



Court of Appeal
Supreme Court

New South Wales

Case Name: Voicu v The Owners Strata Plan 1624

Medium Neutral Citation: [2019] NSWCA 254

Hearing Date(s): 14 October 2019

Date of Orders: 14 October 2019

Decision Date: 14 October 2019

Before: White JA

Decision: Order that the applicant's notice of motion filed on 16 September 2019 be dismissed with costs.

Catchwords: CIVIL PROCEDURE – registrars – review of registrar’s decision – court of appeal – no issue of principle

Legislation Cited: District Court Act 1973 (NSW), s 127
Legal Profession Act 2004 (NSW), ss 384, 385
Supreme Court Act 1970 (NSW), s 48

Uniform Civil Procedure Rules 2005 (NSW), rr 49.19, 51.59. 59.3

Cases Cited: In re Will of Gilbert (dec’d) (1946) 46 SR (NSW) 318
Sinkovich v Attorney General of New South Wales [2013] NSWCA 383
Tomko v Palasty (No 2) (2007) 71 NSWLR 61; [2007] NSWCA 369
Wende v Horwarth (NSW) Pty Ltd (2014) 86 NSWLR 674; [2014] NSWCA 170

Category: Procedural and other rulings

Parties: Ilie Gheorghe Voicu (Applicant)
The Owners Strata Plan 1624 (Respondent)

Representation: Counsel:

Self-represented (Applicant)
A Power (Respondent)

Solicitors:
J S Mueller & Co (Respondent)

File Number(s): 2019/226773

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

JUDGMENT

1 **HIS HONOUR:** This is an application for the review of orders made by the Registrar on 19 August 2019. I take it the application is made under rr 49.19 and 51.59 of the Uniform Civil Procedure Rules 2005 (NSW).

2 The orders made by the Registrar on 19 August 2019 were as follows:

- “1. Join the District Court as the second respondent.
2. Direct the applicant to send, serve and or otherwise notify any documents to the first respondent's legal representative, being (for the time being) JS Mueller & Co.
3. Applicant's submissions to be filed and served by 14 October 2019.
4. Any further documents by the applicant to be filed and served by 14 October 2019.
5. Decline to make the applicant's order as sought in the short minutes handed up.
6. Stood over for further directions on 21 October 2019 3pm; serve on registrar notify parties.”

3 The orders sought by the applicant which the Registrar declined to make, were as follows:

- “1. The Respondent is to file and serve the documents who was presumed to be send, but never was in fact, from COSTS ASSESSMENT REASON, NUMBER 2017/388313, point2.2 (a) (ii): **‘LETTER DATED 9 FEBRUARY 2018 WITH FUTHER [sic] SUPPORTING MATERIALS IN REPLY TO MY LETTER OF 16 FEBRUARY 2018’**, solicited already on 7/09/2018 and on 25/10/2018, but don't received yet.

2. The Respondent is to file and serve the documents mentioned on the Application for Costs Assessment, at page 19, point 124: **'CostsPlus Pty Ltd fees for drawing draft application for assessment and bill of costs - \$1471.20 plus GST - \$1,618.32'.**"

4 The proceedings in this Court were commenced by the applicant by a summons headed "Summons (Supervisory Jurisdiction)" adopting prescribed Form 107 for proceedings in the supervisory jurisdiction of the Court of Appeal. The respondent was named as the Owners - Strata Plan No. 1624.

5 The applicant represents himself.

6 Although the summons was filed using the correct form, the orders that the applicant seeks in that summons are:

"1 Extension of time to Appeal.

2 Appeal to whole decision below, and dismiss of CERTIFICATE OF DETERMINATION OF COSTS Number 2017/388313".

7 The applicant described the application as an appeal from the decision of the District Court, the decision-maker being his Honour Acting District Court Judge Kearns. The material filed with the summons attached a judgment of Judge Kearns dated 6 December 2018 whereby his Honour dismissed the summons filed by the applicant in the District Court that sought to set aside three certificates of costs assessments dated 14 and 21 May 2018. The primary judge also ordered the applicant to pay costs on the indemnity basis. The summons challenges that order as well.

8 The primary judge described the proceedings before him as being either an appeal on a matter of law against decisions of costs assessors made under s 384 of the *Legal Profession Act 2004* (NSW) or an application for leave to appeal under s 385 of that Act. The orders dismissing the applicant's summons were not made in an "action" within the meaning of s 127 of the *District Court Act 1973* (NSW) (*Wende v Horwarth (NSW) Pty Ltd* (2014) 86 NSWLR 674; [2014] NSWCA 170 at [20]). The applicant's summons in this Court invokes the Supreme Court's supervisory jurisdiction by way of judicial review and the proceedings are assigned to the Court of Appeal by s 48 of the *Supreme Court Act 1970* (NSW).

9 Rule 59.3 of the Uniform Civil Procedure Rules provides:

"59.3 Commencement and parties

(1) Judicial review proceedings are to be commenced by summons.

...

(4) The body or person responsible for a decision to be reviewed must be joined as a defendant, but not as the first defendant unless there is no other defendant."

10 In *Sinkovich v Attorney General of New South Wales* [2013] NSWCA 383
Basten JA with whom Bathurst J and Beazley P said (at [13]):

"... In relation to judicial review proceedings the decision-maker is properly named as a party who must be bound by the judgment of the court. However, unless the decision-maker acts as an individual, the responsible body should be named and not the individual ..."

- 11 The first order of the Registrar that the District Court be joined as the second respondent was plainly correct. The applicant does not understand this. In his affidavit in support of the notice of motion he submitted that between October 2015 and December 2018 he was "unable to find any honest judge in the District Court to hear his case". He objected to the order made by the Registrar in the following terms, namely, that in presenting his case to the Supreme Court he was "...not to face a meeting of 'gang of scammers' from the District Court of NSW with 'gang of scammers' from the Supreme Court of NSW". He accused the Registrar of perverting the course of justice and of committing a criminal offence and engaging in corrupt practice by making the order that corrected the applicant's failure to join the decision-maker.
- 12 The District Court is a necessary party to the applicant's application for judicial review and it can be expected to file a submitting appearance and take no part in the proceedings. The florid and abusive language used by the applicant is to be condemned.
- 13 The next order complained of is the direction that the applicant serve documents on JS Mueller & Co. That firm acted for the party named as the first respondent in the District Court. On 1 August 2019 it advised the Registrar that it acted for the respondent. It did so in consenting to an order sought by the applicant to vacate a directions hearing listed for 5 August 2019. A representative of the firm appeared for the respondent before the Registrar on 19 August 2019.

- 14 The order has not been complied with. The matter was listed before me on 30 September, but there was confusion about the listing because the notice of motion provided to the applicant showed a listing date of 30 October 2019. My associate sent an email to the parties noting that there had been no appearance when the matter was called. When the matter resumed after lunch on 30 September 2019, counsel instructed by JS Mueller & Co appeared and advised that that firm had not been served with any documents. I directed that the applicant serve a copy of his notice of motion and supporting affidavits upon JS Mueller & Co, noting that they had advised that they acted for the respondent in these proceedings. That direction was not complied with.
- 15 This itself is a sufficient reason for dismissing the notice of motion. However, I will deal with the substance of the application.
- 16 The applicant, as I understand it, claims that JS Mueller & Co has no valid retainer, apparently because he says that the appointment of that firm was not approved in a general meeting of the Owner's Corporation as it was required to be. There is no application challenging JS Mueller & Co retainer. The Registrar could not assume that that firm had no valid retainer. There is no reason to set aside order 2. I observe that if the respondent has not been served, and if JS Mueller & Co is not served (service on the respondent can be effected by service on JS Mueller & Co), then the applicant's proceeding is liable to be dismissed.
- 17 It is not acceptable that the applicant attempt to bring proceedings seeking orders against the respondent, but refuse to serve the documents on which he relies on the respondent's solicitors.
- 18 Orders 3 and 4 and 6 made by the Registrar relate to timetabling issues. Although this is a review and not an appeal, restraint is called for against interference with the Registrar's decision on a matter of practice and procedure (*In re Will of Gilbert (dec'd)* (1946) 46 SR (NSW) 318 at 323, Jordan CJ said:
"The disposal of cases could be delayed interminably, and costs heaped up indefinitely, if a litigant with a long purse or a litigious disposition could, at will, in effect transfer all exercises of discretion in interlocutory applications from a Judge in Chambers to a Court of Appeal".

- 19 That same general principle applies in applications for review of a Registrar's orders (*Tomko v Palasty (No 2)* (2007) 71 NSWLR 61; [2007] NSWCA 369 at [47]). In any event, I am not satisfied that there is any sound reason to interfere.
- 20 The applicant relies upon what he says are health issues, under which he labours. Prior to his tendering a certificate of a Dr Dunn dated 9 October 2019, there was no medical evidence that could even arguably justify the long delay that the applicant seeks in order to file further documents. The medical evidence was to the effect that he suffers from osteoarthritis affecting his knees. The medical certificate initially relied on did not show why the applicant could not make further submissions, or notify further documents to be relied upon.
- 21 It may be noted that the applicant filed with his summons, a folder of over 600 pages, albeit in an incoherent order, as well as an attachment to his summons that, although unpaginated, runs to dozens of pages. He has filed an affidavit of 16 September 2019 with his notice of motion, and on 8 October filed a further affidavit of some 12 pages, together with 117 pages of attachments. I have read that material. It is irrelevant to the issues which are before me this morning.
- 22 Dr Dunn has provided a letter in which he states that the applicant is living with significant depression, and had on 9 October agreed to embark on a trial of antidepressant medication. He said that he would ask the applicant's general practitioner to monitor progress over the next six weeks, after which he would review the applicant and planned treatment for the future. Dr Dunn said:
- "As he has just commenced psychiatric treatment, I am happy to provide a certificate requesting such a delay in proceedings".
- 23 Dr Dunn does not say whether, and if so why, in his opinion, the applicant would not be able to comply with the orders and timetable provided for by the Registrar.
- 24 Finally, the Registrar refused to make orders that have been sought by the applicant that the respondent produce certain documents. There is no reason to interfere with the Registrar's discretion refusing to make the orders the

applicant sought. It does not appear why the documents he sought would be relevant to a challenge by way of judicial review to the validity of the District Court's orders.

25 For these reasons, I order that the applicant's notice of motion filed on 16 September 2019 be dismissed with costs.

Amendments

21 October 2019 - Title of judgment amended

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