[2018] QCA 55

COURT OF APPEAL

SOFRONOFF P

Appeal No 1461 of 2018
SC No 12210 of 2017

GREGORY RAYMOND YOUNG **Appellant**

v

CRIME AND CORRUPTION COMMISSION **Respondent**

BRISBANE

WEDNESDAY, 28 MARCH 2018

JUDGMENT

SOFRONOFF P: On 9 February 2018 Martin J made an order striking out the appellant's statement of claim. The appellant has filed an appeal against that order. The notice of appeal, which is the further amended notice of appeal, was filed on 7 March 2018. It contains 15 grounds. It's enough in order to understand the nature of the document to quote some of the briefest of these 15 grounds. Subparagraph (b) on page 2 provides:

> "Further to (a), the Judicial Decision was arrived at by FRAUD, warranting Setting Aside the decision, pursuant to UCPR Rule 667, sub-paragraph (667)(2) and UCPR rule 667, sub-sub-paragraph (667)(2)(b);"

Subparagraph (g) of the notice of appeal provides:

> "There has also been a breach of Section 120 of the *Criminal Code 1899* (Qld) entitled Judicial Corruption that warrants setting aside the Decision;"

Subparagraph (j) of the notice of appeal provides:

> "The repetitive Errors of Law in Grounds 2(f), 2(h) and 2(i) above by the Court, constitute Vexatious conduct at Law pursuant to the principles in *Cameron* [1996] 2 Qd R 218 at 220, by Fitzgerald P which warrants setting aside the decision;"

Subparagraph (k) states:

> "False UCPR Chapter 6 allegations to strike out the Claim, warrant setting aside the Decision and adding back struck out valid SoC paragraphs;"

In the course of argument, Mr Young directed my attention to subparagraph (e) on page 2 of the document and contended that this ground alleged a failure on the part of the Judge to accord procedural fairness, in that the appellant had been denied the opportunity to be heard on the application to strike out his pleading. Subparagraph (e) provides:

> "Further to (c) and (d), His Honour breached High Court of Australia Common Law by only hearing the Defendant and not the Plaintiff's case. The Plaintiff's case was to be presented through four Applications and four Affidavits that were explained in Application # 5, to be heard by His Honour on 02 February 2018. His Honour refused to allow the Plaintiff to present his case, and only focused on dismissing the Claim for the Defendant. That will be explained in considerable detail in the plaintiff's Outline before the Court of Appeal. As at the date of this Notice of Appeal, the Courts on-line file summary under the heading "Events" shows the first hearing dated 09 February 2018 to hear the vital first part of the Plaintiff's case, as being "dismissed" by the Primary Judge. As evident in the BS12210/17 Court Registry file summary printed on 02 March 2018, the hearings set down for 23 March 2018 have now been quietly "delisted" (refer page xxxx of the Appeal Record Book)."

The appellant filed an outline of argument in support of his appeal. Its content is similar in character to that of the outline of argument. In the course of his submissions, Mr Young directed my attention to page 8 of the outline, which he contended contained references to errors of law on the part of his Honour. Subparagraph (f3) on page 8 states as follows:

> "Failure in (F) repeats for Plaintiff's alleged Fiduciary Law misunderstanding:
>
> The Error of Law in (f) above for Negligence, repeats for the plaintiff's alleged Fiduciary Law "misunderstanding" (refer to paragraph 4 on page xxxx of the ARB). What misunderstanding is that? What are the reasons? It is a bald statement. To plead a fiduciary relationship, the Plaintiff has to cite High Court Law, which reveals fiduciary law is not a settled law. Also, UCPR Rule 149(2) states "In a pleading, a party may

> plead a conclusion of law or raise a point of law if the party also pleads the material facts in support of the conclusion or point." What part of the High Court law relied upon by the plaintiff in his pleading, is incorrect? Furthermore, how is the Plaintiff not complying with UCPR Rule 149(2)? Again, Supreme Court Law in (f) mandates the Decision in BS12210/17 on 09 February 2018 be set aside at Law, as no judicial explanation about the (f3) "misunderstanding", constitutes an Error of Law."

Rule 747(1)(b) of the UCPR requires that a notice of appeal must state briefly and specifically the grounds of appeal. This notice does not comply with that rule; worse, its contents are entirely irrational and incomprehensible and demonstrate that the proposed appeal, at least in its current form, would be vexatious. Litigation is burdensome and not only be reason of the time and money that must be spent. The Courts cannot permit litigants to prosecute claims or appeals which are self-evidently groundless.

Section 44 of the *Supreme Court of Queensland Act* 1991 provides that:

> "(1) A judge of appeal may exercise the powers of the Court of Appeal—
>
> (b) to dismiss an appeal or other proceeding for want of prosecution or for other cause specified in an Act or a rule of court about the practices and procedures of the Court of Appeal"

Section 44(2) provides that:

> "(2) A judge of appeal may exercise the powers of the Court of Appeal—
>
> (b) to make an order or give a direction in an appeal or other proceeding, other than an order or direction involving the determination or decision of the appeal or other proceeding"

New South Wales has an identical provision which was considered in *Macatangay v State of New South Wales (No 2)* [2009] NSWCA 272. In that case, the Court, which consisted of Allsop P, Tobias JA and Handley AJA held that the New South Wales equivalent of section 44 conferred power on a single Judge of the Court of Appeal to dismiss an appeal as incompetent. Rule 371(2)(f) of the UCPR permits the Court to make such order as is appropriate when there has been a failure to comply with the rules. That rule is picked up by section 44 as one of the rules of Court applicable to the dismissal of an appeal. As I have

said, the appellant has failed to comply with the rules because his notice of appeal fails to articulate any rational ground of appeal. In addition, the outline of argument that has been filed in purported compliance with the Practice Direction fails to comply with the rules for the same reason. I therefore strike out the notice of appeal.

Mr Young, having regard to what you have said, I would not be inclined at this stage to dismiss your appeal. Although, I have concerns about whether there's anything in it whatsoever. However, I'm not proposing to give you leave to file an amended notice of appeal. You'll have to apply for leave to file an amended notice of appeal if you choose to do so. And I don't know whether I'll hear that application or another Judge, but as you would understand, you won't get leave to file an amended notice of appeal if the proposed draft amended notice of appeal doesn't make any more sense than the present one does. Do you understand that?

APPELLANT: So I am entitled to file an amended - - -

SOFRONOFF P: No, I just said you're not entitled to file an amended notice of appeal. What you're entitled to do is to apply for leave to file an amended notice of appeal. And you would need to have a draft notice of appeal, deliver it to the respondent and make application for leave to file it.

APPELLANT: So I can make an application for leave to file an amended notice of appeal?

SOFRONOFF P: Yes.

APPELLANT: I serve that application upon the defendant. I attach to the application a draft – a new draft notice of appeal?

SOFRONOFF P: Yes. And if you do that, it'll come back and a Judge will decide whether you're to be given leave and whether any other orders ought to be made, such as dismissing the appeal. And it depends upon the content of that document, I suppose, what'll happen. Is that clear?

APPELLANT: Yes, your Honour.

SOFRONOFF P: Yes. All right. Well, I'll order that the costs of today's proceeding be the parties' costs in the appeal. Thank you. Call the next matter, please.