



Supreme Court
New South Wales

Case Name: Sethi v The Owners – Strata Plan 93392 (No 7)

Medium Neutral Citation: [2023] NSWSC 1647

Hearing Date(s): On the papers

Date of Orders: 22 December 2023

Decision Date: 22 December 2023

Jurisdiction: Common Law

Before: Chen J

Decision: (1) Dismiss the plaintiff’s recusal application.
(2) Dismiss paragraph 1 of the plaintiff’s notice of motion filed 13 November 2023.
(3) Order the plaintiff to pay the defendant’s costs of the above applications on an indemnity basis.

Catchwords: PRACTICE AND PROCEDURE – application for recusal – where plaintiff identified no basis for recusal – request refused

JUDGMENTS AND ORDERS – amending, varying and setting aside – where plaintiff brought application to set aside orders – where plaintiff did not materially engage with provisions of the Uniform Civil Procedure Rules 2005 (NSW) – where plaintiff alleges judge had hidden and malicious agenda – application dismissed

Legislation Cited: Civil Procedure Act 2005 (NSW)
Uniform Civil Procedure Rules 2005 (NSW)

Cases Cited: Mendonca v Legal Services Commissioner [2020] NSWCA 84
Mohareb v Saratoga Marine Pty Ltd [2020] NSWCA 235
Sethi v The Owners Strata Plan No 93392 (No 6) [2023]

NSWSC 1368

Category: Procedural rulings

Parties: Akhil Sethi (plaintiff) (self-represented)
The Owners – Strata Plan No 93392 (defendant)

Representation: Counsel:
L Holland (defendant)

Solicitors:
Eakin McCaffery Cox (defendant)

File Number(s): 2023/137553

Publication Restriction: Nil

JUDGMENT

Introduction

- 1 On 13 November 2023 I made an order summarily dismissing the plaintiff's claim: *Sethi v The Owners Strata Plan No 93392 (No 6)* [2023] NSWSC 1368.
- 2 Immediately following pronouncement of orders and delivery of my reasons, the plaintiff requested that I recuse myself. Given there were a number of other matters listed at that time, I indicated to the plaintiff that, if he wished to pursue such an application, he could do so at a later time.
- 3 There was a further development. The plaintiff, at 10:26am on 13 November 2023, filed a notice of motion seeking, inter alia, an order that the orders that I made on 13 November 2023 be set aside. That notice of motion was initially returnable before the Common Law Registrar on 30 November 2023. On that day the Common Law Registrar, undoubtedly because the plaintiff's notice of motion sought to set aside orders that I had made, referred prayer 1 of the plaintiff's notice of motion to me.

The post-judgment procedural history

- 4 In relation to the plaintiff's notice of motion, I made the following orders in Chambers on 4 December 2023:
 1. Order the plaintiff to file and serve an outline of submissions, limited to no more than 5 pages, and any evidence in connection with the orders sought by Friday 8 December 2023, 4:00pm.

2. Order the defendant to file and serve an outline of submissions in response, limited to no more than 5 pages, and any evidence in connection with the orders sought by the plaintiff by Tuesday 12 December 2023, 12:00pm.

- 5 In addition to making the above orders, I also advised the parties that I would consider the material filed and that I proposed to determine the application in Chambers unless I formed the view that a short hearing was required.
- 6 Following the making of those orders, the plaintiff sent an email to my Chambers on 4 December 2023 objecting to the orders made by the Registrar, and he requested an allocation of a hearing date for his notice of motion (the plaintiff estimated that it would require a hearing allocation of 1.5 days). The plaintiff also sought advice as to whether I had recused myself or intended to do so.
- 7 In relation to the email that was sent by the plaintiff, and the plaintiff's indication that he pressed the recusal application, I made the following orders in Chambers on 7 December 2023:

1. Order the plaintiff to file and serve an outline of submissions, limited to no more than 3 pages, and any evidence in connection with the orders sought by 13 [December] 2023, 5:00pm.

2. Order the defendant to file and serve an outline of submissions in response, limited to no more than 3 pages, and any evidence in connection with the orders sought by the plaintiff by Friday 15 December 2023, 5:00pm.

- 8 In addition to making the above orders, I also advised to the parties that I would consider the material filed and that I proposed to determine the application in Chambers unless I formed the view that a short hearing was required.
- 9 On 21 December 2023 the plaintiff sent a number of emails to my Chambers. By those emails, the plaintiff has, in essence, sought to reagitate his claim and take further steps (such as filing several notices of motion) in the proceeding in spite of the fact that I dismissed his claim on 13 November 2023. In particular, the plaintiff has advised that he is unable to comply with orders made by the Court – either with regards to the defendant's application for gross sum costs, or more generally – because he requires that notices of motion and subpoenas filed be dealt with first. Further, the plaintiff has inquired repeatedly whether I intend to "voluntarily recuse" myself, notwithstanding that he has elected not to file or serve an outline of submissions or evidence in support of his application.

The recusal application

- 10 In spite of the plaintiff's enquiries to my Chambers as to whether I intend to "voluntarily recuse" myself, he has, in substance, refused to materially advance the application. The plaintiff did not (and has not) filed and served an outline of submissions, or evidence in support of the application, by 13 December 2023. Nor was an application made to extend the time for compliance with these orders.
- 11 Given the plaintiff's non-compliance with the orders I made, the defendant indicated that its position was that the application should be "refused forthwith". The solicitor for the defendant also indicated, by email to my Chambers dated 14 December 2023, the following:

Today we enquired of the Plaintiff his intentions in this regard. His response was as follows:

As advised earlier, none of the orders made by Chen J are valid and hence no one is required to do anything until a Directions listing date is provided. I also note that His Honour has not recused himself voluntarily as yet and I am awaiting a confirmation from Chen J's chambers. I suggest don't keep filing any submissions just to progress your own and Justice Chen's hidden and malicious agendas.

- 12 In view of the plaintiff's failure to comply with the orders, and advance any ground to support the making of the order sought, the recusal application will be dismissed.

The application to set aside the orders made on 13 November 2023

- 13 As I have noted, above, the Common Law Registrar referred prayer 1 of the plaintiff's notice of motion to me – which reads:
1. Pursuant to UCPR r36.15 (1), r36.16 (3)(b), r36.16 (3A) and Civil Procedure Act s63, orders or judgment made by the Judge on 13 November 2023 hearing for the matter are set-aside.
- 14 In relation to the application to set aside the orders made on 13 November 2023, the plaintiff and defendant have served material in connection with that application: the plaintiff filed submissions dated 13 November 2023, an affidavit affirmed 12 November 2023 and a chronology dated 12 November 2023; the defendant filed written submissions dated 12 December 2023.
- 15 Notwithstanding the orders that I made, the plaintiff did not file any further submissions: I proceed on the basis that the plaintiff's arguments are as set out

in his written submissions dated 13 November 2023. Having reviewed the material provided by the parties I am satisfied that the matter can be, and should be, dealt with in Chambers and without a further hearing: ss 56-58 of the *Civil Procedure Act 2005* (NSW). I have also considered the need to eliminate delay (s 59) and the need for the cost to the parties to be proportionate (s 60).

16 The submissions of the plaintiff are not easy to follow. They cover the following matters:

- (1) “The reargument of the defendant’s motion and the listing is listed irregularly and illegally”: submissions at [2]-[9].
- (2) “Breach of duty of obligation and breach of duty of care by the presiding judge and presiding registrars”: submissions at [10]-[13].
- (3) “Misconduct and delays incurred by the defendant’s solicitors”: submissions at [14]-[21].
- (4) “Misconduct and delays incurred by the registrars/duty registrars or prothonotary”: submissions at [22]-[24].
- (5) “Defendant’s notice of appearance and its service is invalid”: submissions at [25]-[30].
- (6) “Defendant’s notice of motion filed 6 June 2023 was out of time and non-compliant”: submissions at [31]-[37].
- (7) “Pending items”: submissions at [38]-[43].
- (8) “Conclusion”: submissions at [44]-[57].

17 The present case calls for no fine-grained analysis of the provisions of the *Uniform Civil Procedure Rules 2005* (NSW) and *Civil Procedure Act 2005* (NSW) relied upon by the plaintiff. That is because, in my respectful view, no attempt has been made by the plaintiff to identify how or why the matters in the written submissions raised engage those provisions. Nor is it apparent from any benevolent reading of those submissions. They are, as the defendant submitted, little more than an attempt by the plaintiff to re-agitate, or complain about, a range of extraneous matters.

18 I am mindful that the plaintiff is unrepresented. Notwithstanding, the Court “is not required to undertake a partisan analysis of lengthy, unstructured assertions and misconceptions with a view to ensuring that a self-represented litigant has not missed some arguable point”: *Mendonca v Legal Services*

Commissioner [2020] NSWCA 84 at [21]; *Mohareb v Saratoga Marine Pty Ltd* [2020] NSWCA 235 at [42].

- 19 Prayer 1 of the plaintiff's notice of motion filed 13 November 2023 will be dismissed.

The gross sum costs order

- 20 When I delivered my reasons for judgment the defendant indicated that it wished to pursue an application for a gross sum costs order. The defendant proposed a series of timetabling orders that would enable that application to be prepared and determined.

- 21 The plaintiff indicated, however, that he needed time – said to be two weeks – in order to respond to the timetable proposed by the defendant. Given that the defendant did not oppose the plaintiff having that time to consider the orders proposed, I made the following orders:

...

4. Direct that any proposed short minutes of order that are sought by the defendant for a gross sum costs order be served upon the plaintiff by 13 November 2023, 4pm

5. Direct that the plaintiff to the extent that any alternate orders are sought that those proposed orders be filed and served by 5pm 15 November 2023 in connection with the application for gross sum costs order.

- 22 No proposed orders were ever served by the plaintiff, so far as I am aware and that is where that aspect of the matter has remained. It is important that the sole outstanding issue in the proceeding is dealt with promptly. Thus, in relation to that application, I make the following further orders:

- (1) Order the defendant to file and serve all evidence upon which it relies by 25 January 2024, 5pm in support of its application for a gross sum costs order pursuant to s 98(4)(c) of the *Civil Procedure Act 2005* (NSW).
- (2) Order the defendant to file and serve an outline of written submissions in support of that application, limited to no more than five pages (and not containing any footnotes) by 25 January 2024, 5pm.
- (3) Order the plaintiff to file and serve all evidence upon which he relies, in connection with the defendant's application for a gross sum costs order, by 29 February 2024, 5pm.
- (4) Order the plaintiff to file and serve an outline of written submissions, in connection with the defendant's application for a gross sum costs order,

limited to no more than five pages (and not containing any footnotes) by 29 February 2024, 5pm.

- (5) Note that upon the filing and service of the above material consideration will be given to whether the matter will be dealt with on the papers.

Orders

23 In relation to the recusal application, and the application to set aside the orders made on 13 November 2023, for the reasons that I have given, I make the following orders:

- (1) Dismiss the plaintiff's recusal application.
- (2) Dismiss paragraph 1 of the plaintiff's notice of motion filed 13 November 2023.
- (3) Order the plaintiff to pay the defendant's costs of the above applications on an indemnity basis.

Amendments

22 December 2023 - Amendments made to order 22

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