

FILED

10 FEB 2015



STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Defamation
Registry	Sydney
Case number	2015/42053

TITLE OF PROCEEDINGS

First Plaintiff	GORDON THOMAS GALT
Second Plaintiff	MICHAEL NEIL MACGREGOR DAVIES
Third Plaintiff	GLEN RICHARD LEWIS
Fourth Plaintiff	JAMES DAVID BEECHER
Defendant	THE HONOURABLE BARRY ROBERT O'FARRELL MP

FILING DETAILS

Filed for	Gordon Thomas Galt, First Plaintiff Michael Neil Macgregor Davies, Second Plaintiff Glen Richard Lewis, Third Plaintiff James David Beecher, Fourth Plaintiff
Legal representative	Michelle Fox, Quinn Emanuel Urquhart & Sullivan
Legal representative's reference	06357-00001
Contact's name and telephone	Geoffrey Lewis (02) 9146 3547
Contact email	geoffreylewis@quinnemanuel.com

TYPE OF CLAIM

Defamation

This matter has been listed before the Court
on 27/3/15
at 9.30am

Clerk of the Court

RELIEF CLAIMED

1. Damages including aggravated damages.
2. Interest.
3. Costs.

PLEADINGS AND PARTICULARS

The plaintiffs rely on the following facts and assertions:

1. Each of the First, Second, Third and Fourth plaintiffs was at all material times a director of NuCoal Resources Ltd (NuCoal).
2. The defendant:
 - (a) is and was at all material times a member of the Legislative Assembly of the Parliament of New South Wales;
 - (b) was the Premier of the State of New South Wales from 28 March 2011 to 17 April 2014.

First matter complained of

3. On or about 10 February 2014, the defendant published statements of and concerning the plaintiffs (first matter complained of) at a public meeting in Maitland New South Wales. A transcript of words attributed to the defendant in the first matter complained of is annexed hereto and marked 'A'.

Particulars of publication/identification – Uniform Civil Procedure Rule 15.19

- (a) The first matter complained of was published at a “Hunter Community Cabinet Meeting” held at the Maitland Town Hall in Maitland New South Wales to persons with knowledge that the plaintiffs were directors of NuCoal, including:
 - (i) John Colnan, Seaforth, New South Wales 2092, NuCoal shareholder;
 - (ii) Matt Haggarty, Redhead, New South Wales, 2290, NuCoal shareholder;
 - (iii) other NuCoal shareholders and members of the public.

Further particulars may be provided after discovery and/or interrogatories.

4. The first matter complained of, in its natural and ordinary meaning, carried the following imputations (or imputations not differing in substance) each of which is defamatory of each of the plaintiffs.
- A. The plaintiff, as a director of NuCoal, was the subject of adverse findings by the ICAC in a report published by the ICAC;
 - B. The plaintiff, as a director of NuCoal, engaged in corrupt conduct in obtaining a mining lease;
 - C. The ICAC's finding that the plaintiff, as a director of NuCoal, engaged in corrupt processes warranted NuCoal being stripped of its mining lease without compensation;
 - D. The plaintiff, as a director of NuCoal, was trying to mislead shareholders in order to avoid his liability to them for the Government acting on the ICAC findings of corruption against him by cancelling NuCoal's mining lease without compensation.

Second matter complained of

5. On or about 10 February 2014, after the publication of the first matter complained of, the defendant published statements of and concerning the plaintiffs in a press conference held in Maitland New South Wales (**second matter complained of**). A transcript of words attributed to the defendant in the second matter complained of is annexed hereto and marked 'B'.

Particulars of publication/identification – Uniform Civil Procedure Rule 15.19

- (a) The second matter complained of was published to members of the press at a press conference held in Maitland New South Wales including persons with knowledge that the plaintiffs were directors of NuCoal.
 - (b) Further particulars may be provided after discovery and/or interrogatories.
6. At the time of publication it was notorious that the Independent Commission Against Corruption had recently issued a report in which it found the grant of licences relating to coal mining in NSW were so tainted by corruption that they should be cancelled.
7. The second matter complained of, taken with the notorious fact pleaded in paragraph 6, in its natural and ordinary meaning, carried the following imputations (or imputations not differing in substance) each of which is defamatory of each of the plaintiffs.
- A. The plaintiff, as a director of NuCoal, engaged in corrupt conduct in obtaining a mining lease.

- B. The plaintiff, as a director of NuCoal, is trying to mislead shareholders in order to avoid his liability to them for the Government acting on the ICAC findings of corruption against him by cancelling NuCoal's mining lease.

Third matter complained of

8. On or about 10 February 2014, after the publication of the second matter complained of, NBN Television broadcast statements of and concerning the plaintiffs on NBN Television in the state of New South Wales (**third matter complained of**). A transcript of the third matter complained of is annexed hereto and marked 'C'.
9. The defendant is liable as a publisher of the third matter complained of in that the third matter complained of:
- (a) contained the sense and substance of the second matter complained of;
 - (b) was the natural and probable consequence of the publication of the second matter complained of;
 - (c) alternatively, was intended by him;
 - (d) alternatively, was authorised by him.

Particulars of publication/identification – *Uniform Civil Procedure Rule 15.19*

- (a) The third matter complained of was published to members of the public including persons with knowledge that the plaintiffs were directors of NuCoal.
 - (b) Further particulars may be provided after discovery and/or interrogatories.
10. The third matter complained of, taken with the notorious fact pleaded in paragraph 6, in its natural and ordinary meaning, carried the following imputations (or imputations not differing in substance) each of which is defamatory of each of the plaintiffs.
- A. The plaintiff, as a director of NuCoal, engaged in corrupt conduct in obtaining a mining lease.
 - B. The plaintiff, as a director of NuCoal, is trying to mislead shareholders in order to avoid his liability to them for the Government acting on the ICAC findings of corruption against him by cancelling NuCoal's mining lease.

Loss and damage

11. By reason of the publication of each of the matters complained of, each of the First, Second, Third and Fourth plaintiffs has been greatly injured in his credit and reputation and has suffered and will continue to suffer loss and damage.
12. The plaintiffs rely on the following republication of the sense and substance of the first matter complained of for which the defendant is liable by reason that such publication was the natural and probable consequence of the publication of the matters complained of and, alternatively, intended by him and, alternatively authorised by him:

The first matter complained of was the subject of a report by, and was republished in part on, ABC Radio in the state of New South Wales on or about 10 February 2014 (**ABC Report**).

A transcript of the ABC Report is annexed hereto and marked 'D'.

13. The circumstances of publication of the matters complained of were such as to warrant an award of aggravated damages.

Particulars of aggravated damages – Uniform Civil Procedure Rules Part 15 rr 8 and 32(a)

- (a) The plaintiffs' knowledge of the falsity of the allegations;
- (b) The sensational language and manner of publication;
- (c) The failure of the defendant to apologise to the plaintiffs or to publish any retraction or correction, despite multiple requests from the plaintiffs through their solicitors.
- (d) The plaintiffs reserve the right to claim aggravated damages by reason of the conduct of the defendant in the course of these proceedings that has the effect of aggravating the hurt caused by the publication of the matters complained of.
- (e) Further particulars of aggravated damage may be provided after discovery and/or interrogatories.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under section 347 of the *Legal Profession Act* 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature of legal representative



Capacity

B. HER PARTNER
Solicitor on the record

Date of signature

10 February 2015

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require further assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1. **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
2. **If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.

- Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
3. **If money is claimed, and you believe that you owe part of the money claimed, by:**
- Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Level 5 Law Courts Building, Queens Square 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2000
Telephone	(02) 9230 8111

PARTY DETAILS

Plaintiffs

Gordon Thomas Galt, First Plaintiff

Michael Neil Macgregor Davies, Second Plaintiff

Glen Richard Lewis, Third Plaintiff

James David Beecher, Fourth Plaintiff

Defendant

The Honourable Barry Robert O'Farrell MP

FURTHER DETAILS ABOUT PLAINTIFFS

First Plaintiff

Name Gordon Thomas Galt
 Address Unit 29, 106 The Esplanade
 Burleigh Heads QLD 4220

Second Plaintiff

Name Michael Neil Macgregor Davies
 Address 1 Prince Albert Street
 Mosman NSW 2088

Third Plaintiff

Name Glen Richard Lewis
 Address 7 Golden Ash Drive,
 Aberglasslyn NSW 2320

Fourth Plaintiff

Name James David Beecher
 Address 11 Jersey Road
 Woollahra NSW 2025

Legal representative for plaintiff

Name Michelle Fox
 Practising certificate number 46188
 Firm Quinn Emanuel Urquhart & Sullivan
 Contact solicitor Geoffrey Lewis
 Address Level 15, 111 Elizabeth Street
 Sydney NSW 2000

Telephone	(02) 9146 3500
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Email	geoffreylewis@quinnemanuel.com
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANT**Defendant**

Name	The Honourable Barry Robert O'Farrell MP
Address	27 Redleaf Avenue Wahroonga NSW 2076

'A'

1 **John Colnan**

2 I'd like to know why NuCoal and its shareholders have not been considered for compensation when the
3 government decided to strip the lease off NuCoal particularly when you look at it from a macro level that
4 is basically about government management and processes going wrong, not the actions to apply for the
5 lease in the first place. So that—

6 **The Hon. Barry O'Farrell MP**

7 So thank you, John. I absolutely understand the concerns of shareholders who are innocent parties of
8 this, but just as it's very hard to unscramble an omelet once made, so too was the situation that ICAC
9 found.

10 And I hear what you just said, but I also know that ICAC Report made adverse comments about a number
11 of directors. And so I think the directors of NuCoal have been doing a fantastic job in trying to distract
12 shareholders from the responsibility of directors in this matter.

13 So if I had the money, we would. But, if you hadn't noticed, state governments, like local councils, and
14 indeed the federal government, don't have a lot of spare cash sitting down...sitting around. The mint in
15 Macquarie street closed a helluva long time ago. But my point is that any investment in the share market
16 is speculative by nature. We all know that from past experience where we've invested in stock and seen
17 it go in the opposite direction. Yes, from time-to-time like a win on the pokies at Maitland bowlo you
18 know, you can be successful.

19 But my point is that shareholders, my point is that shareholders have an ability under the company law to
20 take action against their directors and I think the directors for the past couple of months have done a
21 great campaign to distract shareholders from that their obligation, their responsibility and direct them to
22 us.

23 So, I'm sorry that you've gone through this situation. I'm sorry the state has gone through this situation.
24 The corruption we've seen in these processes were unacceptable. But we received a report from
25 Independent Commission Against Corruption. We were determined to implement that report and send a
26 very strong message to anyone in government in the future or anyone in New South Wales in the future
27 that those practices will not be ever again accepted.

'B'

1 **Unidentified male voice**

2 And just in relation to the coal licenses that you canceled recently. The coal company, NuCoal in
3 particular, is now looking to attack through the US, as well as at home. Are you worried by that?

4 **The Hon. Barry O'Farrell MP**

5 No, I think NuCoal directors are doing a fantastic job of distracting shareholders from the director's own
6 liabilities. As I said in the parliament on the day, if you want to have legal action, shareholders I think have
7 a more than fair case against the directors who got them into this dodgy deal.

8 **Unidentified male voice**

9 Are you sympathetic to those shareholders?

10 **The Hon. Barry O'Farrell MP**

11 I'm absolutely sympathetic for shareholders, but company law enables shareholders to take action against
12 those who made the decision. They're the directors. But I do know the directors have been very keen to
13 create distractions to stop shareholders thinking about that option.

'C'

1 **Television Presenter**

2 The coal industry has its own questions for the O'Farrell government

3 **Audience Member (John Colnan)**

4 I'd like to know why NuCoal's innocent shareholders have not been considered for compensation.

5 **Television Presenter**

6 The Doyle's Creek mining license has been cancelled but the Premier, facing legal threats, won't be
7 backing down. And today encouraged NuCoal's shareholders to sue the company itself.

8 **The Hon. Barry O'Farrell MP**

9 I think NuCoal directors are doing a fantastic job of distracting shareholders from the directors' own
10 liabilities.

'D'

1 **News Presenter**

2 The New South Wales Premier has reminded shareholders in a mining company impacted by the
3 scraping of mining licenses in the Hunter Valley, they are able to take legal action against the company's
4 directors. Premier Barry O'Farrell was responding to a question asked by NuCoal shareholder at today's
5 community cabinet forum in Maitland.

6 The State government scrapped the Doyle's Creek mining license earlier this year following
7 recommendations from the Independent Commission Against Corruption sparking outrage from the
8 company. Mr. O'Farrell says the directors of NuCoal also need to take responsibility.

9 **The Hon. Barry O'Farrell MP**

10 Shareholders have an ability under the company law to take action against their directors. And I think the
11 directors for the last couple of months have done a great campaign to distract shareholders from their
12 obligation, their responsibility and direct them to us.