SUPREME COURT OF QUEENSLAND

CITATION:	*MacDonald v Deputy Commissioner of Taxation* [2017] QCA 206
PARTIES:	**SHANE MacDONALD** (appellant) **v** **DEPUTY COMMISSIONER OF TAXATION** (respondent)
FILE NO/S:	Appeal No 12558 of 2016 DC No 629 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	District Court at Brisbane – Unreported, 4 November 2016 (McGill SC DCJ)
DELIVERED ON:	15 September 2017
DELIVERED AT:	Brisbane
HEARING DATE:	10 May 2017
JUDGES:	Sofronoff P and Gotterson and Philippides JJA
ORDERS:	**1. Appeal dismissed.** **2. Appellant to pay the respondent's costs of the appeal on the standard basis.**

CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – SUMMARY JUDGMENT FOR PLAINTIFF OR APPLICANT – EVIDENCE IN SUPPORT OF APPLICATION – where the respondent sought summary judgment for primary tax debts due by the appellant – where the appellant contended summary judgment ought not be awarded as the respondent failed to plead certain material facts – where the learned primary judge was not satisfied that a component of the debt was proved, but gave summary judgment for the remainder – where the learned primary judge found that the evidence adduced was sufficient to establish the respondent would be successful at a trial notwithstanding the deficiencies in the respondent's pleadings – whether the exercise of discretion to award summary judgment to a plaintiff under r 292 of the *Uniform Civil Procedure Rules* 1999 (Qld) is dependent upon the absence of pleading irregularities in the statement of claim *Uniform Civil Procedure Rules* 1999 (Qld), r 292 *Deputy Commissioner of Taxation v Epov* [2008] NSWSC 1085, cited *Deputy Commissioner of Taxation v Phillips*, unreported, Wylie DCJ, DC No 213 of 2005, 23 December 2005, considered *Deputy Commissioner of Taxation v Purdie* [2014] QDC 222, considered *Deputy Commissioner of Taxation v Salcedo* [2004] QSC 361, approved *Deputy Commissioner of Taxation v Salcedo* [2005] 2 Qd R 232; [2005] QCA 227, applied *Equititrust Ltd v Gamp Developments Pty Ltd & Ors* [2009] QSC 115, approved *H'Var Steel Services Pty Ltd v Deputy Commissioner of Taxation* [2005] WASCA 71, cited
COUNSEL:	I Young for the appellant V G Brennan for the respondent
SOLICITORS:	Small Myers Hughes for the appellant ATO Dispute Resolution for the respondent

[1] **SOFRONOFF P:** I agree with the reasons of Gotterson JA and with the orders his Honour proposes.

[2] **GOTTERSON JA**: On 4 November 2016 in the District Court at Brisbane, summary judgment was given in favour of the respondent, Deputy Commissioner of Taxation, against the appellant, Shane MacDonald, in the amount of $334,592.57 for part of the respondent's claim against the appellant. The respondent was given

leave to amend its statement of claim for the balance of the amount claimed. The appellant was ordered to pay the respondent's costs of the application.

[3] The appellant filed a notice of appeal against the judgment on 30 November 2016. The appellant seeks an order setting aside the judgment and an order that the respondent pay his costs of the appeal.

The litigation

[4] On 17 February 2015 the respondent commenced proceedings against the appellant by way of a claim filed in the District Court. The amount of $359,524.85 was claimed by way of debt due to the Commonwealth of Australia and payable by the appellant to the Commissioner of Taxation ("Commissioner") pursuant to the provisions of the *Taxation Administration Act* 1953 (Cth) ("TA Act") together with further general interest charges pursuant to the TA Act and costs. The respondent is by law entitled to sue to recover debts due to the Commonwealth and payable to the Commissioner.

[5] The statement of claim which accompanied the claim pleaded that the following several amounts were due as debts:

No.	**Item**	**$ amount**
(i)	A Running Balance Account ("RBA") deficit debt in respect of primary tax debts together with general interest charges as at 3 February 2015	190,587.77
(ii)	Administrative penalties for failure to lodge income tax returns (3) as at 3 February 2015	3,240.00
(iii)	Superannuation guarantee charges together with penalties and additional charges for late payment as at 3 February 2015	46,669.23
(iv)	An RBA deficit debt in respect of primary tax debts as trustee of the MacDonald Family Discretionary Trust as at 3 February 2015	117,927.85
(v)	Administrative penalties for failure to lodge income tax returns (2) as trustee of the MacDonald Family Discretionary Family Trust as at 3 February 2015	1,100.00
	Total	$359,524.80

Also claimed were a further general interest charge pursuant to s 8AAZF and Part IIA of the TA Act and a further general interest charge pursuant to s 298-25 in Sch 1 and Part IIA of the TA Act.

[6] The appellant filed a notice of intention to defend and a defence on 7 April 2015. On 29 April 2015, the respondent filed a reply.

[7] On 4 October 2016, the respondent filed an application for summary judgment pursuant to r 292 of the *Uniform Civil Procedure Rules* 1999 ("UCPR"). The application was supported by an affidavit of Mark Simpson, an Australian Taxation Office ("ATO") officer. A further affidavit of Mr Simpson was filed by leave and without opposition at the hearing of the application on 4 November 2016. The

appellant did not file any evidential material to oppose the application. Leave to cross-examine Mr Simpson was not sought.

[8] Mr Simpson's second affidavit swore to amounts owing as at 3 November 2016 in respect of the abovementioned debts. Proof of the indebtedness was by way of certificates pursuant to s 255-45 of Sch 1 of the TA Act exhibited to the affidavit. The debts thereby sought to be proved were:

No.	**Item**	**$ amount**
(i)	As at 3 November 2016	171,821.94
(ii)	As at 3 November 2016	98.28
(iii) & (v)	Together as at 3 November 2016	*52,631.83
(iv)	As at 3 November 2016	117,208.09
	Total	$341,760.14
	*comprised of (iii) $51,531.83 and (v) $1,100.00	

[9] The learned primary judge held that there was no reason to doubt the success of the respondent's claims in respect of (i), (ii), (iv) and (v).

[10] As to (iii), for reasons it is unnecessary to detail here, his Honour was not satisfied that a component of the $51,531.83, namely, $7,167.57 attributable to general interest charges on the superannuation guarantee charges, was proved. He was, however, satisfied that (iii) was proved to the extent of $44,364.26.

[11] Accordingly, the learned primary judge gave summary judgment for the amount of $334,592.57 ($341,760.14 less $7,167.57). The leave to amend which was given related to the claim for those general interest charges.

The appellant's challenge to the adequacy of the statement of claim

[12] At first instance, the appellant's resistance to the summary judgment application focused upon alleged deficiencies in the case pleaded in the statement of claim. Those deficiencies are relied upon in this appeal. It is appropriate that I outline what they are.

[13] With respect to the RBA deficit debt on the appellant's own account, the statement of claim pleaded that the Commissioner had established the account in respect of primary debts due by the respondent under the BAS provisions as defined in subs 995-1(1) of the *Income Tax Assessment Act* 1997 (Cth); that he had allocated both primary tax debts and any payments or other credits to it; that a balance at any time in favour of the Commissioner was an RBA deficit debt; that, pursuant to s 8AAZF(1) of the TA Act, the appellant was liable to pay the general interest charge for each day there was an RBA deficit debt, that such charge was capitalised daily pursuant to s 8AAZF(2) thereof; and that the appellant was liable to pay the amount of $190,587.77 in respect of the RBA deficit debt at 3 February 2015.

[14] Paragraph 8 of the statement of claim pleaded the following particulars of this debt:

"

	$
The Commissioner established a Running Balance Account ("the RBA") in respect of the defendant's liabilities for administrative penalties due under Part 4-25 of Schedule 1 of the TAA 1953 and liabilities under the BAS provisions as defined in subsection 995-1(1) of the ITAA 1997. BAS provisions include, generally: the goods and services tax provisions, the PAYG withholding provisions, the PAYG instalment provisions, the fringe benefits tax instalment provisions and the deferred company instalment provisions. The balance of the RBA as at 3 February 2015 is in favour of the Commissioner, and is accordingly an *RBA deficit debt* for the purposes of section 8AAZH of the TAA 1953.	190,587.77

"

[15] In his defence, the appellant did not deny the indebtedness. He did not admit it on the footing that the allegation of indebtedness was not adequately pleaded and particularised. Specifically, in written submissions, at first instance, the appellant contended that the respondent had not pleaded "material facts". Material facts which the appellant contended should have been pleaded, but were not, included the date when the RBA was established, the amount of each primary tax liability debited to the account and of each payment or other amount credited to the account with the date of the respective debit or credit, the balance amount owing to the Crown under the account on a daily basis, and the amount of general interest charge capitalised to the account for each such day.

[16] A similar defence was pleaded and a similar complaint made in respect of the RBA deficit debt of $117,927.85 pleaded against the appellant as trustee of the MacDonald Family Discretionary Trust. In this instance, there was also a denial of indebtedness on the appellant's part "in his personal capacity".

[17] As to the administrative penalties debt for failure to lodge three income tax returns, the statement of claim pleaded that the appellant failed to lodge income tax returns for each of the years ended 30 June 2011, 30 June 2012 and 30 June 2013 by the respective required date; that he thereby became liable to pay administrative penalties; that notices of the same were served on him pursuant to s 298-10 in Sch 1 of the TA Act; that he failed to pay the administrative penalties on or before the respective due dates specified in the notices; that by reason of the failure so to pay, the appellant, pursuant to s 298-5 of Sch 1 and Part IIA of the TA Act, became liable to pay the general interest charge; and that the appellant was indebted to the Commonwealth in the amount of $3,240 in respect of administrative penalties and the general interest charge.

[18] Paragraph 14 of the statement of claim set out the following particulars of this debt:

"

	$	$

The administrative penalty payable pursuant to section 286-75 in Schedule 1 to the TAA 1953 in respect of failure to lodge an income tax return for the year ended 30 June 2011, as per the notice issued on 3 April 2012 which became due for payment on 23 April 2012 LESS: payments and/or credits	1,100.00 900.00	
		200.00
The administrative penalty payable pursuant to section 286-75 in Schedule 1 to the TAA 1953 in respect of failure to lodge an income tax return for the year ended 30 June 2012, as per the notice issued on 5 July 2013 which became due for payment on 26 July 2013	1,340.00	
		1,340.00
The administrative penalty payable pursuant to section 286-75 in Schedule 1 to the TAA 1953 ,in respect of failure to lodge an income tax return for the year ended 30 June 2013, as per the notice issued on 24 June 2014 which became due for payment on 14 July 2014	1,700.00	
		1,700.00

"

[19] By way of defence, the appellant admitted his failure to lodge the income tax returns and that he thereby became liable to pay administrative penalties. However, he did not admit the remainder of the allegations against him in respect of this debt. The non-admission was on the basis that the appellant was uncertain of the truth of the allegations and that they were not adequately pleaded and particularised in that he did not have in his possession notices of the administrative penalty; that his account maintained by the Commissioner showed in excess of $900 recovered and applied it against the "failure to lodge" penalties; and that the $3,240 appeared not to include any general interest charge component.

[20] The pleading in the statement of claim in respect of the administrative penalty debt for failure to lodge income tax returns as trustee of the MacDonald Family Discretionary Trust was in comparable terms. To that, the appellant pleaded that he did not admit the debt because he was uncertain of the truth of the allegations and that they were not adequately pleaded and particularised in that he had neither the administrative penalties notices, nor a record of tax returns lodged for the MacDonald Family Discretionary Trust, nor the account for it maintained by the Commissioner recording the administrative penalties charged or payments received for them.

[21] At first instance, in written submissions, the appellant contended that material facts had not been pleaded for the establishment or ascertainment of the relevant due date for payment of each administrative penalty. This submission was made

notwithstanding the specification of each due date for payment in the particulars pleaded, on the footing that the statement of the dates in the particulars could not remedy a deficiency of not having pleaded the date as the due date.

[22] Lastly, as to the superannuation guarantee charges, the statement of claim pleaded that, as trustee of the MacDonald Family Discretionary Trust, the appellant was an employer within the meaning of s 12 of the *Superannuation Guarantee (Administration) Act* 1992 (Cth) ("SGAA 1992"). The appellant admitted this allegation. The statement of claim further pleaded that, as trustee, the appellant became liable to pay the superannuation guarantee charge pursuant to s 16 SGAA 1992; that pursuant to s 37 of that Act, the Commissioner assessed the appellant to the superannuation guarantee charges ("the Amended Assessments") in respect of the quarters commencing 1 January 2009, 1 April 2009, 1 July 2009, 1 October 2009, 1 January 2010, 1 April 2010, 1 October 2010, 1 January 2011, 1 April 2011, 1 July 2011, 1 October 2011, 1 January 2012, 1 July 2012, 1 October 2012, 1 January 2013, 1 April 2013 and 1 July 2013; that notices of the Amended Assessments were given to the appellant in accordance with s 40 SGAA 1992; that pursuant to s 37 thereof, the superannuation guarantee charges under the Amended Assessments "were taken to have become payable" on 28 April 2009, 28 July 2009, 28 October 2009, 28 January 2010, 28 April 2010, 28 July 2010, 28 January 2011, 28 April 2011, 28 July 2011, 31 October 2011, 31 January 2012, 30 April 2012, 29 October 2012, 29 January 2013, 29 April 2013, 29 July 2013 and 28 October 2013 respectively; that by reason of the failure to pay the superannuation guarantee charges by the relevant dates, the appellant became liable to pay the general interest charge pursuant to s 49 SGAA 1992 and Part IIA of the TA Act.

[23] Paragraph 21 pleaded that at 3 February 2015, the appellant was indebted to the Commonwealth in the amount of $46,699.23 in respect of amounts payable under the SGAA 1992. It is sufficient for present purposes to set out the components of the amount for the quarters commencing on 1 January 2009 and 1 July 2013:

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	$	$
Increase in superannuation guarantee charge as per notice of Amended Assessment for the quarter commencing on 1 January 2009, which became payable by the defendant as trustee for MacDonald Family Discretionary Trust on 28 April 2009	567.04	
PLUS: The general interest charge pursuant to section 49 of the SGAA 1992 and Part IIA of the TAA 1953, calculated up to and including 2 February 2015	30.63	
		597.67

…

	$	$
Increase in superannuation guarantee charge as per notice of Amended Assessment for the quarter commencing on 1 July 2013, which became payable by the defendant as trustee for MacDonald Family Discretionary Trust on 28 October 2013	6,505.03	
PLUS: The general interest charge pursuant to section 49 of the SGAA 1992 and Part IIA of the TAA 1953, calculated up to and including 2 February 2015	348.82	
		6,853.85

"

[24] In his defence, the appellant admitted that the Amended Assessment notices were given to him and that the due dates for payment on the notices were as pleaded in the statement of claim. He denied that he was liable "in his personal capacity" to the superannuation guarantee charges. He asserted that liability for the Amended Assessments attached to the trustee of the MacDonald Family Discretionary Trust and further asserted that the respondent was seeking to recover these liabilities from the appellant in his personal capacity. As well, he did not admit that the debt claimed was payable because he was uncertain of the allegations and that they were not adequately pleaded and particularised in that "[p]ayments with respect to superannuation related liabilities had been made to the Commissioner" and that he had not been provided with a "complete record of postings made on the superannuation account maintained by the Commissioner with respect to the MacDonald Family Discretionary Trust".

[25] In written submissions, the appellant contended that the pleading of the date for payment of each superannuation guarantee charge as the date on which the charge was "taken to have become payable" was not a sufficient pleading of the factual basis on which that date was the actual date on which the charge was payable.

[26] At first instance, the appellant's written and oral submissions drew upon r 149(1)(b) of the UCPR which provides that a pleading shall contain "a statement of all the material facts" on which the party relies to establish its cause of action. Reference was made to a number of cases in which courts had granted relief in respect of tax-recovery pleadings or set aside default judgments for recovery of unpaid tax. Those cases, the appellant submitted, supported a principle that summary judgment should not be granted on the basis of an irregular pleading and where default judgment, if obtained, would be set aside.

The judgment at first instance

[27] The learned primary judge rejected the principle for which the appellant had contended and which accorded primacy to the pleadings. His Honour said:

"There is one aspect of the summary judgment application which is I think of some

importance in the context of the argument that has occurred today, and that is that the rule which formulates the test looks forward to what is going to occur if the matter goes to trial, and is concerned with the issue of what will happen if there is a full trial of the matter. In those circumstances what is more important is not whether the Plaintiff has pleaded a good cause of action, but whether the Plaintiff really has a good cause of action, and whether, if the matter goes to trial, the Court can be sufficiently confident to the standard specified in the rule that the Plaintiff will be successful in establishing and vindicating that cause of action at a trial.

It's also necessary to consider whether there is for some other reason, for example, because of some uncertainty as to quantum, a need for a trial on some other basis. However, what matters on hearing a summary judgment application is not so much the question of what the pleadings say, but what is the real situation. For that reason it is not necessarily of assistance to a Plaintiff to rely on mere inadequacy in a pleaded defence if the Defendant is able to point to some good reason to think that there may be some weakness in the Plaintiff's claim in some respect or other, even if it hasn't been pleaded.

There is a High Court matter where Justice Heydon pointed out that one of the things that can happen between the hearing of the summary judgment application and a trial is that the pleadings can be amended, but it seems to me that the same really applies to the Plaintiff's pleading and if the Plaintiff can show on the hearing of the summary judgment application that it really has a good cause of action, and that if the matter goes to trial it will win, then the adequacy or otherwise of the Plaintiff's pleading in my view really becomes largely irrelevant."

[28] His Honour then added the following observation in the nature of a qualification:

"This is not a case where it is suggested that the pleading was so bad that the Defendant was misled as to the true cause of action of the Plaintiff. Rather, the position is that the matter has been largely argued on the basis that as a pleading the current statement of claim is inadequate in certain respects, in that certain material facts have not been pleaded. That might have been a good argument if the issue was whether the pleading should be struck out, but it is not as I say the central subject of inquiry on an application for summary judgment."

[29] As to the evidence before him, the learned primary judge observed:

"… I have quite extensive evidence particularly in the form of an affidavit by an officer of the Australian Taxation Office, who has deposed to and verified documents relating to the tax affairs of the Defendant. There are a number of aspects to the claim, but in terms of the factual issues raised there is I think really only one that I need to address in any great detail."

[30] The matter his Honour then addressed was the date particularised as the date on which each of the superannuation guarantee charges became payable. For reasons which it is unnecessary to detail, he was of the view that there was reason to doubt that the charges under the Notices of Amended Assessment became payable on the dates set out in them respectively. Accordingly, he considered that it would not be appropriate to give summary judgment for the total amount claimed by way of

general interest charges on the superannuation guarantee charges and, as I have mentioned, did not do so. The respondent has not cross-appealed in relation to this matter.

[31] As to the other matters, the learned primary judge referred to the recording by way of the running balance accounts, to the provisions in s 8AAZH of the TA Act that a taxpayer is presumptively liable, but not conclusively so, to pay the balance of such an account on any particular day, and to the provisions in s 8AAZI thereof as to *prima facie* evidence of regularity in keeping such accounts. In his Honour's view, these provisions, operating in parallel with the certificates in evidence, meant that *prima facie*, at least, each debt claimed was proved.

[32] His Honour concluded as follows:

"In the light of the evidence in the two affidavits of Mr Simpson, and in the absence of evidence to the contrary, I'm sufficiently confident that the plaintiff will succeed at a trial in relation to all of the other aspects of the plaintiff's claim for me to give judgment in a summary way under rule 292. There is, I think, well, I am satisfied that there is no real possibility of the defendant being successful at a trial in relation to the balance of the plaintiff's claim, and there is otherwise no need for a trial of the action."

Submissions on appeal

[33] At the hearing of the appeal, Counsel for the appellant clarified the nature of his client's appeal against the grant of summary judgment. He said:

"… what I mean to say is that the material is there to establish the quantum and the liability of the debt. There's no material to suggest the assessments were not served or that the Running Account Balance statements were not given or available to the defendant – the appellant in this Court. No evidence of that. The sole point is the technical one. And yes, your Honour, I concede it is a technical pleading point, particularly arising from the nature of the debt and the nature of the statute and the position of the Commissioner."

[34] In developing the technical argument, Counsel observed that whilst there were decisions of the Supreme Court of New South Wales which expounded upon the material facts that needed to be pleaded for recovery of an assessed tax debt, there was "no definitive decision… as to the requisite material facts which must be pleaded in a Running Account Balance (sic) case". He cited two decisions of single judges of the District Court of Queensland, *Deputy Commissioner of Taxation v Phillips* and *Deputy Commissioner of Taxation v Purdie*, which concerned the adequacy of pleadings to recover Running Balance Account debts. Reference was made to the decision of Holmes J (as her Honour then was) at first instance in *Deputy Commissioner of Taxation v Salcedo* with regard to the adequacy of pleadings to recover monies payable under an agreement entered into pursuant to s 222ALA of the *Income Tax Assessment Act* 1936 (Cth).

[35] By way of illustration of pleading defects, Counsel for the appellant referred to a penalty notice for the MacDonald Family Discretionary Trust which stated an issue date of 3 April 2012 and a date for payment of the penalty of $550 of 23 April 2012. His point was that since s 298-15 of the TA Act sets the due date for payment

as at least 14 days after the notice is given, it is necessary to plead the date when the penalty notice was actually given, being a date at least 14 days before 23 April 2012. That had not been done. In relation to the Running Balance Account deficit debts, a failure to plead each primary tax liability debited to the accounts was ventured as another pleading deficiency.

[36] The respondent challenged the principle for which the appellant contended. Exercise of the discretion to award summary judgment to a plaintiff under r 292 is not dependent upon the absence of pleading irregularity in the statement of claim. The primary frame of reference for the application, it was submitted, is the evidential material before the judge who hears the application. On that approach, there was a sufficiency of unchallenged *prima facie* evidence before the learned primary judge to sustain the judgment in the amount given.

Discussion

[37] The principle for which the applicant contends has no support in the language of r 292 itself. Nor does it find support in decisions of the Supreme Court of Queensland or comparable Australian courts concerning comparable summary judgment provisions. Decisions cited by the appellant relating to applications to strike out pleadings as not disclosing a reasonable cause of action or to set aside default judgments are, in my view, of little assistance in the current context.

[38] By contrast, certain summary judgment decisions of the Supreme Court of Queensland tell against the existence of such a principle. In *Salcedo*, Holmes J granted summary judgment notwithstanding pleading deficiencies identified by her Honour. On appeal to this Court, the judgment was upheld. The case concerned principally the test to be applied in determining whether a respondent for a summary judgment application had established sufficient to oppose it. Williams JA, with whom McMurdo P and Atkinson J agreed, was satisfied that the material placed before the Court did not establish that the appellant had any real prospect of successfully defending the claim. Whilst it is true that this Court in *Salcedo* was not presented with an argument by the appellant referenced to pleading deficiencies which Holmes J had identified, it is significant that the frame of reference adopted for deciding the matter was the evidential material put before the Court.

[39] Such an approach was endorsed by McMurdo J (as his Honour then was) in *Equititrust Ltd v Gamp Developments Pty Ltd & Ors*. Relevantly, his Honour observed:

"The power to give summary judgment to a plaintiff is according to the terms of r 292. The rule requires attention to a plaintiff's claim. It does not expressly refer to a plaintiff's pleading. A plaintiff's claim must be that within the document by which the proceedings were commenced or as that has been amended with the leave of the court or a registrar. A plaintiff cannot seek summary judgment for relief which is not within its claim as filed or as duly amended. There is no express requirement within r 292 for the plaintiff's case for that relief to be entirely according to its pleading. But ordinarily that would be required because a defendant is entitled to be fairly informed of the case against it. And because summary judgment may be sought only after a Defence is filed, an application for judgment upon an unpleaded case might be considered premature. Nevertheless they are discretionary considerations. In my view the rule does not limit the power to give summary judgment to instances where the plaintiff's argument precisely

accords with its pleading. In the present case, there could be no disadvantage to the first defendant in not having an amended statement of claim which pleads the September 2008 agreement and the default under that agreement. To the extent that the plaintiff's argument goes further than its pleading, this provides no basis for not giving judgment if the plaintiff establishes that there is no real prospect of defending all or part of its claim and there is no need for a trial of the claim or part of the claim."

[40] I respectfully agree with his Honour's observations. In my view, the appellant here fails at a level of principle. That is not to deny that, as the learned primary judge acknowledged, there may be instances where summary judgment ought to be refused because a statement of claim is so deficient as to mislead a defendant as to the plaintiff's true cause of action. That is not, by any means, the case here, as his Honour correctly noted.

[41] It is unnecessary for this Court to adjudicate upon any difference in approach taken in the two District Court cases to which the appellant referred. *Phillips* concerned an application for further and better particulars of a claim based on a Running Balance Account deficit debt. Wylie DCJ ruled that each tax debt debited to the account needed to be pleaded. In *Purdie*, an applicant to set aside a default judgment for such a debt, relied on *Phillips*. However, he failed to establish that he had reasonable prospects of defending the claim, details of which he was well acquainted. Butler SC DCJ did not regard the deficiency in pleading as one that justified setting aside the default judgment in those circumstances. Neither case involved an application for summary judgment.

[42] Here there was *prima facie* evidence by way of the certificates before the learned primary judge of the component parts of the respondent's claim. That evidence was not challenged. The appellant did not adduce evidence that, for example, the penalty notices were in fact given to him on dates less than 14 days before the dates for payment shown on them, or that the general interest charges claimed were not payable. With the exception of the general interest charges on the superannuation guarantee charges, the appellant did not establish that he had any real prospect of defending the respondent's claim.

Conclusion

[43] For these reasons, the appellant has failed to establish any error on the part of the learned primary judge. This appeal must therefore be dismissed.

Order

[44] I would propose the following orders:

1. Appeal dismissed.

2. Appellant to pay the respondent's costs of the appeal on the standard basis.

[45] **PHILIPPIDES JA:** I agree for the reasons stated by Gotterson JA that the appeal should be dismissed with costs.