

SUPREME COURT OF QUEENSLAND

CITATION: *Yang v Gao* [2026] QSC 191

PARTIES: **WEIMIN YANG**
(plaintiff)
v
MENGPEI GAO
(first defendant)
ASCENT LAWYERS PTY LTD
ACN 624 286 504
(second defendant)
CHAI HOE
(third defendant)
ROYSON LOUIS SHI JIE RAINS
(fourth defendant)
HARMONY LEGAL PTY LTD
ACN 648 878 700
(fifth defendant)
MICHAEL AMERENA
(sixth defendant)

FILE NO: BS 519 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 17 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 7 May 2026, 2 June 2026, 18 August 2026

JUDGE: Sullivan J

ORDER: **The order of the Court will be:**

- 1. The claim and statement of claim are each struck out in their entirety pursuant to the inherent jurisdiction of the Court and rules 16(i) and 171 of the *Uniform Civil Procedure Rules 1999* (Qld)**

CATCHWORDS: PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — PLEADINGS — STRIKING OUT — DISCLOSING NO REASONABLE CAUSE OF ACTION OR DEFENCE — where the defendants were the legal representatives of an opposing party to the plaintiff in separate proceedings — where the plaintiff alleges wrongdoing by the defendants in the course of the separate proceedings — where the plaintiff did not specifically plead any intentional tort or breach of duty by the defendants —

where the plaintiff submitted that the defendants breached professional obligations — whether the defendants owed the plaintiff a tortious or fiduciary duty — whether an alleged breach of legal professional obligations gives rise to a freestanding cause of action — whether advocates’ immunity is enlivened — whether the plaintiff should be given leave to replead

Australian Solicitors’ Conduct Rules 2023, r 3.1, r 19.1

Foreign Acquisitions and Takeovers Act 1975 (Cth)

Land Title Act 1994 (Qld), s 9A, s 10, s 121, s 126, s 131

Legal Profession Act 2007 (Qld), s 452, s 453, s 454, s 455, s 456, s 457, s 458, s 459, s 460, s 461, s 462, s 463, s 464, s 465, s 466, s 467

Migration Act 1958 (Cth), s 131

Uniform Civil Procedure Rules 1999 (Qld), r 16, r 150, r 171

Al-Kandari v JR Brown & Co [1988] QB 665

Attard v James Legal Pty Ltd [2010] NSWCA 311

Attwells v Jackson Lalic Lawyers Pty Ltd (2016) 259 CLR 1

Burrell Solicitors Pty Ltd v Reavill Farm Pty Ltd [2016] NSWSC 303

Caboolture Park Shopping Centre Pty Ltd (in liq) v White Industries (Qld) Pty Ltd (1993) 45 FCR 224

Collins v Metro North Hospital and Health Service (2023) 16 QR 268

D’Orta-Ekenaike v Victoria Legal Aid (2005) 223 CLR 1

Flowers v Hicks [2024] SASCA 126

General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125

Giannarelli v Wraith (1988) 165 CLR 543

John Ljubomir Atanaskovic and the persons named in Schedule A trading as Atanaskovic Hartnell v Birketu Pty Ltd [2020] NSWSC 573

Keefe v Marks (1989) 16 NSWLR 713

Legal Services Commissioner v Kotsifas [2014] VCAT 1615

Li v Yang [2025] QSC 233

Love v Robbins (1990) 2 WAR 510

LZU v YXW (No 2) [2026] QSC 62

Myers v Elman [1940] AC 282

Port Ballidu Pty Ltd v Mullins Lawyers [2017] QSC 91

White Industries (Qld) Pty Ltd v Flower & Hart (a firm) (1998) 156 ALR 169

Wilson v Carter [2005] NSWSC 1351

COUNSEL:

The plaintiff appeared on her own behalf

B Kabel for the first and second defendants

A Nicholas for the third, fourth and fifth defendants

E J Cameron (sol) for the sixth defendant

SOLICITORS: Carter Newell for the first and second defendants
 Barry Nilsson for the third, fourth and fifth defendants
 DWF (Australia) for the sixth defendant

Introduction

- [1] Ms Yang, the plaintiff in this proceeding, is involved in ongoing litigation with her former de facto partner, a Mr Li, in proceeding number 1966 of 2022 in the Supreme Court of Queensland (“the **Main Proceeding**”). Ms Yang is the defendant in the Main Proceeding.
- [2] The Main Proceeding concerns real property located at Staysail Crescent, Clear Island Waters (“the **Clear Island Property**”).
- [3] The Clear Island Property is registered in Ms Yang’s name and Mr Li has lodged a caveat over it, claiming, amongst other interests, an equitable interest arising from a resulting trust founded upon his alleged contribution of the vast bulk of the purchase price for that property.
- [4] In the Main Proceeding Ms Yang disputes the claimed equitable interest and, amongst other things, alleges that Mr Li was unable to acquire an interest in the Clear Island Property as it was illegal for Mr Li to have done so by reason of the provisions of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (“**FATA**”).
- [5] Ms Yang has brought two separate applications in the Main Proceeding to remove the caveat over the Clear Island Property. Ms Yang has failed in both applications. The decision of Hindman J in the first application is *Li v Yang* [2025] QSC 233, and was handed down on 26 June 2025. The decision in the second application was that of Smith J in *LZU v YXW (No 2)* [2026] QSC 62, and was handed down on 2 April 2026.
- [6] This proceeding (“the **Current Proceeding**”) was commenced on 6 February 2026. In it, Ms Yang has sued four legal practitioners and two corporate legal practices. All of the defendants have acted for Mr Li at some point in time, either in the lodgment of the caveat, or in the conduct of the Main Proceeding.
- [7] Two separate applications have been brought in the Current Proceeding. These reasons deal with these two applications.
- [8] The first application has been brought by the first and second defendants. The first defendant is a natural person solicitor, and the second defendant is a corporate legal practice. Both acted for Mr Li in the lodgment of the caveat.
- [9] The second application has been brought by the third, fourth and fifth defendants. The third and fourth defendants are two natural person solicitors, and the fifth defendant is a corporate legal practice. They have all acted for Mr Li in the Main Proceeding, and in particular for Mr Li in the first caveat removal application. The third defendant is also said to have acted for Mr Li in respect of the lodgment of the caveat, the commencement of the Main Proceeding on behalf of Mr Li and the filing of a Notice of Action with Titles Queensland which notified the commencement of the Main Proceeding.

- [10] The sixth defendant is a barrister who appeared for Mr Li in the two caveat removal applications in the Main Proceeding. He has not brought an application. I have been informed by his legal representative that, as at the date of the hearing of these applications, he had not yet been served with the claim and statement of claim.
- [11] The first and second defendants have applied for summary judgment against Ms Yang, or alternatively, the striking out, setting aside or permanent stay of the Current Proceeding. The third, fourth and fifth defendants have applied to strike out the plaintiff's claim and statement of claim.
- [12] Ms Yang says that her statement of claim contains arguable causes of action and that applying the test identified in *General Steel*,¹ the causes of action she alleges are not untenable. She also says that this is an inappropriate case for a summary judgment determination. Finally, Ms Yang says that if the statement of claim is struck out against one or more of the defendants, then she should be given leave to replead.
- [13] I am satisfied that the plaintiff's claim and statement of claim in the Current Proceeding do not contain tenable causes of action. The Current Proceeding brought against the various lawyers and corporate legal practices is misconceived, and the claim and statement of claim ought to be struck out.
- [14] I am satisfied that this is not an occasion in which an opportunity to replead ought to be allowed. The defects in the underlying alleged causes of action are fundamentally flawed and the affidavit material put on by Ms Yang does not reveal a basis upon which an identified and properly pleaded cause of action could be advanced against any of the defendants. Further, there are other discretionary bases which sound against the granting of such leave.

The pleaded case

- [15] The case pleaded against the respective defendants is broadly as follows.
- [16] Ms Yang is the registered owner of the Clear Island Property, and is the defendant in the Main Proceeding.
- [17] The first defendant in the Current Proceeding, Ms Gao, is a solicitor and the principal lawyer of the second defendant, Ascent Lawyers Pty Ltd ("**Ascent Lawyers**").
- [18] The third defendant, Ms Hoe, is a solicitor and the principal lawyer of the fifth defendant, Harmony Legal Pty Ltd ("**Harmony Legal**"). Ms Hoe had previously worked in the second defendant's practice at the time Mr Li lodged the caveat referred to below. The fourth defendant, Mr Rains, is a solicitor in the employ of the fifth defendant.
- [19] The sixth defendant, Mr Amerena, is a barrister who was retained to act for Mr Li in the Main Proceeding, and acted for Mr Li in both of the caveat removal applications.

¹ *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 128–129 per Barwick CJ.

[20] On 14 December 2021, Ascent Lawyers lodged a caveat over the Clear Island Property, on behalf of Mr Li. The caveat was in evidence. By reference to the caveat and the statement of claim, Ms Yang pleaded to the effect:

- (a) that the caveat had been signed by the first defendant and second defendant on behalf of Mr Li;
- (b) that the then Form 11 Version 2 Caveat document provided immediately above the signature provision the following words:

“7. Request/Execution

...

I certify that:

- 1. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.
- 2. The Certifier has retained the evidence supporting this Registry Instrument or Document.
- 3. The Certifier has taken reasonable steps to verify the identity of the caveator or his, her or its administrator or attorney.

...”;² and

- (c) the first and second defendant made the certifications set out immediately above by reason of the signature applied to the caveat.

[21] Whilst not pleaded, I note the following aspects of the caveat:

- (a) the address of the caveator was Mr Li’s solicitor’s street address, being that of the second defendant, but it did not have the number of the suite which the second defendant occupied at that address;
- (b) the interest being claimed was “an equitable interest in a fee simple estate”; and
- (c) the ground claimed in support of that interest was that it arose “pursuant to a constructive and/or implied or resulting trust arising upon the financial and non-financial contribution of the caveator to the acquisition, conservation and/or improvement of the property”.

[22] These features were relevant to the oral submissions of Ms Yang made in the hearing of the applications and to the additional evidence of Ms Yang which I have allowed in after the matter had been heard and reserved.

[23] At the time of the lodgment of the caveat, the first and second defendants had been acting for Mr Li in a separate court proceeding which also involved Ms Yang.

[24] On 18 February 2022, Mr Li, represented by the third defendant, commenced the Main Proceeding seeking to establish the interest claimed in the caveat over the property.

² I have taken the extracted words above directly from the caveat rather than the pleading.

- [25] On 21 February 2022, the third defendant lodged a Notice of Action with the Land Titles Registry³ on behalf of Mr Li. The lodging of this Notice of Action had the effect of maintaining the caveat.
- [26] On 7 May 2025, Ms Yang filed the first caveat removal application in the Main Proceeding.
- [27] On 28 May 2025, the fifth defendant is alleged to have filed an affidavit on behalf of Mr Li opposing the removal of the caveat. At this time, the third defendant witnessed Mr Li's signature on the affidavit by audio-visual link, as Mr Li was residing in the People's Republic of China.
- [28] At paragraph 15 of the statement of claim, Ms Yang pleads to the effect that Mr Li's 28 May 2025 affidavit in the first caveat removal application attested to the following matters:
- (a) that Mr Li had become a permanent resident in Hong Kong in or about 2001;
 - (b) that Mr Li had made an application for a subclass 188B Business Innovation and Investment visa which consequently allowed Ms Yang to come to Australia;
 - (c) that Mr Li had denied the statutory declaration "WY-7"⁴ was in any way false;
 - (d) that in or about 2023, Mr Li's visa permitting Ms Yang to be in Australia was cancelled as a result of the making of a protection order, and following the cancellation of the visa, Mr Li returned to permanently residing in the People's Republic of China;
 - (e) that a property located at Chelsea Road, Ransome, Queensland 4154 ("the **Chelsea Road Property**") was held by Mr Li's son, Cheuk Pang Li, on behalf of Mr Li, and that Cheuk Pang Li recognised this property as Mr Li's asset; and
 - (f) that Mr Li understood that a person who makes an affidavit that contains material that is known to be false in a material particular commits an offence.
- [29] It was alleged that at the hearing on 28 May 2025, the sixth defendant, who appeared as Mr Li's barrister, stated:⁵
- "And then, because of the protection order, apparently my client's visa was cancelled."
- [30] Ms Yang then alleged to the effect that:
- (a) as a result of the above matters, Mr Li's solicitors and counsel saw, or ought reasonably to have seen, a document titled "RECORD OF DECISION UNDER SECTION 131 OF THE MIGRATION ACT 1958 NOT TO REVOKE CANCELLATION OF A VISA" issued by the Australian Government Department of Home Affairs (the "**visa document**");

³ This is more likely a reference to what is now known as Titles Queensland.

⁴ This was apparently a reference to an exhibit in an affidavit from the Main Proceeding.

⁵ Plaintiff's statement of claim at paragraph 16.

- (b) in Queensland, solicitors who prepare, witness and lodge registry instruments and court documents owe an independent obligation to take reasonable steps to verify the identity of the person executing the document;
 - (c) in lodging an instrument with the Land Titles Registry, a solicitor is required to certify that:
 - (i) reasonable steps have been taken to verify the identity of the client;
 - (ii) the document is compliant with the relevant legislation and prescribed requirements; and
 - (iii) supporting evidence has been retained;
 - (d) when witnessing affidavits or statutory declarations, an authorised witness, including a solicitor, is required to be satisfied as to the identity of the deponent before witnessing the execution of the document; and
 - (e) a solicitor, as an officer of the court, is required to take reasonable care not to assist in the preparation, witnessing or filing of documents that may misrepresent or obscure matters of legal significance arising from the client's identity or status, including matters bearing upon statutory compliance and the lawful existence of proprietary interests.
- [31] Ms Yang alleged that the defendants, as Mr Li's solicitors and counsel, knew or ought reasonably to have known:
- (a) their client's identity;
 - (b) their client's Australian visa status;
 - (c) that their client's Australian visa was cancelled in 2023; and
 - (d) that their client was a foreign person within the meaning of the FATA at all material times when they acted for him in the Main Proceeding.
- [32] An undertaking as to damages was required by the Court at the hearing of the first caveat removal application on 28 May 2025 in order to support the maintenance of the caveat.
- [33] Further affidavits were subsequently sworn in the Main Proceeding by Mr Li and his son, which were separately witnessed by the third and fourth defendants respectively (the "**undertaking affidavits**"). In the undertaking affidavits, the Chelsea Road Property was offered as part of an undertaking as to damages in support of the continued preservation of the caveat over the Clear Island Property.
- [34] Ms Yang alleges that the undertaking affidavits failed to disclose:
- (a) the visa document;
 - (b) Mr Li's Australian visa history;
 - (c) Mr Li's residency status; and
 - (d) the number of days Mr Li had been physically present in Australia.

- [35] It was alleged that those matters were directly relevant to whether Mr Li was legally capable of acquiring or asserting an interest in Australian property. It was alleged that Mr Li had contravened the FATA in the alleged acquisition of the Chelsea Road Property; the allegation being that the equity in the Chelsea Road Property was not capable of constituting a readily recoverable or enforceable asset for the purposes of a valuable undertaking as to damages, as it was amenable to civil and criminal consequences under the FATA in respect to Mr Li's son owning the property improperly on behalf of Mr Li. These consequences were said to materially undermine the enforceability and value of the Chelsea Road Property as a security for the undertaking.
- [36] The undertaking was accepted by the Court, and the first application to remove the caveat was dismissed by Hindman J on 26 June 2025.
- [37] It was alleged that the caveat was lodged, and the Main Proceeding was commenced and maintained, in circumstances where the claimed proprietary interests articulated in the caveat were legally incapable of existing.
- [38] Whilst confusingly pleaded, in effect, Ms Yang alleged in a rolled up way that but for the certifying and lodgment of the caveat, the witnessing, filing and reliance upon the impugned affidavits, the Land Titles Registry would not have accepted the caveat, and the Court would not have accepted the undertaking as to damages, the consequence being that the Court would not have dismissed the plaintiff's first application to remove the caveat. I pause to note that one vice of this rolled up set of allegations is that the conduct alleged in respect of the affidavits identified is said to have caused pre-existing events to have occurred. That, of course, is an embarrassing and illogical plea.
- [39] The plaintiff claimed \$410,800 as damages for "intentional professional misconduct", interest and costs. Particulars of the damages are pleaded as:
- (a) \$239,000 for court-ordered indemnity costs awarded in the Federal Circuit and Family Court of Australia;
 - (b) \$70,800 for personal liabilities incurred in China; and
 - (c) \$105,000 for Australian-based costs stated to be directly related to the caveat and the Main Proceeding.
- [40] I pause to note that for particulars (a) and (b) no causation case is pleaded to link those alleged damages to the current pleaded facts. Particular (c) inferentially may have such a link.

Principles applicable to a strike out application

- [41] The power to strike out a statement of claim arises from the inherent power of the Court and also r 171 of the *Uniform Civil Procedure Rules 1999* (Qld) ("UCPR") which provides as follows:

"171 Striking out pleadings

- (1) This rule applies if a pleading or part of a pleading—

- (a) discloses no reasonable cause of action or defence; or
 - (b) has a tendency to prejudice or delay the fair trial of the proceeding; or
 - (c) is unnecessary or scandalous; or
 - (d) is frivolous or vexatious; or
 - (e) is otherwise an abuse of the process of the court.
- (2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.
- (3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading.”

[42] As identified in *General Steel*, the Court ought to exercise significant caution in striking out a statement of claim in whole or in part.⁶ Nonetheless, it will be appropriate to strike out the whole of the pleading if it reveals no tenable cause or causes of action. There is also jurisdiction to strike out the claim, in whole or in part, again with the exercise of significant caution. The jurisdiction to strike out a claim is found in the inherent jurisdiction of the Court and pursuant to r 16(i) of the UCPR.

[43] Ms Yang may be self-represented in this matter, but self-represented persons in this Court still need to meet the same criteria for advancing tenable causes of action. Ms Yang also has the benefit of a law degree from Bond University, has been admitted as a solicitor in Queensland and holds a restricted practising certificate.

Causes of action alleged against the first and second defendants

[44] The prayer for relief in the statement of claim is articulated as being a claim for \$410,800 in damages for “intentional professional misconduct”. The concept of “intentional professional misconduct” does not immediately identify the nature of the civil cause or causes of action which Ms Yang is intending to advance. In submissions, Ms Yang contended that her claim was not limited to “intentional professional misconduct”. Such a submission also fails to expose exactly what the cause or causes of action are which she intends to advance.

[45] During the course of argument, Ms Yang accepted that her causes of action did not include an alleged breach of a tortious duty of care said to be owed to her by the first and second defendants. That was an appropriate concession to have made as no such duty of care would have been owed to her by any of the first to sixth defendants in the circumstances pleaded in the statement of claim. The law in this respect is settled, and I refer to the summary of the authorities set out in my prior decision of *Collins v Metro North Hospital and Health Service* (2023) 16 QR 268 at paragraphs [57]–[76]. The defendants did not fall within any of the very limited exceptions to the general rule that a legal representative does not owe a duty of care to a party which opposes his or her client.

⁶ (1964) 112 CLR 125 at 129.

- [46] Ms Yang also initially accepted that she was not intending to allege some type of intentional tort via the pleading. I note that towards the end of the initial hearing, Ms Yang seemed to waiver on this position. At the initial hearing, Ms Yang failed to articulate any particular intentional tort which she may have been averting to. On that occasion, Ms Yang did not articulate how the elements of any such intentional tort may have been present within the facts as pleaded or as contained in her then affidavit material.
- [47] I ultimately allowed Ms Yang to adduce additional evidence after the two principal applications had been reserved for judgment. This evidence included that Mr Li's solicitors (being the first and second defendants) had omitted the suite number from the address of the second defendant which had been placed into the caveat.
- [48] Ms Yang then submitted that this omission had occurred by way of fraud perpetrated by the first and second defendants.
- [49] If a litigant wants to allege an intentional tort against another, it is a serious matter and the allegation must be distinctly alleged, particularised, and clearly proved. Such torts cannot be constituted by mere vague, sweeping and confusing assertions.⁷
- [50] No such intentional tort (including fraud) has been pleaded by Ms Yang against any of the defendants. The further affidavit material which I allowed to be adduced does not disclose a proper basis to allege or plead the fraud as submitted. The making of that allegation without a proper basis is a serious matter. The seriousness of the making of the allegation is underscored in the case of Ms Yang by the fact that Ms Yang is admitted as a legal practitioner and holds a practising certificate.
- [51] The pleading by Ms Yang did not allege that a fiduciary duty existed between Ms Yang and any of the first to sixth defendants. For similar reasons to those identified in *Collins*, such a fiduciary duty would not arise in circumstances where each of the first to sixth defendants had at all material times been retained by Mr Li. The existence of any such fiduciary duty would have been inconsistent with the contractual and fiduciary duties which each defendant, as a legal practitioner or corporate law practice, owed to their own client.
- [52] Whilst difficult to discern from the pleading, as the oral argument developed, it became apparent that Ms Yang contended that a cause of action existed against the first and second defendants by reference to ss 9A, 10, 121, 126 and 131 of the *Land Title Act 1994* (Qld) ("LTA"), paragraph 11-4020 of Part 11 of the *Land Title Practice Manual* and paragraph 59-2030 of Part 59 of the *Land Title Practice Manual*.
- [53] Those relevant sections of the LTA in force at the time of the caveat was lodged⁸ and the *Land Title Practice Manual*⁹ are set out below.
- [54] Section 9A of the LTA stated:

⁷ *Flowers v Hicks* [2024] SASCA 126 at [30] per Livesey P and Bleby JA, speaking of allegations of fraud.

⁸ The lodgment date being 14 December 2021.

⁹ The relevant paragraphs that Ms Yang referred the Court to were extracted from the *Land Title Practice Manual* as at 1 August 2025.

“9A Land title practice manual

- (1) The registrar may keep a manual of land title practice (by whatever name called) in the way the registrar considers appropriate, for the information and guidance of persons performing functions in relation to the land registry and other persons dealing with the land registry.
- (2) The manual may include—
 - (a) directions given by the registrar under—
 - (i) section 10(1)(b); or
 - (ii) the *Forestry Act 1959*, section 61RW(1)(b); or
 - (iii) the *Land Act 1994*, section 287(1)(b); and
 - (b) practices developed in the land registry, before or after the commencement of this section, for the depositing and lodging of instruments, including practices directed at ensuring that—
 - (i) there is consistency and efficiency in land registry processes; and
 - (ii) each register under this Act is an accurate, comprehensive and usable record; and
 - (iii) the integrity of the registers included in the land registry is supported and maintained to the greatest practicable extent.
- (3) The manual may include statements about additional information a person may be required to produce, or additional instruments or documents a person may be required to deposit, under section 156.
- (4) The manual may provide for the registrar’s approval of the form of an electronic conveyancing document for the Electronic Conveyancing National Law (Queensland), section 7(1)(a).
- (5) The registrar must make the manual available to the public in the way the registrar considers appropriate.
- (6) Without limiting subsection (5), the registrar must ensure an up-to-date copy of the manual is available to be read free of charge at each office of the land registry.”

[55] Section 10 of the LTA provided:

“10 Form of instruments

- (1) An instrument lodged by a person or issued by the registrar must—
 - (a) be in the appropriate form; and
 - (b) comply with the directions of the registrar about—

- (i) how the appropriate form must be completed; and
 - (ii) how information to be included in or given with the instrument must be included or given.
- (2) An instrument required or permitted to be executed must be in the appropriate form when it is executed.
- (3) However, the registrar may register an instrument that is not in the appropriate form if the registrar is satisfied it is not reasonable to require the instrument to have been executed in the appropriate form.
- (4) Also, the registrar may register, or otherwise deal with, an instrument that does not comply with a direction mentioned in subsection (1)(b) if the registrar is satisfied it is reasonable to not require the compliance.
- (5) Subsections (3) and (4) do not apply to an instrument that is an electronic conveyancing document.”

[56] Section 121 of the LTA provided:

“121 Requirements of caveats

- (1) A caveat must be signed by or for the caveator.
- (2) The caveat must state—
 - (a) the name of the caveator; and
 - (b) an address where documents can be served on the caveator; and
 - (c) unless the registrar dispenses with it, the name and address of—
 - (i) the registered proprietor of the lot affected by the caveat; and
 - (ii) each other person whose interest or whose right to registration of an instrument is affected by the caveat; and
 - (d) the registered interest affected by the caveat; and
 - (e) if the caveat relates to only a part of a lot—a description of the affected part; and
 - (f) the interest claimed by the caveator; and
 - (g) the grounds on which the interest is claimed.
- (2A) Without limiting subsection (2)(b), the address stated may be the address of a stated legal practitioner.

- (3) This section applies to all caveats under this Act other than a caveat prepared and registered by the registrar under section 17.”

[57] Section 126 of the LTA provided:

“126 Lapsing of caveat

- (1) This section does not apply to a caveat if—
- (a) it is lodged by the registered owner; or
 - (b) the consent of the registered owner, in the appropriate form, is deposited when the caveat is lodged; or
 - (c) an office copy of a court order mentioned in section 122(1)(d) or (e) is deposited when the caveat is lodged; or
 - (d) it is lodged by the registrar under section 17; or
 - (e) it is lodged other than under this division.
- (1A) However, this section applies to a caveat lodged by the registered owner of a lot if—
- (a) the lot is subject to a mortgage; and
 - (b) the grounds stated in the caveat relate to the actions of the mortgagee in relation to—
 - (i) if the mortgage is registered—registration of the mortgage; or
 - (ii) the mortgagee’s power of sale.
- (2) The caveatee of a caveat to which this section applies—
- (a) may serve on the caveator a notice requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat; and
- Note—*
- See section 131 in relation to the service of notices on the caveator.
- (b) if the caveatee serves a notice under paragraph (a)—must, within 14 days after the notice is served, deposit an instrument notifying the registrar of the service of the notice.
- (4) If a caveator does not want a caveat to which this section applies to lapse, the caveator must—
- (a) start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat—
 - (i) if the caveatee has served a notice under subsection (2)(a) on the caveator and has complied

with subsection (2)(b)—within 14 days after the notice is served on the caveator; or

- (ii) otherwise—within 3 months after the lodgement of the caveat; and
 - (b) notify the registrar, by depositing an instrument, within the 14 days or the 3 months that a proceeding has been started and identify the proceeding.
- (5) If the caveator does not comply with subsection (4), the caveat lapses.
- (6) The caveator is taken to have complied with subsection (4)(a) if, before the caveat was lodged—
- (a) a proceeding has been started in a court of competent jurisdiction to establish the interest claimed under the caveat; and
 - (b) the proceeding has not been decided, discontinued or withdrawn.
- (7) The registrar may remove a caveat that has lapsed from the freehold land register.”

[58] Section 131 of the LTA provided:

“131 Notices to the caveator

- (1) A notice to a caveator under this division is sufficiently served if left at or sent to the address mentioned in section 121(2)(b).
- (2) If the registrar is satisfied that a notice under this division will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way specified in a written direction by the registrar.
- (3) If the registrar is informed in writing, and is satisfied, that the name or address of the caveator has changed, the registrar must note on the caveat details of the new name or address.
- (4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.”

[59] Paragraph 11-4020 of the *Land Title Practice Manual* stated:

“[11-4020] Item 1

Insert the full name of the caveator and an address where documents can be served on the caveator where indicated (this address may be the address of a stated legal practitioner).

If the caveator is claiming the interest in a certain capacity (for example as trustee), then such capacity must be specified after the name of the caveator (e.g. John Smith as Trustee).

If the caveator is acting as a Trustee in Bankruptcy then the prescribed name should be shown here (see [14-2170] and Example 5).

If there is more than one caveator, reference should be made in the address to ‘both of’ or ‘all of’, if such be the case, or individual addresses should be shown.

If there is insufficient space, insert “see Enlarged Panel” and use a Form 20 – Enlarged Panel (see [20-2020]).

Insert the lodger details and lodger code (if applicable) where indicated (see [59-2030]).”

[60] Paragraph 59-2030 of the *Land Title Practice Manual* relevantly stated:

“[59-2030] Lodger

The lodger details must contain the minimum information necessary for positive identification and contact by mail, email, and telephone. However, in extenuating circumstances the Registrar may approve this panel to remain uncompleted, if requested in writing prior to lodgement and there is a substantive reason. The lodger code (if applicable) should always be shown.

[59-2030-1] Lodger Reference

Lodgers may include an internal reference (relevant to their lodgement), in the lodger section of the form, to assist the lodger to identify the matter or transaction for which the lodgement is being made. However, this internal lodger reference must be confined to a single line of text, and may be made up of letters, numerals, and standard punctuation marks (full stops, commas, colons, semicolons, hyphens, etc) only. Lodgers must not use special symbols, QR Codes, barcodes, or link generators as an internal reference, or for any other purpose on any instrument or document lodged in the registry. Any instrument or document lodged with an internal lodger reference that is not made up of letters, numerals, and standard punctuation marks only, may be requisitioned, and will require the lodger to redact any internal reference that is not compliant with these requirements before relodging.

[59-2030-2] Amending Lodger details

Only the lodger of the instrument or document can request a change to the lodger details. The request must be made before the dealing is registered. Lodger details can be changed by sending the request using our online enquiry form or by email or letter.”

[61] As part of the initial oral articulation of that contention, Ms Yang complained about the address given for Mr Li on the caveat, namely, the solicitor’s address. Ms Yang,

at this stage of the hearing, was unable to articulate what was the mis-certification. I initially assumed that the complaint was that Mr Li should have provided a People's Republic of China address. That criticism would have had no merit. Sections 121(2)(b) and 121(2A) of the LTA expressly provide that the address given in a caveat for the service of documents on the caveator can be that of the solicitor of the caveator. It was only this address which the caveat required for the purposes of s 121(2)(b) of the LTA.

- [62] Only after the applications had been heard and judgment reserved did Ms Yang advance the case that there was a mis-certification in the caveat by Mr Li's solicitor's address omitting from the street address the further descriptor, "Suite 4". The fresh affidavit material showed that Ms Yang's solicitor had sent a letter by express post to the street address listed in the caveat. This letter was sent on 24 January 2022, and presumably it was addressed to Mr Li. The letter enclosed a s 126(2)(a) notice to Mr Li, requiring Mr Li to commence an action in support of the caveatable interest within 14 days. The letter was returned by the postal service to Ms Yang's solicitor.
- [63] The same affidavit material revealed that a separate letter was sent on the same day to the same address contained in the caveat. This letter was addressed to Ascent Lawyers. The material supports that this letter was not sent back by the postal service, and was, in fact, delivered to the identified street address. In this respect, the additional affidavit material exhibited a letter of 10 February 2022 from Ascent Lawyers to Titles Queensland which referred to this separate 24 January 2022 letter as having been misplaced due to the address not including the "Suite 4" reference. To have been misplaced, the letter must still have been received at the street address.
- [64] Between 29 January 2022 and 9 February 2022, there was communication between the solicitor for Ms Yang and Titles Queensland as to whether the registrar could retrospectively approve, pursuant to s 131(2) of the LTA, the letter to Ascent Lawyers as constituting service on Mr Li of the s 126(2)(a) Notice. The registrar identified that this could not be done, but approved a form of service to the address on the caveat with the addition of the words "Suite 4". Service of the s 126(2)(a) Notice was then effected on or about 10 February 2022.
- [65] Ms Yang contends that the costs of this first attempted service and the communications with Titles Queensland, being at its highest an amount between \$3,000 to \$4,000, is recoverable against the first and second defendants for the mis-certification, said to be constituted by the omission of "Suite 4" from the street address in the caveat.
- [66] This particular allegation about the "Suite 4" omission was not a pleaded allegation.
- [67] Ms Yang separately alleged by the pleading that the first and second defendants knew, or ought to have known, about the circumstances of Mr Li having been excluded from Australia, and that Mr Li's claimed equitable interest was contrary to the FATA, and that because of this knowledge, or the knowledge they ought to have had, they then ought to have disclosed this information, to the Titles Queensland Registry via the caveat or they should have not caused the caveat to be lodged at all.

[68] The submission that these allegations¹⁰ demonstrated tenable causes of action should be rejected for a number of reasons.

[69] First, the sections of the LTA and the provisions of the *Land Title Practice Manual* referred to do not give rise to a cause of action for damages or compensation against a legal practitioner for an improperly lodged caveat. I make clear that in saying this I am not suggesting that this caveat was improperly lodged, but rather I am merely taking Ms Yang's allegations at their highest.

[70] The LTA does create a statutory cause of action for compensation for an improperly lodged caveat, but that cause of action is solely against the caveator.

[71] Section 130 of the LTA relevantly provides as follows:

“130 Compensation for improper caveat

(1) The caveator under a caveat lodged or continued without reasonable cause must compensate anyone else who suffers loss or damage as a result.

(2) In a proceeding for compensation under subsection (1), a court of competent jurisdiction may include in a judgment for compensation a component for exemplary damages.

(3) In a proceeding for compensation under subsection (1), it must be presumed that the caveat was lodged or continued without reasonable cause unless the caveator proves that it was lodged or continued with reasonable cause.

(4) Subsection (1) does not apply to the registrar in relation to a caveat prepared and registered under section 17.”

[72] Further, the sections of the LTA and the provisions of the *Land Title Practice Manual* referred to do not provide for a statutory cause of action for damages or compensation for mis-certification of details in a caveat form.

[73] Accordingly, even if the omission of the further descriptor of “Suite 4” from the street address in the caveat was accepted as a mis-certification, no such mis-certification would give rise to a statutory cause of action founded on the sections of the LTA or the provisions of the *Land Title Practice Manual* identified by Ms Yang.

[74] Secondly, Ms Yang separately sought to support her pleading by reference to the Victorian Civil and Administrative Tribunal (“VCAT”) decision of *Legal Services Commissioner v Kotsifas* [2014] VCAT 1615. In that decision, Senior Member Smithers made statements to the following effect:

- (a) that because of a caveat's similar effect to an *ex parte* injunction, a lodging solicitor must exhibit a higher level of candour and preparation in the gathering of evidence to support the existence of the interest claimed;
- (b) the solicitor had an independent non-delegable duty to assess whether a caveat should be lodged; and

¹⁰ Some allegations being pleaded; others not being pleaded.

- (c) the solicitor had an analogous duty to that reflected in the *Civil Procedure Act 2010* (Vic) to independently assess whether a proper basis for the caveat existed.
- [75] Ms Yang effectively contended that this decision supported a freestanding civil cause of action against a legal practitioner in respect of his or her improper lodgment of a caveat on behalf of a client. This contention should be rejected.
- [76] The decision of *Kotsifas* referred to was delivered in a disciplinary proceeding held by VCAT pursuant to s 4.4.3(1)(a) of the *Legal Profession Act 2004* (Vic). The allegation in that disciplinary proceeding was that the practitioner had engaged in professional misconduct, constituted by unsatisfactory professional conduct involving a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.
- [77] In that decision, Senior Member Smithers was not speaking of a freestanding civil cause of action pursuant to which compensation could be awarded to a caveatee against a solicitor who had participated in the improper formulation and lodgment of a caveat. The decision was dealing with conduct which was said to have been constituted by a breach of the ethical duties owed by a solicitor to the Court.
- [78] The decision does not stand for the proposition that there is a freestanding actionable duty sounding in damages or compensation owed by a solicitor to a caveatee to make an independent assessment about whether the caveat should be lodged.
- [79] It may be the case that if a legal practitioner lodges a caveat on behalf of a client without making a proper independent assessment as to whether there is a caveatable interest that this might amount to professional misconduct or unsatisfactory professional conduct which could justify the practitioner being brought before the relevant statutory authority for sanctions under ss 452 – 467 of the *Legal Profession Act 2007* (Qld). The relief in such a disciplinary hearing can include a compensation order up to \$7,500, subject to certain qualifications, and appropriate findings of misconduct being made. However, this process does not represent a cause of action which vests in the caveatee against the legal practitioner.
- [80] No other authority was produced in support of such an alleged freestanding civil cause of action. I am satisfied that no such cause of action exists.
- [81] Thirdly, for the reasons previously identified, no proper basis has been established by the affidavit material received for the application so as to justify the unpleaded allegation recently advanced by Ms Yang that the omission of “Suite 4” from the second defendant’s address had occurred by way of fraudulent conduct undertaken by the first and second defendants. That allegation should never have been made. It has imbedded within it the allegation that the two defendants knew the address to be false and recorded the known false address into the caveat, with the intention of deceiving Ms Yang and her legal representatives as to the true address.
- [82] Fourthly, the only other basis asserted by Ms Yang for damages was the belated oral submission that the omission of “Suite 4” from the address constituted a misrepresentation. This was not a pleaded allegation and was made at the same time as the fraud allegation. Ms Yang did not attempt to articulate how the

misrepresentation arose in law. No draft pleading was produced at the further hearing. No authorities were provided in support of the allegation. Ms Yang had the benefit of weeks to produce both submissions and a draft pleading. None of this was forthcoming and the bare assertion of misrepresentation did not seek to explain how there was a tenable cause of action for pure economic loss said to have been represented by incurring of the legal fees. Ms Yang simply did not articulate how, for example, the facts as presented could be accommodated within the law of negligent misstatement.

- [83] No other basis was identified by Ms Yang for such a freestanding civil cause of action sounding in damages or compensation in respect of a solicitor's conduct in respect of an alleged improper lodgment of a caveat.
- [84] Fifthly, the plea that the various defendants knew, or ought to have known, at the relevant time that the caveatable interest could not exist as a matter of law was fatally flawed. That plea was based on the conclusion of law that such an interest could not arise if Mr Li was in contravention of the FATA. The flaws in that plea are as follows.
- [85] There was no proper compliance with rr 150(1)(k) and 150(2) of the UCPR for the plea of knowledge. That is, the facts from which the state of mind was to be inferred were not pleaded.
- [86] More fundamentally, at the time of the lodgment of the caveat, the then existing case authorities supported that such a caveatable interest could arise where a contravention of the FATA existed. Where that was the state of the relevant case authority at the time of the lodgment of the caveat and thereafter, it is untenable to boldly assert that a practitioner knew, or ought to have known, that no such interest could exist at law.
- [87] I will expand on this issue.
- [88] Ms Yang's contention centred around Mr Li's solicitors' apparent knowledge of:
 - (a) Mr Li's alleged contravention of the FATA; and
 - (b) that as a matter of law, no equitable interest derived from a resulting trust could exist where such a contravention was present.
- [89] Ms Yang raised this contravention contention at the second caveat removal application before Smith J. His Honour rejected the contention. His Honour referred, in part, to s 134 of the FATA, which provided as follows:

“134 Validity of acts done in contravention of this Act

An act is not invalidated by the fact that it constitutes an offence against or contravention of a civil penalty provision of this Act.”

- [90] His Honour noted that the section and its predecessor section (in the context of the operation of the overall Act) had repeatedly been construed as providing for the validity of the underlying acquisition which had occurred in contravention of the FATA.¹¹ As his Honour identified, the existing authorities supported the conclusion

¹¹ See Smith J's reasons in *LZU v YXW (No 2)* [2026] QSC 62 at [97]–[113] and the authorities his Honour identifies.

that the FATA did not operate to invalidate an equitable interest arising in the land, even though the equitable interest arose by reason of a contravention of the FATA. Those authorities included Supreme Court authority from various States (including Queensland), and at least one intermediate appellate court. The bare allegation that the defendants knew, or should have known, the law to have been the opposite of the case law as it existed at the time of lodgment and thereafter is untenable.

- [91] At the hearing, Ms Yang was unable to explain how the defendants had knowledge of a legal consequence which was directly contrary to the then existing case authorities.
- [92] That is not to say that a contravention of the FATA may not have a role to play in denying equitable relief in appropriate circumstances. The contravention may feature in an unclean hands defence to the relief sought.
- [93] The pleading that the various defendants knew, or should have known, at the time of the lodgment of the caveat that the claimed interest could not legally arise due to a contravention of the FATA is not a maintainable allegation of law, fact, or mixed law and fact.
- [94] Whatever Ms Yang's pleaded case was attempting to be, it did not disclose a tenable cause of action based on this unmaintainable plea of knowledge, or knowledge which it is said the defendants should have possessed.
- [95] The statement of claim against the first and second defendants in respect of the lodgment of the caveat should be struck out.
- [96] If a fundamentally misconceived cause of action is advanced by a litigant and there is no identifiable basis for it to be repleaded, then the misconceived cause of action ought be brought to an end efficiently and speedily. If it were not so, then defendants to such a misconceived case would continue to be the subject of further vexation. That proposition is no less applicable to a party merely because they are self-represented.
- [97] To the extent that similar causes of action are advanced against the third defendant for her alleged involvement with the commencing of the Main Proceeding and the lodging of the Notice of Action with Titles Queensland, those causes of action should also be struck out without leave to replead for the same reasons articulated above.
- [98] For the reasons previously explained, it is not appropriate for Ms Yang to be granted leave to seek to replead causes of action which have been struck out. It is also not appropriate to grant Ms Yang leave to plead causes of action not previously pleaded where she has not established that they have a tenable basis.
- [99] I further record that, even if the recent misrepresentation allegation had been shown to have a tenable basis, I would have exercised my discretion so as to deny leave to allow that cause of action to be pleaded.
- [100] To have granted leave would have allowed a previously unpleaded cause of action to be advanced. The quantum of the new alleged cause of action would have been less than \$4,000 at its highest. No other cause of action against the first and second defendant would have been present in the proceeding.

- [101] In those circumstances, it would have been inappropriate to have effectively authorised Ms Yang to now bring in the Supreme Court, via an amendment, a cause of action which ought to have always been commenced in the Magistrates Court. The amendment to the statement of claim would also have to be accompanied by a corresponding amendment to the relief contained in the claim.
- [102] If such a tenable cause of action could be demonstrated, which to date it has not, the proper place to pursue it against the first to second defendants is in the Magistrates Court, and not the Supreme Court.

Causes of action alleged against the third, fourth and fifth defendants

- [103] The case advanced in respect to this part of the statement of claim centres around the preparation of affidavits and the conduct during the hearing of the first application to remove the caveat. The allegations are levelled at the third to sixth defendants.
- [104] As previously observed, the defendants do not owe a tortious duty of care, or a fiduciary duty to Ms Yang. Further, Ms Yang has not identified any intentional tort as applicable to this conduct, and has not sought to establish a basis to plead the elements of any such intentional tort.
- [105] Ms Yang, in oral submissions and in her received affidavit material, referred to the *Australian Solicitors' Conduct Rules 2023* (“**ASCR**”) as a basis for the alleged cause of action. The ASCR provides that a legal practitioner owes a paramount duty to the court and the administration of justice. This is reflected in rule 3.1. Quite apart from the ASCR, such an ethical duty derives from the status of a legal practitioner as an officer of the court.
- [106] The ASCR more specifically provides at r 19.1 that a practitioner has a duty not to deceive or knowingly or recklessly mislead the court.
- [107] These duties are not owed to an opposing litigant in the sense of creating a freestanding civil cause of action, but are duties ultimately owed to the court.
- [108] A breach of such ethical duties can constitute unsatisfactory professional conduct or professional misconduct and may give rise to disciplinary actions which can be brought by the Legal Services Commissioner to the appropriate body.
- [109] As a general proposition, the safeguards against impropriety of legal practitioners in the conduct of adversarial litigation is to be found in the rules and remedies relevant to the regulation of professional misconduct or unsatisfactory professional conduct.
- [110] In *Al-Kandari v JR Brown & Co* [1988] QB 665, Lord Donaldson of Lymington MR (with whom Dillon LJ agreed) observed at 672 as follows:

“A solicitor acting for a party who is engaged in “hostile” litigation owes a duty to his client and to the court, but he does not normally owe any duty to his client’s opponent: *Business Computers International Ltd. v. Registrar of Companies* [1987] 3 W.L.R. 1134. This is not to say that, if the solicitor is guilty of professional misconduct and someone other than his client is damnified thereby, that person is without a remedy, for the court exercises a supervisory

jurisdiction over solicitors as officers of the court and, in an appropriate case, will order the solicitor to pay compensation: *Myers v. Elman* [1940] A.C. 282...”

- [111] The reference above to the paying of compensation was a reference to the power of the Court to award costs against legal representatives who engage in misconduct in litigation.
- [112] If there is professional misconduct or unsatisfactory professional conduct associated with the conduct of a proceeding, this can provide a basis for the Court to make an adverse costs order against an offending legal practitioner involved in the proceeding.¹²
- [113] The Court, when exercising its inherent jurisdiction to supervise its officers and to preserve the administration of justice, does not do so for the purposes of enforcing private legal rights, but rather for the purpose of ensuring the honourable conduct on the part of the Court’s own officers.¹³
- [114] It is appropriate to turn in greater detail to the specifics of this part of the case alleged against the third to fifth defendants.
- [115] Ms Yang pleads that on 28 May 2025, the third defendant witnessed an affidavit of Mr Li which, amongst other things, stated the matters pleaded in paragraph 15(a) to 15(f) of the statement of claim which have previously been set out. This included that in or about 2023, apparently as a result of the making of a protection order, Mr Li’s visa permitting Ms Yang to be in Australia was cancelled. The pleading alleged that as a result of the cancellation of the visa, Mr Li had returned to residing only in the People’s Republic of China, and that he did not come to Australia. It was pleaded that his son (from another relationship) held the Chelsea Road Property on behalf of Mr Li.
- [116] At paragraph 16 of the statement of claim, it was pled that on the same day (ie 28 May 2025) counsel for Mr Li¹⁴ stated to the Court that, because of the protection order, apparently Mr Li’s visa was cancelled.
- [117] At paragraph 17 of the statement of claim, Ms Yang then pled that the matters in paragraphs 15 and 16 supported that the third to sixth defendants therefore knew of, or ought reasonably to have seen, the visa document.
- [118] At paragraphs 18 through to 21, Ms Yang then pled a series of confusing, illogical propositions. They included that solicitors who witness registered instruments have obligations to identify persons executing documents. What this allegation is meant to convey is unclear. There is no allegation that there was some misidentification of

¹² *Caboolture Park Shopping Centre Pty Ltd (in liq) v White Industries (Qld) Pty Ltd* (1993) 45 FCR 224 at 234 and *White Industries (Qld) Pty Ltd v Flower & Hart (a firm)* (1998) 156 ALR 169. *Myers v Elman* [1940] AC 282, which was concerned with the making of a costs order against a non-party legal practitioner.

¹³ *John Ljubomir Atanaskovic and the persons named in Schedule A trading as Atanaskovic Hartnell v Birketu Pty Ltd* [2020] NSWSC 573 per Hammerschlag J at [30].

¹⁴ That is, the sixth defendant.

Mr Li. None of the caveat documents referred to in the pleading required identification of Mr Li's residency status in Australia.

- [119] The pleading continued to the effect that the solicitors and counsel each knew, or ought reasonably to have known, of Mr Li's identity and Australian visa status, especially that Mr Li's Australian visa was cancelled in 2023.
- [120] Paragraph 22 pled that "...In such circumstances, a solicitor, as an officer of the Court, is required to take reasonable care not to assist in the preparation, witnessing or filing of documents that may misrepresent or obscure matters of legal significance arising from the client's identity or status, including matters bearing upon statutory compliance and the lawful existence of proprietary interests".
- [121] By reason of the above matters Ms Yang said that the solicitors and the counsel for Mr Li knew, or ought reasonably to have known, that Mr Li was a foreign person within the meaning of the FATA at all material times when they acted for him in the Main Proceeding.
- [122] It was then pleaded that Hindman J determined that there were three options available to support the maintenance of the caveat in terms of an undertaking for any damages which might flow if the maintenance of the caveat was not justified. They were pleaded to be:
 - (a) the provision of an undertaking from Mr Li's son;
 - (b) the payment of an appropriate sum of money into court; or
 - (c) the payment of a sum of money into court which her Honour considered sufficient to secure the undertaking.
- [123] It was alleged that on 11 June 2025, the fifth defendant, the corporate legal practice, filed affidavits from Mr Li and his son, respectively witnessed by the third and fourth defendants, which had the effect of offering undertakings from each of them as to damages supported by the equity in the Chelsea Road Property, which was registered in Mr Li's son's name.
- [124] It was alleged that the affidavits of both Mr Li and his son identified that the Chelsea Road Property was beneficially Mr Li's property.
- [125] Paragraph 29 alleged that none of the third, fourth, fifth or sixth defendants put into evidence the visa document.
- [126] Paragraph 30 alleged, in effect, that Mr Li had been residing in China when the Chelsea Road Property had been acquired and, accordingly, his son's acquisition of the property purportedly for Mr Li amounted to a contravention of the FATA.
- [127] Ms Yang then pleaded at paragraph 30(d) that, "[A]ny claim to a beneficial interest in the [redacted] Chelsea Property without prior approval was, as a matter of law, legally incapable of existing and exposed the property to significant criminal and civil penalty consequences under the FATA..."

- [128] Ms Yang then pleaded at paragraph 30(e), in effect, that in the circumstances set out above, the Chelsea Road Property was not capable of constituting a readily recoverable or enforceable asset for the purpose of a valuable undertaking as to damages because the property was exposed to significant regulatory civil and criminal consequences which materially undermined its enforceability and its value as security.
- [129] At paragraph 31, Ms Yang alleged that in relying upon the two affidavits from Mr Li and his son and the submissions of the sixth defendant, Hindman J accepted the undertaking associated with the Chelsea Road Property.
- [130] At paragraph 33, Ms Yang again alleged that the caveat and the Main Proceeding were commenced and maintained in circumstances where the proprietary interests identified in the caveat were legally incapable of existing.
- [131] At paragraph 34, in the form of a rolled-up allegation, Ms Yang alleged that “But for the certifying, lodgement, witnessing, filing and reliance upon the impugned affidavits and representations, the Land Title Registry and the Court would not have accepted the caveat, the purported undertaking and would not have dismissed the plaintiff’s application to remove the cavea[t]”.
- [132] Having set out this aspect of the pleading in more detail, I find that it does not raise a tenable cause of action against the third to sixth defendants. This is so for the following reasons.
- [133] First, as I have already identified above, no tortious duty to take reasonable care or fiduciary duty was owed by the defendants to Ms Yang.
- [134] Secondly, for the reasons previously explained, the ethical duties owed to the Court by legal practitioners do not give rise to freestanding civil causes of action vested in an opposing litigant such as Ms Yang.
- [135] Thirdly, the conduct alleged concerns the preparation of affidavits which were read in Court as part of a legal proceeding and, in the case of the sixth defendant, the making of submissions to the Court in that proceeding. Whether that alleged offending conduct was expressed in terms of positive acts or omissions, this alleged conduct is covered by advocate’s immunity. In that respect, I refer to my observations in *Collins v Metro North Hospital and Health Services* (2023) 16 QR 268 at [77]—[89] in respect of the principles applicable to an advocate’s immunity.
- [136] A well-accepted articulation of that immunity can be found in *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1, where Gleeson CJ, Gummow, Hayne and Heydon JJ at [1] stated as follows:¹⁵
- “...at common law an advocate cannot be sued by his or her client for negligence in the conduct of a case in court, or in work out of court which leads to a decision affecting the conduct of a case in court...”

¹⁵ *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at [1] per Gleeson CJ, Gummow, Hayne and Heydon JJ.

- [137] In *D’Orta-Ekenaike*, Gleeson CJ, Gummow, Hayne and Heydon JJ observed that the central justification for the immunity was the principle “that controversies, once resolved, are not to be reopened except in a few, narrowly defined, circumstances...”.¹⁶ Their Honours later observed that underpinning the system of justice was the need for certainty and finality of decisions, and that the immunity of advocates was a necessary consequence of that need.¹⁷
- [138] Subsequently, in *Attwells v Jackson Lalic Lawyers Pty Ltd* (2016) 259 CLR 1, the majority of the High Court, constituted by French CJ, Kiefel, Bell, Gageler and Keane JJ, observed as follows:¹⁸
- “...The advocate’s immunity is grounded in the necessity of ensuring that the certainty and finality of judicial decisions, values at the heart of the rule of law, are not undermined by subsequent collateral attack. The operation of the immunity may incidentally result in lawyers enjoying a degree of privilege in terms of their accountability for the performance of their professional obligations. But this incidental operation is a consequence of, and not the reason for, the immunity. Because this incidental operation of the immunity comes at the expense of equality before the law, the inroad of the immunity upon this important aspect of the rule of law is not to be expanded simply because some social purpose, other than ensuring the certainty and finality of decisions, might arguably be advanced thereby.”
- [139] While it may be accepted that the precise scope of the immunity is not yet settled,¹⁹ a number of features of the immunity seem to be uncontroversial, namely:
- (a) the principle applies both to barristers and solicitors;
 - (b) the principle also applies to both acts and omissions;²⁰
 - (c) the principle applies both to the conduct of a case in Court and also to work out of Court which leads to a decision affecting the conduct of the case in Court or work intimately connected with work in Court;²¹ and
 - (d) the relevant conduct must move litigation towards a determination by a Court.
- [140] Whilst the principle as articulated in *D’Orta-Ekenaike* was put in terms of an advocate not being sued by his or her client for negligence in the conduct of the case, authority supports that the immunity applies equally to an advocate being sued by an opposing party.

¹⁶ *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at [34] per Gleeson CJ, Gummow, Hayne and Heydon JJ.

¹⁷ *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at [84] per Gleeson CJ, Gummow, Hayne and Heydon JJ.

¹⁸ *Attwells v Jackson Lalic Lawyers Pty Ltd* (2016) 259 CLR 1 at [52] per French CJ, Kiefel, Bell, Gageler and Keane JJ.

¹⁹ *Port Ballidu Pty Ltd v Mullins Lawyers* [2017] QSC 91 at [11] per Dalton J (as her Honour then was).

²⁰ *Port Ballidu Pty Ltd v Mullins Lawyers* [2017] QSC 91 at [13] per Dalton J (as her Honour then was); *Burrell Solicitors Pty Ltd v Reavill Farm Pty Ltd* [2016] NSWSC 303 at [159] per White J; *Attard v James Legal Pty Ltd* [2010] NSWCA 311 at [9] per Giles JA (with whom Beazley JA agreed).

²¹ *Keefe v Marks* (1989) 16 NSWLR 713 per Gleeson CJ at 719-720 and Meagher JA at 728-729.

[141] In *Love v Robbins* (1990) 2 WAR 510, the Western Australian Court of Appeal was considering the immunity of prosecutors. An accused who had been convicted in a criminal trial later brought a writ against two Crown prosecutors in respect of both an initial trial, and also a second trial in which the conviction actually occurred. The causes of action raised against the prosecutors were for damages for breach of duty and for conspiracy.

[142] Chief Justice Malcolm (with whom Seaman and Wallwork JJ agreed) made the following statement in respect of the immunity principle as articulated in *Giannarelli v Wraith* (1988) 165 CLR 543:²²

“If the immunity principle extends to counsel actually briefed or retained by a client to protect him from suit by the client, there would be even greater justification for the application of the immunity principle to counsel briefed or retained by an opposing party or, as in the present case, counsel employed by the Crown. Mason CJ said in *Giannarelli* (at 555) that the justification for the immunity rested on public policy grounds.”

[143] After referring to the conceptual basis for the immunity, Malcolm CJ continued:²³

“The foundation of that principle is the perception that great mischief would result if those engaged in the administration of justice were not at liberty to speak freely. The immunity is not confined to actions for defamation. As McTiernan J noted in *Cabassi* with reference to the rule in its application to witnesses:

‘It is a rule of law that no civil action lies at the suit of any person for any statement made by a witness in the course of giving evidence in a judicial proceeding. The rule, which is founded on public policy, is not confined to actions for defamation but applies to any form of action.’

The considerations which dictate the need to protect freedom of speech in court likewise dictate the need to protect the advocate’s freedom of judgment with respect to what is said and done in court. Just as the principle protects the judge and the jury in relation to what they decide, so it protects the advocate. The advocate is as essential a participant in our system of justice as are the judge, jury and the witness and his freedom of judgment must be protected: see the discussion by Brett MR in *Munster*. The need for that protection arises from ‘the fear that if the rule were otherwise, numerous actions would be brought against persons who were merely discharging their duty’, to repeat the words of words of Fry LJ in *Munster*.”

[144] The advocate’s immunity covers all forms of causes of action.

[145] The alleged case against the third defendant, fourth defendant and fifth defendant is, at its highest, based upon:

²² *Love v Robbins* (1990) 2 WAR 510 at 517 per Malcolm CJ.

²³ *Love v Robbins* (1990) 2 WAR 510 at 518 per Malcolm CJ.

- (a) the drafting of the affidavits used in the hearing at the first application to remove the caveat;
 - (b) the omission to lead evidence in relation to the visa document;
 - (c) the failure to make submissions of the alleged legal and factual effect of the FATA; and
 - (d) the failure to make submissions that Mr Li's and his son's alleged exposure to civil and criminal penalties for contraventions of the FATA eroded the equity value of the Chelsea Road Property as security for the undertaking as to damages.
- [146] All of those matters as alleged, at their highest, constitute acts or omissions affecting the conduct of the case in Court. They are intimately connected with the work in Court, or are out of Court work which leads to decisions affecting the conduct of the case in Court. Such conduct as pleaded is unambiguously the subject of an advocate's immunity.
- [147] In relation to the drafting of affidavits, I note the observations made by Rothman J in *Wilson v Carter* [2005] NSWSC 1351, which was a case concerning a strike out application based on the presence of immunity in respect of the task of drafting affidavit material. His Honour observed as follows at [55]:
- “The drafting of affidavits, the determination of the contents of those affidavits and the advices relating thereto, indeed all the tactical decisions associated with the preparation for and presentation of the extension application were, in the circumstances of this case, “intimately connected” with conduct of the case in court and affected the hearing. It is difficult to imagine out-of-court work more connected with the conduct of the case in court than the determination of the witnesses to be called and the evidence to be adduced from them. To the extent that these allegations concern out-of-court work, they are fundamentally directed to such matters or to preliminary steps leading only to such matters.”
- [148] In such circumstances, a case constituted by such conduct is untenable in the face of an advocate's immunity and that part of the case ought to be struck out, which was the outcome in *Keefe v Marks* (1989) 16 NSWLR 713 and *Wilson v Carter* [2005] NSWSC 1351.
- [149] There is nothing raised by Ms Yang, against either the third, fourth, fifth or sixth defendants, which would provide support for a grant of leave to replead on this subject matter. Again, this includes those matters raised in the scatter gun set of allegations made in the additional affidavit material I have allowed to be read.
- [150] I pause to note that whilst I have let in a portion of that additional material into evidence, much of it is irrelevant to the Current Proceeding. A large portion of it deals with why Ms Yang says she will ultimately succeed in the Main Proceeding against Mr Li, and seeks to remake various allegations ventilated in the caveat removal applications. These allegations do not demonstrate tenable causes of action against the defendants for the reasons previously expressed.

Other objections

- [151] There is a litany of other criticisms of the pleading. Given my reasons above, it is unnecessary to deal with those other criticisms.

Repleading

- [152] This is not an appropriate case to give leave to replead or, indeed, plead afresh. Ms Yang has not identified any basis upon which she could plead a sustainable cause of action against the first to fifth defendants. For that reason, the claim and statement of claim ought to be struck out in respect of each of the first to fifth defendants as not disclosing any tenable causes of action.

Sixth defendant

- [153] A review of this application occurred after the application was heard and reserved for judgment. This was due to Ms Yang seeking to reopen her case to lead additional evidence. At that review, a legal representative for the sixth defendant attended. I was informed by that representative that the sixth defendant had not yet been served with the claim and statement of claim. Be that as it may, the Court of its own volition under its inherent jurisdiction has power to strike out the proceeding against the sixth defendant if the pleaded case against him is untenable. It is appropriate to do so in this case. It would be absurd to leave the proceeding on foot against the sixth defendant in circumstances where the case against him is as equally misconceived as that advanced against the third to fifth defendants for the reasons previously explained.
- [154] There is nothing in the statement of claim which discloses a tenable cause of action against the sixth defendant, and as set out above, there is nothing in the received affidavit material which would provide support for leave to replead against the sixth defendant.
- [155] In those circumstances, I exercise the Court's inherent jurisdiction to strike out the claim and statement of claim against the sixth defendant.

Additional matters

- [156] In striking out the claim and statement of claim, for the reasons expressed above, it should clearly be understood that I am not suggesting any impropriety on the part of any of the defendants. A strike out application must be approached on the basis of the pleaded case at its highest, subject to the receipt of affidavit material as contemplated by r 171 of the UCPR.
- [157] I have approached the case on that basis.

Conclusion

- [158] Based upon my reasons above, the whole of the claim and statement of claim will be struck out.

The order of the Court will be:

1. The claim and statement of claim are each struck out in their entirety pursuant to the inherent jurisdiction of the Court and rules 16(i) and 171 of the *Uniform Civil Procedure Rules 1999* (Qld).

[159] I will hear the parties on costs.