is, prima facie, an agent of its partners and its acts bind its partners: section 8 of the *Partnership Act 1891* (Qld). The partners are jointly liable with Mazars (Qld) for all debts and obligations of the firm: section 12 *Partnership Act 1891*: *MAM Mortgages Ltd (in Liq) v Cameron Bros* [2002] QCA 330 at [22].

[57] This is so whether or not on the face of it the Director Services Agreement can be said to have been made by Mazars (Qld) Pty Ltd expressly as agent for those partners.

[58] Accordingly while I provisionally agree that only Mazars (Qld) Pty Ltd appears to be the contracting party it does not follow that the claim for damages for breach of the agreement is plainly only available against it and not also its (alleged) partners.

[59] The position is, of course, otherwise on one of the alternative possibilities pleaded, namely that the partnership is between the natural person first and second respondents. The members of that partnership might be liable if it was arguable that Mazars (Qld) Pty Ltd entered into the Agreements as undisclosed agent for the partners: *Marginson v Ian Potter & Co* (1976) 136 CLR 161 at 169. But in any event a focus of liability would then be the liability of Mr Wen as a partner, exposing his partners to liability, rather than a claim for damages for breach of the Director Services Agreement.

- [60] A number of issues concerning the breach of contract claims are the subject of the respondents' Notice of Contention. They are all matters which bear upon the adequacy of the statement of claim and do not, in my view, demonstrate that the Claim is to be summarily set aside. The pleading asserts that the Director Services Agreement contained implied terms including that Mr Wen would act in the best interests of Antai Solar: paragraph 36. It is also pleaded that Mr Wen (in the course of performance of that Agreement) misapplied the funds in contention. I have no difficulty in concluding that even if the pleading is presently deficient, it is not one realistically incapable of being amended to deal with those deficiencies.

Tortious Duties

- [61] Antai Solar pleaded:

1. That the first respondents owed Antai Solar a "non-delegable duty" to ensure that Mr Wen and in turn Mr Yin carried out performance of various of their duties as expressed elsewhere in the pleading (including as director or officer of Antai Solar) including the careful performance of their duties under the Director Services Agreement and the Accounting Services Agreement.
2. Alternatively, that:
 - (i) the first respondents owed it a duty to take all reasonable steps to "effect compliance with Wen of his obligations" pleaded in part VII of the statement of claim.
 - (ii) the first respondents owed it a duty to take all reasonable steps to "effect compliance with Yin of his obligations" pleaded in part X of the statement of claim.

- [62] The Claim seeks damages for negligence as against the third respondents but no such claim has been advanced by any allegations in the statement of claim. The primary judge did not identify this as a basis for setting aside part of the Claim and no submissions have been directed to solely this aspect as justifying the setting aside of the Claim against the third respondents (apart from Mazars (Qld) Pty Ltd). This issue should be addressed in any amended pleading.

- [63] On appeal Antai Solar did not advance any alleged error in relation to the duty of care pleaded against the first respondents, other than the non-delegable duty. The primary judge dealt first with the non-delegable duty contention. His Honour stated that a non-delegable duty arises where there is 'a special responsibility or duty to see that care is taken' identifying the typical situations as employer/employee, hospital/patient; school authority/pupil and so on: R [44]. His Honour then found:

"[44] Such a duty arises where there is 'a special responsibility or duty to see that care is taken'. Typically, such a special responsibility arises where the relationships are employer/employee; hospital/patient; school authority/pupil; and occupier/contractual entrant in circumstances involving extra-hazardous activities.

[45] On this point, I accept the defendants' submissions that:

- (a) the non-delegable duty that the plaintiff pleads at paragraph 74 of the statement of claim—being a duty to

the plaintiff to ‘procure, supervise or ensure the proper performance by Wen and Yin of the services required to be performed by them under the Accounting Services Agreement’ is not a non-delegable duty within the recognised categories of cases giving rise to such a duty; and

- (b) in any event, Antai Solar does not plead, with precision, the nature and content of that duty which could give rise to a new category.

[46] No circumstances are pleaded that would give rise to a special responsibility or duty to see that care is taken. Paragraph 70(a) of the statement of claim contains an allegation to the effect that the director/partners ‘collectively exercised complete control over the conduct of the Mazars Business’. But it is not clear why the director/partners’ control here was any more stringent than would be the case for any other business or professional practice or why the control here gives rise to a special responsibility or duty.

[47] Paragraphs 70(b) to (r) of the statement of claim comprise numerous allegations concerning what the director/partners knew or understood but, again, it is unclear as to why that subjective knowledge gives rise to a special responsibility or duty or to a new category of non-delegable duty.”

[64] The primary judge’s reasons reveal that his Honour could not find any material facts pleaded which might give rise to a non-delegable duty. His Honour does not conclude that he has formed the view that this position could not be overcome by amendment to the statement of claim.

[65] The foundation of the existence of a non-delegable duty is the relationship between the parties, in which one party has a special dependence on (or possibly vulnerability to) the situational control of the other in that relationship, and that the other party can be said to have assumed or undertaken to take care to protect the first party from harm: *AA v Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle* (2026) 100 ALJR 170 per Gageler CJ, Jagot and Beech-Jones JJ at [17], [21]–[22], [78], [101]–[102], [105]; per Gordon J at [272]–[273]; per Edelman J at [348].³

[66] To extend the existence of such a duty to the performance by Mr Wen or Mr Yin of their obligations under the Agreements, or perhaps Mazars (Qld) Pty Ltd’s performance by Mr Wen and Mr Yin of those obligations, would appear novel.

[67] Antai Solar identifies in paragraph 70 the facts it relies on in its statement of claim to make out such a duty as including the first respondents being aware of a number of things. This is, to some extent, inelegant but should be understood as both an allegation of the facts and also that the first respondents were aware of those facts. It was urged on appeal by senior counsel for Antai Solar that the facts themselves are

³ It should be noted that Edelman J observed ‘vulnerability’ was not an essential requirement and also not a substitute for the assumption of responsibility: at [364].

otherwise found in the pleading. Given the view I take as to the fair reading of paragraph 70 it is unnecessary to examine that contention further. In summary the facts alleged are to be understood as being:

1. That the firm marketed a programme directed, inter alia, to Chinese owned corporations desirous of carrying on business in Australia: paragraph 70(e).
2. In doing so Mazars asserted that its services would be provided by personnel who would act honestly in the interests of the client: paragraph 70(e).
3. That programme contemplated the personnel could be sole director of and in control of the affairs of the Australian subsidiary of the foreign entity: paragraph 70(e), (k).
4. There was a foreseeable risk of serious loss if the personnel did not act in that way: paragraph 70(o).
5. That in his dealings with Antai Solar, Mr Wen in some capacity (which might include for the partnership constituted by or with the first respondents) made representations as to the need to have one Australian director, and as to the expertise of Mazars to provide the person and perform the tasks needed for the establishment and then conduct of business in Australia: paragraphs 17-19.
6. Antai Solar was a foreign owned entity dependent on Mazars for advice and for the provision of the necessary personnel and services it needed. It relied entirely on Mazars for this: paragraph 6.

[68] There are a number of obstacles to the appellant successfully defending the present pleading. The pleaded duty is to ensure performance of certain obligations rather than to ensure that reasonable care is taken to avoid harm to Antai Solar. The present drafting of the pleading assumes that a non-delegable duty amounts to a warranting of the successful performance of the obligations rather than to ensure reasonable care was taken. Additionally, the scope of the duty is identified without any precision. The subject matter of the obligations to be performed is identified (albeit in an inherently vague way) in paragraph 71(a) as:

- “(a) ought to be held to have assumed responsibility for ensuring adherence by Wen as sole director, or alternatively, sole director and company secretary, in the discharge of services provided pursuant to the agreements entered into by ASA, to:
 - (i) the common law and statutory duties and obligations pleaded herein; and
 - (ii) the obligations and duties set out in the Mazars Internal Policy Manual and the APES standards.”

[69] It is then pleaded that the non-delegable duty extended to ensuring:

- “(b) thereby owed a non-delegable duty to ASA:
 - (i) to ensure that those duties and obligations, or each of them, were carried out by Wen; and/ or
 - (ii) to ensure the careful performance of work carried out by Wen and Yin in the performance of their duties under the

Director Services Agreement and the Accounting Services Agreement; and/ or

- (iii) to design, implement and maintain a suitable system of supervision incorporating appropriate checks and balances over the actions of Wen when carrying out his duties under the Director Services Agreement so as to ensure the matters pleaded in (b)(i) and (ii) immediately above;
- (iv) to put in place sufficient and suitable policies, principles or rules in order to preclude or prevent Wen from breaching his fiduciary obligations and other obligations as pleaded in Part IX hereof.”

[70] These are drafting excesses and irregularities which perhaps could be overcome. Putting those aside, the respondents’ contention is that no non-delegable duty could be pleaded having regard to the relationship between Antai Solar and the first respondents. In substance it is urged that there is no assumption of responsibility by the first respondents (whether or not there might be said to be one by Mazars (Qld) Pty Ltd). The first respondents, it is said, are merely directors of companies carrying on company business. No material fact, it is said, is pleaded to go past their role as such to give rise to the special relationship necessary for the non-delegable duty.

[71] There is considerable force in this submission. But it is mounted from the position of there being no or not sufficient material facts pleaded. That does not mean that the position cannot be cured by amendment.

[72] While the identification of a non-delegable duty on the first respondents in these circumstances would be both doubtful and novel, perhaps even highly doubtful, it is not able to be described as being one as to which there is a high degree of certainty that it will fail. In the circumstances the Claim ought not to have been set aside as to this claim.

Statutory Claims

[73] Claims are pleaded based on alleged contraventions of s 18 of the *Australian Consumer Law* (ACL). They fall into four categories. None of them has been properly pleaded.

[74] Category 1: By paragraph 93 of the statement of claim it is alleged that representations identified in paragraph 55(b), 46 and 57 were made by Mr Wen but “on behalf of” the Mazars Partnership or alternatively the entities conducting the Mazars Business. The cross referred paragraphs concern the need for Mr Wen’s own bank account to be linked to the Antai Solar account and associated statements made by Mr Wen to facilitate and then delay detection of his misuse of the company account.

[75] Category 2: By paragraphs 90 and 92 of the statement of claim representations are alleged to have been made (or implied) from the issuing of monthly accounts for performance of work. The invoices are pleaded to be issues “under the Accounting Services Agreement”. The conduct is alleged to have been on behalf of various respondents: paragraph 90 (d).

[76] Category 3: Paragraph 91 of the statement of claim relies on the conduct alleged in paragraphs 82, 83, 85, 86 and 88. These paragraphs all refer to conduct by Mr Yin in

recording transactions and is said to have amounted to misrepresentations of various kinds.

[77] Category 4: By paragraphs 94 to 98 conduct amounting to representations by silence is relied on; broadly in not bringing to Antai Solar's attention the irregularities which had been occurring in its affairs.

[78] The respondents advance various contentions as to these allegations.

1. First, it is urged that the expression 'on behalf of' is not sufficient to make the representations ones made by the third respondents: s 84(2) of the *Competition and Consumer Act 2010* (Cth).
2. It is then said there is no allegation of fact made which would amount to Mr Wen's statements being made as agent for the third respondents. While there is an assertion of agency (in paragraph 8) no material facts for that agency are identified nor is it alleged that the representations were made within his actual or apparent authority as agent for the third respondents.
3. Second, again while it is alleged Mr Wen was agent of the first respondents the only pleading as to his acting within the scope of the authority is in paragraph 15(b) and is unrelated to the making of the representations the subject of the present claim.
4. Third, similarly as to Mr Yin (or another accounting officer referred to, Mr Chen) while it is alleged they were agents of the various respondents and acting within authority as such (see paragraphs 10 and 11) no material facts are pleaded.
5. Fourth, it is urged that the first respondents cannot be liable for breach of s 18 of the *ACL* save if that section had an extended operation by force of s 6 of the Act and no attempt have been made to do so (including as to how the invoices were provided to Antai Solar).

[79] The primary judge did not explicitly deal with these issues. His Honour identified as a complaint made by the respondents that the misleading character of the misrepresentations in paragraph 93 is not identified. At a superficial level that is true but paragraph 60 of the statement of claim does plead that the representations in each of paragraph 55(b), 56 and 57 (those picked up by paragraph 93) were untrue identifying why that is alleged.

[80] The issue falls for this court to determine on the notice of contention. I have no difficulty in concluding that the pleading is deficient. The contentions advanced by the respondents are well made as criticisms of the present pleading. However, none of them can be said to be incapable of being overcome by amendment to the pleading. Whether they can be cured is something which in my view Antai Solar ought to be given an opportunity to undertake.

Claims Against Mr Wen

[81] By the Claim Antai Solar sought relief against Mr Wen including for breach of contract, negligence, deceit, contravention of statutory duties as director under the *Corporations Act* and for knowing involvement in the misleading and deceptive conduct of the Mazars Partnership under s 18 of the *ACL*.

- [82] The primary judge was not invited to set aside the Claim as against Mr Wen and did not do so.
- [83] Some difficulties arise from the course the primary judge took. In particular the Claim seeks compensation from Mr Wen for being knowingly involved in the misleading and deceptive conduct of the Mazars Partnership under s 18 of the *ACL*. This has not been struck out but, of course, begs the question of who constitutes that partnership. Whomever they are, as the primary contraveners, they might be thought to be proper parties to the claim made against Mr Wen. Additionally, each of them would also be exposed to potential responsibility for all the claims made against Mr Wen if he were held to be one of their partners (or agent).
- [84] Accordingly, implicit in allowing the repleading of the claims advanced against Mr Wen is a recognition of the potential viability of some claims against the first and third respondents (in addition to Mazars (Qld) Pty Ltd).⁴

Strike Out of Pleadings

- [85] In the course of his reasons the primary judge identified a series of deficiencies in the statement of claim which I have mentioned above.
- [86] This court is slow to interfere with decisions made by a primary judge on matters of practice and procedure. It will do so, of course, if explicitly or inferentially the primary judge can be said to have made some misapplication of principle.
- [87] But that cannot be said of the decision to strike out at least very significant parts of this Statement of Claim. It is unnecessary to canvass all of the points identified by the primary judge or by the respondents, and will be sufficient to touch upon a few only.
- [88] *First*, the articulation of the partnership as comprising the first respondents “and/or” the second respondent “and/or” one or more of the third respondents as engaged in a single business has the potential to lead to a confusing number of combinations and indeed would, on the language used, allow for a “partnership” comprising Mr Wen alone or any one of the third respondents alone: at statement of claim [64]. Such a partnership cannot exist.
- [89] *Second*, the Mazars Business is then pleaded to be carried on by that possibly wide range of combinations but seemingly inconsistently with that it is also pleaded that the “substance and reality ... was that of a partnership between the individual [first respondents], notwithstanding the interposition of separate salaried partners (so including Mr Wen) and the third respondents: statement of claim paragraph 64(j).
- [90] *Third*, again inconsistently with the range of combinations initially referred to at paragraph 65 of the statement of claim it is pleaded that the partnership was between the first respondents or alternatively them and “with one or more of” the other respondents.
- [91] *Fourth*, as I have already mentioned, there is a paucity of material facts pleaded for the existence of a partnership which includes the third respondents (whether by two or more of them, or with the first respondents or Mr Wen).

⁴ The same issue does not arise in relation to Mr Yin where on its face the claim is not expressed on the basis of any knowing concern in a contravention by others.

- [92] *Fifth*, the primary judge accepted, and in my view correctly, the submission made by the respondents that the non-delegable duty pleaded at paragraph 74 of the statement of claim in terms that the respondents ensured Mr Wen and Mr Yin performed their services properly is not a recognisable duty and needs to be repleaded together with material facts relied on to establish the relationship giving rise to a properly identified duty: R [45]–[46].
- [93] *Sixth*, the primary judge found, correctly in my view, at R [54] that:
- “[54] ...the pleas of states of mind in paragraphs 16(b), 26(c), 27, 70, 72, 94, 96 and 97(b)(ii) are inadequately pleaded contrary to rule 150(1)(k) of the UCPR.”
- [94] *Seventh*, that the pleading fails to plead material facts (as distinct from mere assertion) as to the authority of individual defendants or that they had exercised control: R [55–56]. As to this, the primary judge described part of the pleading (paragraph 15 of the Statement of Claim) as a “perplexing jumble of words and concepts”: R [58]. One instance of that is the language “complete control over and, where appropriate, or necessary” in paragraph 15(a)(i) where one is left to speculate as to where it was appropriate or when was it necessary to do whatever is then said was done.
- [95] *Eight*, the pleading does not seek to identify the loss arising from each alleged cause of action separately and, as pointed out by the respondents, there must at least be some question about the adequacy of this in circumstances where some of the claims concern a failure to act after Mr Wen had embarked on this course or deception and thus some of the money claimed might have already been lost.
- [96] There are other matters referred to by the respondents which it is unnecessary to further canvass. Enough has been shown to support a conclusion that the statement of claim is one which at least in part should be struck out.
- [97] As discussed in *McFaul v Green & White Freightlines Pty Ltd* [2026] QCA 48 at [37] in order to justify striking out a pleading it is not necessary that every paragraph of it be objectionable. The court need not trawl through an obviously inadequate pleading to preserve the parts to which (in isolation, assuming they can be isolated from the balance) no objection might be taken. That is the case here. The nature of the deficiencies described above so permeate the pleading and are sufficiently extensive that it cannot be said a primary judge would be to misapply principle in deciding to strike out the whole pleading.

Summary

- [98] It is clear from the above discussion that the statement of claim is substantially deficient to meet the requirements of such a pleading and ought to be amended. No error is shown in striking it out in its entirety.
- [99] On the other hand, it is not able to be concluded that those deficiencies in whole or part are not capable of being cured by amendment. For that reason at least *prima facie* the Claim itself should not (yet) have been set aside. The primary judge’s reference to that in some respects it was unlikely that a case could be pleaded to support the relief sought in the Claim fall short of the standard required to be applied in determining whether to set aside the Claim. It is such a misapplication of the appropriate test that his Honour’s order in that respect, even though in respect of a matter of practice, should be set aside.

- [100] There is a further dimension to his Honour's order that should be mentioned. The Order giving leave to replead is expressed as "Subject to further order of the court, [Antai Solar] have leave to replead limited to the claims against Mazars (Qld) Pty Ltd, Mr Wen and Mr Yin.". The respondents submitted that this enabled Antai Solar to apply for leave to replead even as against the first respondents and the third respondents quite apart from Mazars (Qld) Pty Ltd. Such a view is consistent with his Honour's reasons at R [62], and comprehended by the opening phrase of that order, though not expressly stated in the Order made.
- [101] The provision of this apparent liberty to amend as against the first respondents and the third respondents quite apart from Mazars (Qld) Pty Ltd suggests that the primary judge had not formed the view that the deficiencies in the current pleading could not be overcome by amendment. That reinforces the view I have reached as to the error made by his Honour in setting aside parts of the claim. Additionally, once the Claim is set aside against the first respondents and the third respondents quite apart from Mazars (Qld) Pty Ltd it is not sufficient to seek leave to amend the statement of claim. The Claim itself would need to be amended before or in conjunction with doing so. It is perhaps implicit in his Honour's reasoning that this is what he had in mind.
- [102] In any event, there is little utility in the course his Honour adopted. If there is to be an amended statement of claim, in my view it should be one which pleads against all such respondents as Antai Solar is advised to pursue and against whom it can mount a defensible pleading. If it were thought desirable that a draft of that amended pleading had to be provided in order to inform whether the amendment should be permitted (that is abrogating the usual right to amend) then such a direction could have been made. The present order in my view represents an inefficient mix of both possibilities.

Conclusion

- [103] For these reasons in my view the appeal should be allowed. The appropriate orders are:
1. The appeal is allowed.
 2. The Order made setting aside the Claim against the defendants other than the third defendant, Mazars (Qld) Pty Ltd, the second defendant and the fourth defendant is set aside.
 3. Order 4 is deleted and in its place, it is ordered that the plaintiff have leave to replead its claims against the defendants.
 4. The parties are to provide submissions in writing as to the appropriate order as to costs, limited to 5 pages, within 7 days of the date of delivery of this judgment.