



Supreme Court
New South Wales

Case Name: Application of Qasim

Medium Neutral Citation: [2022] NSWSC 302

Hearing Date(s): 16 March 2022

Date of Orders: 16 March 2022

Decision Date: 16 March 2022

Jurisdiction: Common Law

Before: Dhanji J

Decision: (1) The Owners Strata Plan 61034 be joined as a defendant in these proceedings.
(2) I order that the costs on the motion will be costs in the cause.
(3) I order the matter be adjourned to the Registrar's List on 4 April 2022.

Catchwords: CIVIL PROCEDURE – notice of motion – joinder of defendant – application granted – costs

Cases Cited: Qasim v Kekatos Lawyers [2021] NSWSC 1366

Category: Procedural rulings

Parties: Dr Shaheen Qasim (Plaintiff)
The Owners Strata Plan 61034 (Prospective Defendant)

Representation: Counsel:
Dr S Qasim (Self-represented)
M Maconochie (Prospective Defendant)

Solicitors:
Dr S Qasim (Self-represented)
Maher Legal (Prospective Defendant)

File Number(s): 2021/136133

Publication Restriction: Nil

EX TEMPORE JUDGMENT (REVISED)

- 1 **HIS HONOUR:** This is a notice of motion filed by Dr Shaheen Qasim, who is the plaintiff in the substantive proceedings. The substantive proceedings have been brought in this Court by way of a summons seeking leave to appeal against a decision of the Local Court.
- 2 The background is as follows. In the Local Court proceedings were brought by The Owners Strata Plan 61034 against Dr Qasim in relation to an amount of money said to be owing by way of strata fees. Ultimately The Owners Strata Plan 61034 obtained a default judgment in the Local Court. Dr Qasim brought an application to set aside that default judgment. That application was refused in the Local Court on 15 May 2021. Dr Qasim has sought leave to appeal against that decision by way of a summons in this Court, this application for leave to appeal being the substantive proceedings I referred to earlier.
- 3 The matter came before Schmidt AJ on 19 October 2021. Her Honour, in a decision given on 26 October 2021 in *Qasim v Kekatos Lawyers* [2021] NSWSC 1366, made orders that the proceedings against a number of named parties be dismissed. The reason for those orders was that none of the individuals, the subject of those orders, were a party to the proceedings in the Local Court, albeit that they had some connection with the body corporate that had brought the action. As is made plain in her Honour's judgment, the necessary parties to the application for leave to appeal in this Court are Dr Qasim and the other party in the Local Court, that is, The Owners Strata Plan 61034.
- 4 In dismissing the proceedings insofar as they were brought against the various named individuals, Schmidt AJ made plain that not only was The Owners Strata Plan 61034 the proper defendant, but that defendant had not been joined in the proceedings. It is plain that for Dr Qasim's application for leave to appeal to proceed, it is necessary that The Owners Strata Plan 61034 be joined.

5 At the hearing of this motion today it was accepted by the parties that while the motion itself raises a large number of matters and issues, what really needed to occur was the joining of The Owners Strata Plan 61034 to the proceedings. Mr Maconachie, who appeared for the prospective defendant, very helpfully indicated that there was, in fact, no objection to the prospective defendant being joined. Dr Qasim made clear that she was seeking that course so that she could then pursue her appeal.

6 In those circumstances, it is appropriate that an order be made joining the prospective defendant as a defendant to the proceedings. I make the following orders:

- (1) The Owners Strata Plan 61034 be joined as a defendant in these proceedings.
- (2) I order that the costs on the motion will be costs in the cause.
- (3) I order the matter be adjourned to the Registrar's List on 4 April 2022.

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