Federal Court of Australia

Karlsson v Griffith University [2022] FCA 591

|  |  |  |
| --- | --- | --- |
| File number: |  | |
|  |  | |
| Judgment of: | **KATZMANN J** | |
|  |  | |
| Date of judgment: | 24 May 2022 | |
|  |  | |
| Catchwords: | **PRACTICE AND PROCEDURE** — application by applicant for default judgment — where respondent failed to file a defence within the time permitted by the rules but later excused from doing so until further order — whether judgment in favour of applicant should be entered  **PRACTICE AND PROCEDURE** — application by respondent for summary judgment — where applicant had sued respondent in the Supreme Court of New South Wales based on the same factual matrix as the proceeding in this Court and raising substantially the same allegations — where the Supreme Court action was summarily dismissed on the basis that they were frivolous, vexatious and involved an abuse of process, whether the proceeding in this Court should be summarily dismissed as an abuse of process — alternatively, where applicant’s pleading defective in numerous respects, whether it should be struck out and leave to replead refused | |
|  |  | |
| Legislation: | *Competition and Consumer Act 2010* (Cth) s 137C(1)(b), Schedule 2 ss 18, 29, 151(1)(a), 236(1), (2)  *Federal Court of Australia Act 1976* (Cth) ss 31A(2), 37M  *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) s 7(5)  *Trade Marks Act 1995* (Cth) ss 120, 124, 126, 127, 195  *Federal Court Rules 2011* (Cth)ss 1.34, 1.40, 1.41, 16.02(1)(d), 16.21(1), 16.32, 16.42, 26.01  *Limitation of Actions Act 1974* (Qld) s 12(1) | |
|  |  |
| Cases cited: | *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256  *Campomar Sociedad Limitada v Nike International Ltd* (2000) 202 CLR 45  *Do Carmo* v *Ford Excavation Proprietary Limited* (1984) 154 CLR 234  *Field v Perpetual Ltd* [2010] FCA 1001  *Idoport Pty Ltd v National Australia Bank Ltd* [2006] NSWCA  *Karlsson v Griffith University* (2020) 103 NSWLR 131  *Karlsson v Griffith University* [2019] NSWSC 1335  *Karlsson v Griffith University* [2020] NSWSC 365  *Karlsson v Griffith University* [2021] HCASL 12  *Meckiff v Simpson* [1968] VR 62  *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191  *PNJ v The Queen* [2009] HCA 6; 83 ALJR 384; 252 ALR 612; 193 A Crim R 54  *Polar Aviation Pty Ltd v Civil Aviation Authority* (2012) 203 FCR 325  *Rogers v The Queen* (1994) 181 CLR 251  *Spencer v Commonwealth of Australia* (2010) 241 CLR 118  *Stewart v Deputy Commissioner of Taxation* [2010] FCA 402; 76 ATR 66  *Taco Co of Australia Inc v Taco Bell Pty Ltd* (1982) 42 ALR 177  *Tang v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCA 1042  *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507  *Trade Practices Commission v David Jones (Australia) Pty Ltd* (1985) 7 FCR 109  *Turner v Bulletin Newspaper Co Pty Ltd* (1974) 131 CLR 69  *UBS AG v Tyne as Trustee of the Argo Trust* (2018) 265 CLR 77  *Walton v Gardiner* (1993) 177 CLR 378  *Williams v Spautz* (1992) 174 CLR 509 | |
|  |  | |
| Division: |  |
|  |  |
| Registry: |  |
|  |  |
| National Practice Area: |  |
|  |  |
| Sub-area: |  |
|  |  |
| Number of paragraphs: | 93 | |
|  |  | |
| Date of hearing: | 20 April 2022 | |
|  |  | |
| Counsel for the Applicant: | The Applicant appeared in person | |
|  |  | |
| Counsel for the Respondent: | Mr AG Psaltis | |
|  |  | |
| Solicitor for the Respondent: | Bartley Law | |

ORDERS

|  |  |  |
| --- | --- | --- |
|  | | NSD 1102 of 2021 |
|  | | |
| BETWEEN: | ANNIKA KARLSSON  Applicant | |
| AND: | GRIFFITH UNIVERSITY  Respondent | |

|  |  |
| --- | --- |
| order made by: | KATZMANN J |
| DATE OF ORDER: | 24 MAY 2022 |

THE COURT ORDERS THAT:

1. The interlocutory application filed by the applicant on 2 February 2022 be dismissed.
2. The proceeding be dismissed.
3. Summary judgment be entered in favour of the respondent against the applicant.
4. The applicant pay the respondent’s costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

KATZMANN J:

## Introduction

1. Annika Karlsson is the owner of a registered trade mark. She claims that Griffith University infringed that mark. She also claims that the University literally stole the mark because it first used it in August 2011 several months after a bag of hers containing a USB flash drive went missing. Nearly eight years later she reported the alleged theft to the Australian Federal Police but asked them to take no action. Less than a month after her report to the AFP, Ms Karlsson launched proceedings in the Supreme Court of New South Wales seeking damages from the University for trade mark infringement, misleading and deceptive conduct and “theft” (**the Supreme Court action**). The Supreme Court action was summarily dismissed and Ms Karlsson was ordered to pay the University’s costs. Ms Karlsson applied to the Court of Appeal for leave to appeal but the leave application was also dismissed and a claim for special leave to appeal to the High Court was refused. The costs of the Supreme Court action were assessed in April 2021 and judgment entered in the amount assessed and, although a year has passed, they have not been paid.
2. In October 2021 Ms Karlsson launched fresh proceedings against the University in the original jurisdiction of this Court. It is common ground that the proceeding in this Court raises substantially the same allegations as were made in the Supreme Court action and seeks similar kinds of relief. Only the amount of her damages claim has changed, rising from $2 million to over $5 million.
3. Upon being served with the originating process, the University, through its solicitors, wrote to Ms Karlsson inviting her to discontinue the proceeding or, if not, to file and serve an amended statement of claim to cure the apparent defects in her pleading, foreshadowing an application to have it summarily dismissed if she did not. Ms Karlsson retaliated with an interlocutory application seeking judgment in the entire amount of her claim. That application was filed on 22 November 2021. The next day the University filed an application for summary judgment and, in the alternative, for orders striking out the whole of the originating application and statement of claim. It also sought an order that it be excused from filing a defence until further order of the Court. Over two months later, on 2 February 2022, and before the first case management hearing was held, Ms Karlsson filed a second interlocutory application seeking default judgment. The parties proceeded on the basis that Ms Karlsson’s second interlocutory application superseded her first. Each party filed a number of affidavits. The University’s interlocutory application and Ms Karlsson’s interlocutory application for default judgment were listed for hearing on the same day.
4. Throughout the litigation in and arising out of the Supreme Court action and in the instant proceeding, Ms Karlsson appeared in person. It has not served her well.

## The evidence

1. The University relied on three affidavits sworn by Elise Brooke Allcock on 23 November 2021, 4 March 2022 and 19 April 2022. Among other things, the affidavits set out the relevant history concerning the use and registration of the respective trade marks, and included a chronology of the Supreme Court action and annexed relevant correspondence.
2. Ms Karlsson relied on five affidavits affirmed on 22 November 2021 (1), 6 December 2021 (2), 2 February 2022 (3), 25 March 2022 (4), and 12 April 2022 (5). With the exception of the affidavit of 2 February 2022, in which Ms Karlsson pointed to the University’s failure to file a defence in accordance with the *Federal Court Rules 2011* (Cth) (**Rules**), none of this evidence was of assistance in resolving the issues raised by either application. The relevance of many of the documents either to the present applications or to Ms Karlsson’s substantive case is obscure.
3. The first of Ms Karlsson’s affidavits was filed in support of the first interlocutory application. It identified the national practice areas and sub-areas to which Ms Karlsson apparently believed the application could be allocated and advised of her intention to serve the University by serving its solicitors. It annexed the results of an internet search for “Griffith [U]niversity Know more. Do more.”, which appears to have been carried out on 16 September 2021. So far as I can tell, to the extent that the search results revealed material linking the University to the slogan, they do not disclose the use by the University of the slogan after it ceased to be the registered owner of the trade mark.
4. The second affidavit was said to have been filed “in support of Reply for plead a matter of fact or point of law”. It appears to be directed at challenging the orders made in the Supreme Court action. In para 4, Ms Karlsson purported to apply for an order disallowing any costs “improperly, unreasonably, or negligently incurred”. Annexed to the affidavit were copies of the transcript of the hearings before Wright J and the Court of Appeal; correspondence from the University’s solicitors debunking her allegations but offering to settle on terms which would excuse her from paying costs; the “Registration of Cost Assessment Certificate”; and a letter from a firm of accountants dated 16 March 2016, advising her that records were only kept for five years.
5. The third affidavit was filed in support of Ms Karlsson’s interlocutory application for default judgment. In it she stated, in essence, that the University had failed to file a defence and that she was seeking orders for summary judgment in the amount of $5,371,258.18. Annexed to the affidavit were correspondence between Ms Karlsson and the University’s solicitors; receipts and invoices for legal services which Ms Karlsson said amounted to over $16,000; correspondence with a translation service; a business plan and other marketing materials from Ms Karlsson’s business featuring the mark “Know more. Do more”; the profiles of various employees of Ms Karlsson’s business; information relating to international student numbers; a hospital discharge summary; and copies of prescriptions in Ms Karlsson’s name.
6. The fourth affidavit was 180 pages long. In it, Ms Karlsson curiously deposed that she had done nothing to cause damage to my reputation. She complained that, by failing to file a defence, the University had “violated the courts orders” (apparently equating the Rules with orders of the Court). She stated that, unlike the University, she had done everything in a timely fashion. She also accused the University of having “stolen” documents she had filed with the High Court because copies of those documents, bearing the seal of that court, were annexed to one of Ms Allcock’s affidavits. In addition, she made the extraordinary allegation, unsupported by evidence, that the University “used personal identity and personal documents to copy house key and car keys and used them to enter the house and enter the car to steal [the] documents”.
7. Annexed to the affidavit were copies of Ms Karlsson’s submissions and the affidavit itself, both in the Thai language together with certified English translations; the results of a search on the IP Australia website of the search term “Be Remarkable”; a copy of the transcript of a hearing before Lonergan J in the Supreme Court; correspondence with the Supreme Court registry; the affidavit Ms Karlsson filed in the High Court in connection with her special leave application; correspondence between her and the High Court registry; part of the Explanatory Statement relating to changes to the High Court Rules made in 2016; and the reasons of Keane and Edelman JJ for dismissing Ms Karlsson’s special leave application, together with a sealed copy of the High Court’s order. The affidavit also annexed a statement about the Federal Crime and Related Proceedings National Practice Area, apparently taken from the Court’s website; a copy of the first two front pages of a judgment of the Full Court in a COVID-19 insurance test case published in February last year; media releases issued by the Australian Competition and Consumer Commission in random civil penalty cases; a copy of part of the first page of the Court of Appeal’s judgment in Ms Karlsson’s case; correspondence from the University’s solicitors to Ms Karlsson; an extract of the documents electronically filed in this matter; a copy of Ms Karlsson’s application for special leave; a certificate of service and copies of medals won by Michael Charles Hoffmann (apparently Ms Karlsson’s husband); a veteran’s card in the name of Tiger Karlsson; and a letter to Ms Karlsson from the Hon Tony Abbott MP, when he was Prime Minister, providing a spirited defence of the 2014 federal budget (“tough … but … fair”).
8. The fifth affidavit was also filed in support of Ms Karlsson’s application for default judgment and duplicated some of the material annexed to the fourth affidavit. It was 213 pages long. It contained evidence of her attempts to serve her submissions on the application and the fourth affidavit on the University. In addition to these documents, the affidavit annexed receipts from Officeworks, extracts from the Australia Post website; correspondence between Ms Karlsson and the registry of this Court; and correspondence from the University’s solicitors and Legal Vision. It also annexed a certificate apparently issued by the Local Court of NSW on 19 July 2019 under s 309A of the *Criminal Procedure Act 1986* (NSW) stating that Ms Karlsson’s driving licence and credit card were stolen and that the offender had used the identification information taken from these items to commit offences “in relation to the victim’s personal or business affairs”.

## Background

1. The following matters are apparently uncontentious.
2. On or about 14 August 2011 the University started to use the trade mark, know more. do more. The University used the trade mark in marketing its courses on the internet and elsewhere. On 10 May 2013, it applied to register the trade mark in class 41 (education services). The Registrar of Trade Marks accepted the University’s application on 21 November 2014, with a priority date of 10 May 2013. The acceptance was advertised on 27 November 2014 and the mark was entered on the Register on 4 February 2015. In 2016 the University embarked on a new marketing campaign, using the slogan “Be Remarkable”.
3. On 3 August 2014 Ms Karlsson applied to register know more. do more in the same class. By August 2018 she had received at least six adverse reports explaining that her application was unsuitable for registration.
4. On 7 August 2018 Baxter IP, a firm of patent and trade mark attorneys, wrote to the University on Ms Karlsson’s behalf seeking its consent to her use of the mark. In that letter Baxter IP acknowledged that the University was the owner of Australian Trade Mark 1556369 for know more. do more. in class 41 and noted that Ms Karlsson had filed an application for registration of the same mark in the same class. They advised:

Our client intends to start a new business and use the trade mark know more. do more. as a slogan for her new business. The nature of the business of our client will be an immigration and education agency, which will provide services in relation to studying in Australia and immigrating to Australia. The business will also provide language training classes for clients who need to meet language requirements of visas.

…

Taking into consideration the different industries which our client and you operate in, we believe that our client’s use of the trade mark will not conflict with Griffith University, nor would it cause confusion to consumers. Due to the similarity of the trade marks, however, your registration has been cited against our client’s application. As such our client has instructed us to seek a letter of consent from you in relation to their application.

…

Should you not agree to sign the letter of consent an alternative approach for our client to overcome the citation is a non-use action against your trade mark under section 92 of the Trade Marks Act 1995.

1. The University replied two days later, agreeing to the request and on 14 August 2018 it applied for cancellation of the registration of its trade mark. The registration was cancelled on 20 August 2018. On 16 August 2018 Ms Karlsson’s trade mark application was accepted by IP Australia and on 31 October 2018 her trade mark (1638546) for know more. do more was registered with a priority date of 3 August 2014.
2. On 25 April 2019 Ms Karlsson wrote to the University claiming that the University had continued to use the know more. do more. trade mark since she became the registered owner. The claim was apparently based on images she had seen on the internet. She asserted that the continuing use of the mark by the University had caused “considerable confusion” and she had suffered loss in the nature of “additional marketing costs and loss of sales”. She invited the University to “settle the matter” on the following terms: either the University would immediately cease using the trade mark and compensate for her losses, which were estimated at approximately $200,000 to date, or suggested the University purchase the trade mark and to “provide a suggest price”. Two weeks later, on 8 May 2019, she wrote again to the University repeating her allegations and renewing her invitation but advising that she had changed the amount of her claim to $500,000. In a lengthy response to the first letter, dated 13 May 2019, the University explained its position in some detail, rebutted Ms Karlsson’s assertions, and declined her invitation.
3. Thereafter Ms Karlsson wrote repeatedly to the University’s lawyers foreshadowing her intention to institute legal proceedings for trade mark infringement, each time increasing the level of compensation to which she claimed to be entitled. By 28 May 2019 the amount she was claiming in compensation had increased to $800,000, offering, in the alternative, to sell the trade mark to the University for $2 million.
4. On 7 June 2019 the University’s lawyers replied to Ms Karlsson rejecting her allegations; informing her that no payment would be made; pointing out problems with her case; and encouraging her, in effect, to withdraw the proceeding and, if not, to seek independent legal advice.
5. On 1 July 2019 Ms Karlsson lodged a report with the AFP in which she claimed that her purse had been stolen at 2.24 pm on 14 January 2011. Ms Karlsson claimed that the purse contained valuable intellectual property on a USB, amongst other things, consisting of a “slogan about Trademark for business”, and that on 4 February 2015 she discovered that the trade mark had been registered with IP Australia in the name of the University. She named the culprits as Griffith University and its employee “Nathan Campus” providing the address of the University’s campus in the Brisbane suburb of Nathan, known as the Nathan Campus. She said she would “prosecute the crime with the University” and offered to provide evidence if the AFP required it. Still, she finished her report by discouraging an AFP inquiry, saying:

I wish to provide information only. I do not require a response from the AFP.

1. No evidence was proffered to indicate that the AFP opened an investigation into the alleged offence or, for that matter, referred the matter to the Queensland police for investigation.
2. A little over two weeks later, the Local Court certificate annexed to Ms Karlsson’s fifth affidavit was issued. It recorded a finding by the Registrar of the Newcastle Local Court that Ms Karlsson’s driver’s licence and a credit card in her name were either lost or taken from her possession without her knowledge and that “the offender used identification information taken from these items to commit [“identity”] offences”. The certificate does not state when the offences were alleged to have occurred and no finding on the subject was recorded.
3. On 24 July 2019 Ms Karlsson filed a statement of claim in the Supreme Court seeking $2 million in damages from the University. On 31 July 2019 she filed an amended statement of claim in substantially the same form with 81 pages of attachments. On 16 August 2019 the University wrote to Ms Karlsson asserting that her claim had no basis, inviting her to agree to judgment in its favour and offering to forego its costs if she accepted its offer. After the offer was not accepted, the University filed a notice of motion seeking orders that the whole of the amended statement of claim be struck out as embarrassing because it was unable to understand the case it had to meet and it disclosed no reasonable cause of action. The University was successful. On 1 October 2019 Adamson J made orders striking out Ms Karlsson’s pleading on the basis that its form was so embarrassing the University should not be required to plead to it and made further orders to facilitate repleading: *Karlsson v Griffith University* [2019] NSWSC 1335. Her Honour also ordered that Ms Karlsson forthwith pay the University’s costs of, and incidental to, its notice of motion.
4. On 21 October 2019 Ms Karlsson sent a proposed further amended statement of claim to the University’s lawyers, who claimed that the proposed new pleading was equally defective. They made a renewed effort to settle the matter, first offering to reduce its costs and then offering to forego them. Ms Karlsson declined both offers and, on 18 November 2019, she filed a notice of motion in the Supreme Court seeking, amongst other things, $2 million in damages and/or an account of profits to be paid within three business days with interest.
5. Based on the proposed new pleading Wright J inferred that Ms Karlsson was raising causes of action for trade mark infringement under s 120 of the *Trade Marks Act 1995* (Cth) (**TM Act**) and for false and misleading representations under s 29 of the *Australian Consumer Law* (**ACL**)*,* being Sch 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**).
6. On 7 April 2020 Wright J refused Ms Karlsson leave to file her proposed further amended statement of claim: ***Karlsson v Griffith University***[2020] NSWSC 365. His Honour held that it failed to disclose a reasonable cause of action in relation to trade mark infringement (at [66]) or false and misleading representations in contravention of the ACL (at [71]); did not clearly identify how any particular infringement caused her to suffer the loss and damage claimed (at [67] and [72]); and was “in part unintelligible, in part ambiguous, and generally so imprecise in its identification of material factual allegations as to deprive the University of proper notice of the real substance of the claims made against it” (at [74]). His Honour said that he had given Ms Karlsson the choice between trying to convince the court that the problems he had tentatively identified were not problems at all and seeking to file a new form of pleading which was “properly expressed and contains all the necessary allegations of material fact and explanations of law” (at [97]). His Honour considered that, without professional legal assistance, Ms Karlsson would never be able to formulate a pleading that satisfied the requirements of the *Uniform Civil Procedure Rules* *2005* (NSW) and fulfil the function of a pleading to inform the other party of the case it had to meet (at [100]). He noted that Ms Karlsson had informed the court that she had sought legal assistance on 10 or more occasions between February and September 2019 and spent “not insignificant sums” obtaining registration of her trade mark and preparing her business case (at [96]–[97]). He also referred to a comment that she made to the court that no lawyer whom she had consulted would take on her case. He concluded that in these circumstances there was no reasonable prospect that the proceedings would be successfully prosecuted and in this sense could be seen to be frivolous (at [101]–[102]). Having regard to the considerable expense to which the University would inevitably be put if Ms Karlsson were permitted to continue to prosecute the proceedings, his Honour concluded that they should also be characterised as vexatious (at [103]). After referring to some of the evidence before the court, his Honour concluded that the action was an abuse of process (at [111]–[114]):

111 From this material, it appeared to me that Ms Karlsson was effectively seeking to obtain compensation for alleged infringements which were unlikely to have occurred, by settling a “matter” in respect of which proceedings had not then been commenced and where the amount of compensation sought was arbitrarily determined and increased without any obvious basis.

112 The proceedings were commenced in July 2019 but:

(1) $2,000,000.00 was sought by way of damages, equitable compensation or an account of profits;

(2) no real question to be tried and no reasonable cause of action were identified by Ms Karlsson in her original pleading or in her proposed further amended statement of claim;

(3) Ms Karlsson did not obtain professional legal assistance properly to plead her claims and was apparently unwilling to do so now; and

(4) the evidence before me did not indicate that there was likely to be any substance to Ms Karlsson’s claims of infringement made in her correspondence with the University.

113 Thus, in my view, there are no reasonable prospects of Ms Karlsson successfully prosecuting the proceedings and yet Griffith University has been and will be required to expend time and resources in dealing with these proceedings, if they are permitted to continue.

1. His Honour proceeded to make orders dismissing the proceedings and ordering Ms Karlsson to pay the University’s costs of and incidental to the proceedings.
2. On 5 May 2020 Ms Karlsson filed a summons for leave to appeal from the judgments of both Adamson J and Wright J. The summons was dismissed for want of jurisdiction, based on s 7(5) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth), the effect of which is that any appeal from a decision of a single judge of the Supreme Court in a matter arising under certain statutes, including the TM Act, can only be heard or determined by the Full Court of this Court, or with special leave of the High Court: *Karlsson v Griffith University* (2020) 103 NSWLR 131.
3. I would add that an appeal to the Court of Appeal was expressly precluded by s 195 of the TM Act, which relevantly provides that:

(1) An appeal lies to the Federal Court against a judgment or order of:

(a) another prescribed court exercising jurisdiction under this Act; or

(b) any other court in an action under Part 12.

Note: For prescribed court see section 190.

…

(3) With the special leave of the High Court, an appeal lies to the High Court a judgment or order referred to in subsection (1).

(4) Except as otherwise provided by this section, an appeal does not lie against a judgment or order referred to in subsection (1).

1. Ms Karlsson did not seek leave to appeal to this Court. She would have required an extension of time to do so. Rather, she filed an application for special leave to appeal from the Court of Appeal’s judgment. That application was dismissed on 10 February 2021: *Karlsson v Griffith University* [2021] HCASL 12.
2. On 29 March 2021 the University applied for its costs in the Supreme Court action to be assessed. Costs were assessed on 28 March 2021 at $60,323.75. Certificates of determination of those costs and the assessor’s costs of $3,229.05 were issued and served on the parties. On 16 April 2021 judgment was entered in the Local Court of NSW in the total sum of $63,552.80. On 17 May 2021 the University’s solicitors wrote to Ms Karlsson by email and registered post seeking payment of the judgment debt within two weeks and foreshadowing bankruptcy or enforcement proceedings if she did not. Those costs remain unpaid.
3. Some five months later, on 20 October 2021, Ms Karlsson commenced proceedings in the original jurisdiction of this Court, seeking damages of $5,341,737.50 for the same alleged wrongs which were the subject of the Supreme Court action. On 1 November 2021 the University’s solicitors wrote to Ms Karlsson informing her that it had been instructed to accept service of the originating documents (the originating application and statement of claim). In that letter, which was signed by Ms Allcock, the solicitors set out the history in some detail and identified problems with her case, foreshadowing an application for summary judgment. They wrote:

You have now commenced proceedings in the Federal Court seeking relief on substantially the same terms as the SC proceeding, which was dismissed and for which costs were ordered. We invite you to withdraw the Federal Court proceeding before our client incurs substantial costs defending that claim.

If you will not do so, we note the following matters in respect of your originating application and statement of claim:

(a) You have instituted civil proceedings in the Federal Court in relation to proceedings that are not excluded proceedings, but have not filed a genuine steps statement, in breach of Federal Court Rules (“FCR”) r 8.02;

(b) Your originating application does not comply with FCR rr 8.03 and 34.48 and has been drafted in a manner that is unintelligible and discloses no reasonable cause of action;

(c) Your statement of claim suffers the same defects in substance and form as those defects which caused the SC proceeding to be dismissed. It fails to disclose a reasonable cause of action, is an embarrassing pleading and, being frivolous and vexatious, amounts to an abuse of process.

You have had the benefit of both Adamson and Wright JJ’s judgments, which each described specific problems with your pleadings and the manner by which they could be rectified. For example, Wright J made comments from [66] to [68] in relation to the material facts and particulars required to identify each alleged infringement (which are not apparent in your Federal Court statement of claim).

Instead of having regard to those judgments, the statement of claim and originating application exhibit the same inadequacies as those already determined to be frivolous, vexatious and an abuse of process by the earlier proceeding. On that basis alone, it is plain that you are conducting, and intend to continue to conduct, the Federal Court proceedings vexatiously.

Our client remains of the view that your claim has no substance and is unmeritorious. Upon considering the history of the prior proceedings and the material now filed, it is evident that the proceeding will be dismissed and your claim will fail. A consequence of that will be a further costs order made against you in addition to the costs order already outstanding, which you will be liable to pay.

If you will not withdraw your claim, we invite you to file and serve an amended statement of claim and originating application to remedy the problems with your current pleading. Our client will then require an extension of 28 days from the date of service of the amended originating application and amended statement of claim to file any appearance and defence.

If you intend to take that course, please advise us by no later than 4:00pm on 5 November 2021.

If you do not communicate that intention to us by 4:00pm on 5 November 2021, we will proceed on the basis that you do not intend to amend your pleadings and our client will file an application for summary dismissal or strike out.

1. Ms Karlsson did not reply to this letter. Rather, on 22 November 2021 she filed her first interlocutory application. The next day the University filed its interlocutory application and on 2 February 2022 Ms Karlsson filed her second interlocutory application.

## Ms Karlsson’s interlocutory application

1. This is Ms Karlsson’s second interlocutory application.
2. The basis of this application was that the University had not filed a defence within 28 days after service of the statement of claim, contrary to r 16.32 of the Rules. The application must be dismissed because on 11 February 2022, pursuant to r 1.34, I dispensed with the requirement for the University to file a defence until further order of the Court. Rule 1.34 entitles the Court to dispense with compliance with any of the Rules, “either before or after the occasion for compliance arises”. There were obvious problems with Ms Karlsson’s pleading, discussed below. It was impossible for the University to plead to it.
3. The interlocutory application also sought orders in respect of the costs incurred in the Supreme Court action. No arguments were advanced in support of them. In any event, this aspect of the interlocutory application was misconceived. It is not open to the Court in this proceeding to make those orders.

## The University’s interlocutory application

1. The University applied for summary judgment pursuant to s 31A(2) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and r 26.01 of the Rules. In the alternative it applied for an order striking out the whole of Ms Karlsson’s originating application and statement of claim pursuant to r 16.21(1).

### The legislative framework

1. The power to order summary judgment is conferred both by the FCA Act and the Rules.
2. Section 31A of the FCA Act relevantly provides that:

(2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:

(a) the first party is defending the proceeding or that part of the proceeding; and

(b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.

(3) For the purposes of this section, … a proceeding or part of a proceeding need not be:

(a) hopeless; or

(b) bound to fail;

for it to have no reasonable prospect of success.

(4) This section does not limit any powers that the Court has apart from this section.

1. Rule 1.40 provides that, at any stage of a proceeding, the Court may exercise a power mentioned in the Rules on its own initiative or on the application of a party or a person with a sufficient interest in the proceeding.
2. Rule 26.01(1), read with r 1.41, enables the Court to make an order for summary judgment if:

(a) the applicant has no reasonable prospect of successfully prosecuting the proceeding or part of the proceeding; or

(b) the proceeding is frivolous or vexatious; or

(c) no reasonable cause of action is disclosed; or

(d) the proceeding is an abuse of the process of the Court[.]

1. These categories overlap. For example, a proceeding will be frivolous, if, among other reasons, the applicant has no reasonable prospects of successfully prosecuting it (*Spencer v Commonwealth of Australia* (2010) 241 CLR 118 at [22] per French CJ and Gummow J) or because no reasonable cause of action is disclosed (*Karlsson v Griffith University* per Wright J at [87]) and a proceeding may be an abuse of process if it is “vexatious and oppressive for the reason that it is sought to litigate anew a case which has already been disposed of by earlier proceedings”: ***Walton v Gardiner***(1993) 177 CLR 378 at 393 (Mason CJ, Deane and Dawson JJ). A reasonable cause of action is a cause of action with some chance of success if regard is only had to the allegations in the claimant’s pleading: *Polar Aviation Pty Ltd v Civil Aviation Authority* (2012) 203 FCR 325 at [41]–[43] (Perram, Dodds-Streeton and Griffiths] JJ).
2. Rule 16.21, read with r 1.41, gives the Court the power to order that all or part of a pleading may be struck out where it:

(a) contains scandalous material; or

(b) contains frivolous or vexatious material; or

(c) is evasive or ambiguous; or

(d) is likely to cause prejudice, embarrassment or delay in the proceeding; or

(e) fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or

(f) is otherwise an abuse of the process of the Court.

1. The Court is bound to interpret and apply all these provisions and to exercise any of the powers they confer in the way that best promotes the overarching purpose of the legislation, which is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible: FCA Act, s 37M. That purpose includes the following objectives:

(a) the just determination of all proceedings before the Court;

(b) the efficient use of the judicial and administrative resources available for the purposes of the Court;

(c) the efficient disposal of the Court’s overall caseload;

(d) the disposal of all proceedings in a timely manner;

(e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.

### Should the proceeding be summarily dismissed?

1. The question is whether the proceeding should be summarily dismissed either as an abuse of process or because it enjoys no reasonable prospect of success.
2. The University’s principal argument was that the proceeding should be dismissed as an abuse of process because it is no more than an attempt to bring fresh proceedings to re-litigate the Supreme Court action. While Ms Karlsson certainly did not accept that the proceeding in this Court is an abuse of process, she did not deny the foundation of the University’s argument. For the reasons that follow, that argument must be accepted.
3. The burden of satisfying a court that there has been an abuse of process is on the party making the allegation, here the University, and the burden is “a heavy one”: *Williams v Spautz* (1992) 174 CLR 509 at 529 (Mason CJ, Dawson, Toohey and McHugh JJ). Nevertheless, I am satisfied that it has been made out in this case.
4. Although the categories of cases which will constitute an abuse of process are not closed, it has long been accepted that abuses of process will occur in any of the following circumstances: where the court’s processes or procedures are invoked for an illegitimate or collateral purpose; where the use of the court’s processes or procedures would be unjustifiably oppressive to a party; or where the use of the court’s processes or procedures would bring the administration of justice into disrepute:  *Rogers v The Queen* (1994) 181 CLR 251 at 286 (McHugh J); ***Batistatos*** *v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256 at [9], [15] (Gleeson CJ, Gummow, Hayne and Crennan JJ)*.* See also *PNJ v The Queen* [2009] HCA 6; 83 ALJR 384; 252 ALR 612; 193 A Crim R 54 at [3] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ) and *UBS AG v* ***Tyne*** *as Trustee of the Argo Trust* (2018) 265 CLR 77at [1] (Kiefel CJ, Bell and Keane JJ).
5. A well-recognised form of abuse of process is the bringing of fresh proceedings to litigate anew a case which has already been determined in earlier proceedings or which ought reasonably to have been made or raised for determination in the earlier proceedings, even if the circumstances do not give rise to an estoppel: *Walton v Gardiner* at 393 (Mason CJ, Deane and Dawson JJ); *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at [26] (French CJ, Bell, Gageler and Keane JJ). Contrary to the assumption made by Ms Karlsson, in such a case the exercise by the Court of its power to dismiss a matter summarily for an abuse of process is not precluded by the fact that the merits of the claim have never been decided: cf. *Batistatos* at [63]–[65] (Gleeson CJ, Gummow, Hayne and Crennan JJ); *Tyne* at [40] (Kiefel CJ, Bell and Keane JJ, Gageler J agreeing at [61]). As the plurality in *Tyne* observed at [46], “[s]erial proceedings discontinued prior to judgment would be an obvious example of an abuse of process”. While the remedy sought and granted in both *Batistatos* and *Tyne* was a permanent stay, there is no reason to think that summary judgment could not be entered where a permanent stay is available. ***Field*** *v Perpetual Ltd* [2010] FCA 1001 was such a case.
6. In *Field*, Gordon J held that it was an abuse of process for a person to commence a proceeding in this Court which raised allegations the subject of a pleading which was struck out in the Supreme Court and ordered that the proceeding be dismissed. This case is relevantly indistinguishable. The only relevant distinction is that the pleading which was struck out in that case was an amended defence whereas in the present case it was a further amended statement of claim. That is a distinction without a difference.
7. It is true that the proceeding in this Court also includes a section (D) headed “Breach of Contract or Actual Breach”, which does not appear to have been raised in the pleadings in the Supreme Court. But no contract between Ms Karlsson and the University is pleaded. Nor does Ms Karlsson claim that she ever had a contract with the University. In any case, the allegations in the paragraphs under the heading ([20] and [21]) are not concerned with any contractual breach but with the allegedly infringing conduct. That is clear from [31] of the pleading.
8. In this proceeding, as in the Supreme Court action, Ms Karlsson sought damages from the University for infringing her trade mark; misleading or deceptive conduct/false representations; and “theft”. The allegations she made in the two proceedings were substantially the same. In each she alleged that:
9. the University had infringed her trade mark (Further Amended Statement of Claim in the Supreme Court proceeding at [5]; Statement of Claim in this proceeding at [31]);
10. she created the trade mark in 1999 in relation to a business she operated on the Gold Coast in Queensland (FASOC [6]; SOC [2]);
11. the University prevented her from becoming the registered owner of the trade mark (FASOC [9]–[10]); SOC [8], [14]);
12. following the cancellation of its trade mark and after she became the registered owner of the identical mark, the University continued to use the same sign as a trade mark (FASOC [8], [21]; SOC [12], [18], [20]);
13. by its use of the sign, the University made false and misleading representations/engaged in misleading and deceptive conduct in contravention of the CCA (FASOC [5], [9.2]; SOC [10], [13]-[15], [26],[32]);
14. the University acquired the trade mark by stealing it or fraudulently appropriating it (FASOC [11], [12]; SOC [9], [15], [21], [25], [33]);
15. she suffered loss and damage (or potential damage) to her business interests (FASOC [9]; SOC [29]-[30], [32]); and
16. by causing her to delay her registration of the trade mark and infringing her trade mark on registration, the University caused her to suffer physical illness requiring surgical treatment (FASOC [9]; SOC [16]-[17]).
17. Indeed, Ms Karlsson made it clear to the Court during argument that her purpose in this proceeding was to bring the case she had been prevented from running in the Supreme Court (at T43):

HER HONOUR: Can I ask you this, Ms Karlsson: the fundamental point or a fundamental point that the university puts against you is that the case that you are bringing or that you want to bring in this court is the same case as the case you tried to bring in the New South Wales Supreme Court. Do you accept that that is the case?

THE INTERPRETER: Yes, that is the case, your Honour, because even in the past there was no judgment whether the trademark is owned by me or not.

1. In *Field* at [38] Gordon J held that it would be “unjustifiably oppressive for the [r]espondent to have to face the same issues again in this proceeding” and that “[i]t would also bring the administration of justice into disrepute if, having had the allegations struck out in the Supreme Court, the [a]pplicant could simply issue a proceeding in this Court raising the same allegations” (citations omitted). The same conclusion inexorably follows here. The situation is aggravated in the present case by Ms Karlsson’s failure to pay the costs of the earlier proceedings: cf. *Idoport Pty Ltd v National Australia Bank Ltd* [2006] NSWCA 202 at [110] (Beazley JA, with whom Mason P and Ipp JA agreed at [1] and [119] respectively).
2. While it is unnecessary to deal with this question, for the reasons that follow I am also satisfied that each of the causes of action upon which Ms Karlsson relies has no reasonable prospect of success.
3. I begin with the trade mark infringement claim.
4. First, to the extent that Ms Karlsson’s claim covers a period before Ms Karlsson became the registered owner of the know more. do more. trade mark, it is bound to fail. A cause of action for trade mark infringement is only available for infringement of a registered trade mark: see TM Act, s 120.
5. Nor does she have an arguable claim in the period after the University’s registration was cancelled.
6. Section 124 of the TM Act relevantly provides that a person does not infringe a registered trade mark by using an unregistered trade mark that is substantially identical with, or deceptively similar to, the registered trade mark in relation to services similar to services in respect of which the trade mark is registered or goods closely related to those services “if the person … [has] continuously used in the course of trade the unregistered trade mark in relation to those goods or services from a time before the date of registration of the registered trade mark”. Thus, if the University continued to use the know more. do more. trade mark after Ms Karlsson’s trade mark was registered in relation to services similar to those in respect of which her mark was registered or goods closely related to those services, it would have a complete defence.
7. I am also satisfied that the ACL claims have no reasonable prospects of success.
8. In [32] of her statement of claim, Ms Karlsson pleaded contraventions of ss 18 and 151(1)(a) of the ACL.
9. As the University submitted, to succeed on any such claim, Ms Karlsson would need to plead and prove that the University, in trade or commerce, had made certain representations which were false or misleading or engaged in particular conduct which was misleading or deceptive or likely to mislead or deceive. To that end she would need to plead the material facts (r 16.02(1)(d)), namely, those facts or combination of facts that give rise to her right to sue: *Do Carmo* v *Ford Excavation Proprietary Limited* (1984) 154 CLR 234 at 245. But she has not done so. Nor has she otherwise identified them.
10. Section 18 of the ACL relevantly provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Conduct will be misleading or deceptive only if it leads or is capable of leading someone into error: ***Parkdale*** *Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191 at 199 (Gibbs CJ). The question is to be determined by reference to the likely effect of the impugned conduct on ordinary or reasonable members of the class of consumer to whom it is directed: *Campomar Sociedad Limitada v Nike International Ltd* (2000) 202 CLR 45 at [102] (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ). Whether that is so must be determined objectively in the context of all the surrounding circumstances: *Taco Co of Australia Inc v Taco Bell Pty Ltd* (1982) 42 ALR 177 at 199, 202 (Deane and Fitzgerald JJ); *Parkdale* at 198 (Gibbs CJ).
11. Section 151(1)(a) of the ACL provides that:

A person commits an offence if the person, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(a) makes a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use[.]

1. In [32] of her statement of claim Ms Karlsson pleaded (without alteration) that the University contravened s 18 ACL in that it “misrepresent[ed] the profits of a Trade Mark that use history of an advertising or service result of its reliance on the conduct the claimant suffered a loss”. In the same paragraph she pleaded (again, without alteration) that the University “makes a false or misleading representation that goods are of particular or have a particular history use made valves, grade ...”
2. With respect, these allegations are gibberish.
3. The allegation that ss 18 and 151(1)(a) of the ACL were contravened, however, are also said to be “by reason of the matters alleged in paragraphs 14–18[,] 20 [and] 26”.
4. I am unable to make much sense of these paragraphs either.
5. Paragraphs 14–16 are barely intelligible. They read as follows:

14 On 14 September 2016 Griffith University non-use/ non-remove of Trade Mark (Know more. Do more.)

15. On 31 October 2018 that Applicant’s waiting 4 years 2 months entered registered Trade Mark 1638546. Because the Respondent steal to register and use another slogan (Remarkable / Be remarkable) non-remove / non-cancel before 14 September 2016.

16. From on 31 May 2016 Applicant sick had surgery in hospital these are causes by Respondent. Applicant had Chronic stress is factors keep getting sick regularly that immune system is not functioning correctly the body is unable to fight off germs such as bacteria property an infection occurs which a constant-of illness unwell while continuers of waiting Trade Mark register or Trade Mark infringement.

1. Paragraph 17 merely reads:

17 Schedule 2 Australian Consumers Law Introduction Chapter I section 2 serious injury or illness means an acute physical injury or illness that requires medical or surgical treatment by or under the supervision of a medical practitioner or a nurse (whether in a hospital clinic or similar).

1. In [18] Ms Karlsson pleaded:

18 From on 12 August 2011 Griffith University Published worldwide continues using Trade Mark (Know more. Do more.) it is Ten Years into the 2021.

1. Paragraph 19 is irrelevant. There, Ms Karlsson purports to summarise ss 126 and 127 of the TM Act.
2. Paragraph 20 lists a number of Google advertisements in which the University is said to have continuously used the know more. do more trade mark since August 2011. Paragraph 26 pleads that on 14 September 2016 the University used its registered trade mark and then used the slogan Remarkable / Be remarkable.
3. The University submitted that the effect of these paragraphs is to suggest that its continued use of the know more. do more trade mark alongside the new slogan is misleading. Since Ms Karlsson did not contend otherwise, I accept the University’s submission. In that event, the claim is misconceived. There is no apparent reason why the University could not concurrently use the two slogans in its advertising material. Ms Karlsson never explained why this was false, deceptive or misleading. In circumstances where she does not plead that she has ever used either slogan at any time, let alone in any situation which could cause a not insignificant number of persons in the relevant class to fall into error, the ACL claim is doomed to fail.
4. Even if Ms Karlsson had an arguable claim, in order to recover for any loss or damage she would also need to plead and prove that there was a causal connection between the making of the particular representations or the engagement in the particular conduct and the loss or damage she claims to have sustained: see ACL, s 236(1). To the extent that the loss or damage occurred before 20 October 2015 the claim is out of time: ACL, s 236(2). To the extent that her claim relates to loss or damage resulting from personal injury, it is barred by s 137C(1)(b) of the CCA.
5. The “theft” claim is also hopeless.
6. First, it relies on the *Crimes Act 1958* (Vic), which, as the University pointed out, can have no operation in relation to a crime allegedly committed in Queensland. Second, the mere commission of a criminal offence does not give rise to a right to damages. “The perpetrator of a criminal act is only liable to pay damages by way of compensation if the commission of the elements which constitute that criminal act themselves, wholly or in part, or in conjunction with other factual elements, constitute all of the elements necessary to constitute an actionable tort against the actor”: *Tang v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCA 1042 at [10] (Cooper J). If Ms Karlsson were in a position to identify the person who allegedly stole the USB or the bag containing it, she might have been able to sue that person for the tort of conversion. But she has not done so. In any case, she could only sue the person within a period of six years from the date when the theft is alleged to have occurred (*Limitation of Actions Act 1974* (Qld), s 10) and that time has long passed. It is not at all clear whether her alleged injuries or medical conditions are said to be related to the alleged theft but if this is what she intended the limitation period is only three years (Limitation of Actions Act, s 11(1)).

### Should the statement of claim be struck out and leave to replead refused?

1. Even if summary dismissal were not warranted, this action should not be allowed to proceed on the alternative basis advanced by the University.
2. The University’s alternative submission was that the pleading should be struck out on the basis that it is likely to cause prejudice, embarrassment or delay. A pleading is “likely to cause prejudice, embarrassment or delay” where it is defective, for example, where it is “unintelligible, ambiguous, vague or too general, so as to embarrass the opposite party who does not know what is alleged against him”: *Meckiff v Simpson* [1968] VR 62 at 70 (Winneke CJ, Adam and Gowans JJ). A pleading will also be defective if it merely asserts a conclusion to be drawn from facts which are not stated: *Trade Practices Commission v David Jones (Australia) Pty Ltd* (1985) 7 FCR 109 at 114–115 (Fisher J).
3. Ms Karlsson’s pleading answers each of these descriptions.
4. The University argued that first, the allegations in [16], [17], [22] and [24] have no bearing on the causes of action and will delay the proceeding; second, the allegations at [26] and [27] merely repeat the pleas at [10] and [11]; third, many of the allegations (such as those in [5], [9], [16], [21], [23], [24] and [29]) are “nonsensical, vague and argumentative”; and fourth, “the damages pleas at [16]–[17] and [29]–[30] state conclusions without identifying the facts from which the conclusions are drawn”.
5. While Ms Karlsson filed written submissions, they were not responsive to the University’s submissions. Nor did she engage with the University’s submissions in oral argument. To the extent that her arguments were intelligible, they were directed to the merits of her substantive claims.
6. I accept the University’s submissions.
7. For the reasons advanced by the University and those given by Wright J in relation to the Further amended statement of claim filed in the Supreme Court action, which apply equally here, the whole of the statement of claim should be struck out. Although the statement of claim filed in this proceeding is not identical in form to that filed in the Supreme Court action, it is plagued with the same kinds of defects. Indeed, in some respects it is worse. In [21], for example, which counsel for the University correctly described as unintelligible and not apparently relevant, it makes serious allegations of “fraud or bad faith” against unnamed University staff without providing any particulars (contrary to r 16.42). There is no need to go through the document to see whether some parts are unobjectionable for, where the form of pleading is defective, as Ms Karlsson’s statement of claim clearly is, a court is entitled to strike it out in its entirety and has no obligation to reframe it for the applicant’s benefit: *Turner v Bulletin Newspaper Co Pty Ltd* (1974) 131 CLR 69 at 97 (Jacobs J).
8. It is trite to observe that the purpose of a pleading is to inform the other party or parties of the case it has to meet. As Perram J explained in *Stewart v Deputy Commissioner of Taxation* [2010] FCA 402; 76 ATR 66 at [35]:

Pleadings are succinct statements of a case designed to inform court and foe alike of what is said and how it will be put. Properly done, they promote the identification of the issues in dispute and, by so doing, their more prompt and efficient resolution. So much has always been so. The enactment of provisions such as s 37M of the *Federal Court of Australia Act 1976* (Cth) with its injunction to the expeditious and inexpensive resolution of proceedings gives added impetus to these considerations. It follows that a pleading which departs from its principal purpose of affording procedural fairness to the opposing party is a pleading which confounds the ends of justice. It engenders expense, delay and the wastage of public resources; it is not to be countenanced.

1. Ms Karlsson’s pleading does just that. It is a pleading which denies her opponent procedural fairness confounds the ends of justice and generates unnecessary expense, delay and the wastage of public resources. The best way to promote the overarching purpose of the Court’s civil practice and procedure provisions is to uphold the University’s application.
2. The remaining question is whether or not leave to replead should be granted. On this subject I also respectfully agree with Wright J. Indeed, the case for refusal is even stronger now. This is Ms Karlsson’s fourth attempt to plead her claim. Yet, once again, the University has been vexed with the trouble and expense of having to deal with a seriously defective pleading. As Ms Allcock wrote in her letter to Ms Karlsson of 1 November 2021, the current statement of claim “suffers the same defects in substance and form as those defects which caused the SC proceeding to be dismissed”.
3. At the first case management hearing I strongly urged Ms Karlsson to obtain legal advice and assistance but it is apparent that my entreaty fell upon deaf ears.
4. It is not enough that the University is able to discern from the documentation that Ms Karlsson is claiming that she is entitled to damages (or compensation) for trade mark infringement, misleading or deceptive conduct and “theft”. It is entitled to be told at the outset the material facts upon which each cause of action is founded. The Rules require it (see r 16.02(1)(d)). But Ms Karlsson has repeatedly failed to plead those facts.
5. Like Wright J, I am satisfied that, without professional legal assistance, Ms Karlsson will never be able to plead a case that complies with the Rules and serves the purpose of informing the University of the case it has to meet. Based on the information she provided to the Court, there is no real prospect that she will ever obtain that assistance. In these circumstances it would be futile to give her yet another opportunity to replead.

## Conclusion

1. Ms Karlsson’s application for default judgment was misconceived and should be dismissed. The University’s interlocutory application for summary judgment is well-founded and should be allowed. Had I not been persuaded to give summary judgment, I would have ordered that Ms Karlsson’s statement of claim be struck out and refused her leave to replead.
2. Costs should follow the event. There will be orders accordingly.

|  |
| --- |
| I certify that the preceding ninety-three (93) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Katzmann. |

Associate:

Dated: 24 May 2022