DISTRICT COURT OF QUEENSLAND

CITATION:	*Craven v Commercial & Process Services Australia Pty Ltd and Anor* [2020] QDC 12
PARTIES:	**GORDON JAMES CRAVEN** (plaintiff) **v** **COMMERCIAL AND PROCESS SERVICES AUSTRALIA PTY LTD** (first defendant) **and** **WARREN NIGEL RUSS** (second defendant)
FILE NO:	D165/17
DIVISION:	Civil
PROCEEDING:	Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	21 February 2020
DELIVERED AT:	Maroochydore
HEARING DATE:	6 December 2019
JUDGE:	Cash QC DCJ
ORDERS:	**1. The plaintiff provide security for the first and second defendants' costs of the proceedings in the amount of $10,000 in a form satisfactory to the registrar by 4.00 pm on 20 March 2020; and** **2. Costs of the application are reserved.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – FACTORS RELEVANT TO EXERCISE OF DISCRETION – litigant in person – poverty – where defendant seeks security for costs – where the plaintiff is impecunious – where an order for security would likely stifle the proceedings – whether the justice of the cases requires an order for security for costs – whether plaintiff's mode of litigation "vexatious" or "harassing" *Uniform Civil Procedure Rules* 1999 (Qld), r 670, r 671, r 672, r 674 *Craven v Commercial & Process Services Australia Pty Ltd & Anor* [2019] QCA 235 *Craven v Globe Valley Pty Ltd & Ors* [2018] QDC 155

Craven v Globe Valley Pty Ltd & Ors [2018] QDC 198
Craven v Globe Valley Pty Ltd & Ors [2019] QDC 28
Globe Valley Pty Ltd & Ors v Craven [2018] QCA 328
Mbuzi v Hall [2010] QSC 359

COUNSEL: Plaintiff/respondent in person
S D Argles (solicitor) for the defendants/applicants

SOLICITORS: Aejis Legal for the defendants/applicants

Introduction

[1] This is an application for security for costs brought by the defendants against the plaintiff, Mr Craven. The principal proceedings were commenced by Mr Craven in late 2017 and have already been the subject of considerable litigation. A summary of these proceedings can be found in the decision of Philippides JA in *Craven v Commercial & Process Services Australia Pty Ltd & Anor* [2019] QCA 235 which I gratefully adopt and set out below.

> "[2] The background to the proceeding is that Mr Craven and his wife occupied a property owned by their daughter, Penelope, who in 2007 granted a tenancy to a company Penny's Flowers Pty Ltd, of which she was then the director and shareholder. The company granted a subtenancy to Mr and Mrs Craven and a further subtenancy in 2013 at a time when Mr Craven was a director and his wife was apparently the sole shareholder.
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> [3] Mr Craven became a bankrupt in 2015. The Trustee in bankruptcy claimed funds invested in the property. In June 2015, a Deed of Settlement was entered into between Penelope and the Trustee for the sale of the property and division of the proceeds of sale. A Power of Attorney was also granted to the Trustee to take steps to deal with and sell the property. Subsequently, in August and September 2015, the Trustee's solicitors engaged Mr Russ, a licensed process server (the second defendant), through his company (the first defendant) to make various attendances at the property to serve an Entry Notice, take possession and secure the property.
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> [4] In September 2016, Mr Craven and his wife commenced a proceeding in the District Court against the Trustee and Penelope for, amongst other claims, trespass and wrongful eviction arising from the attendances of Mr Russ (the first proceeding). The first proceeding was discontinued on a Settlement Deed being entered into in October 2017 between Mr and Mrs Craven and the Trustee. Pursuant to that Deed, the Trustee agreed, *inter alia*, to pay Mrs Craven $55,000 in compensation and Mr and Mrs Craven agreed to release and indemnify the Trustee.
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> [5] By the present District Court proceeding commenced by Mr Craven in November 2017 (the second proceeding), damages including aggravated and exemplary damages are sought for trespass and unlawful eviction in relation to the attendances of Mr Russ, the subject of the first proceeding."

[2] Mr Craven unsuccessfully sought summary judgement in his favour in March 2019. At the same time, I ordered Mr Craven pay the defendants their costs of the unsuccessful application and adjourned to a date to be fixed an application by the defendants for security for costs. An attempt to appeal against my refusal to give summary judgement resulted in an application for security for costs by the

defendants.[1] Philippides JA made orders requiring Mr Craven to give security for costs to prevent the appeal proceedings being dismissed. Mr Craven did not pay the security and his appeal was dismissed. He has not paid the costs of his unsuccessful application for summary judgement.[2]

[3] On 11 November 2019, soon after the orders of Philippides JA, Mr Craven applied for further orders in the principal proceedings. In response, the defendants press their application for security for costs in the principal proceedings. For the reasons that follow, I have decided that Mr Craven should provide security for the defendants' costs with the consequence that the principal proceedings will be stayed if security is not provided.[3] As a result of this decision it is not appropriate to determine the matters raised by Mr Craven's application of 11 November 2019.

Relevant principles

[4] A court may order, pursuant to r 670 of the *Uniform Civil Procedure Rules* 1999 (Qld), that a plaintiff give the security the court considers appropriate for the defendant's costs of and incidental to the proceedings, but may only do so if satisfied of one or more of the criteria set out in r 671. If the discretion is enlivened, the court may have regard to the matters listed in r 671 to decide whether to make an order for security for costs. The defendants rely upon r 670(h) and argue that the "justice of the case requires the making of the order". Consideration of the justice of the case requires regard to well-established principles governing orders for security for costs, including the notion that poverty should not prevent a person pursuing an otherwise viable claim. These principles were summarised by Applegarth J in *Mbuzi v Hall* [2010] QSC 359.[4] It is convenient set out some of his Honour's reasons (citations omitted).

> "[67] The bare fact that a claimant may be unable (or even will be unable) to meet an adverse costs order after the trial of the proceeding does not mean that the commencement or further prosecution of the proceeding is an abuse of process. The principles upon which security for costs are ordered under court rules and under the court's inherent jurisdiction permit, within limits, impecunious natural persons to litigate bona fide and viable claims with the prospect that the claimant will be unable to meet a costs order made in the event that the claim fails. There is no general rule that to prosecute proceedings without reasonable prospects of being able to meet an adverse costs order is an abuse of process. Unless and until the principles governing security for costs are revisited, I would not regard the bare fact that a claimant may be unable (or even will be unable) to meet an adverse costs order after the trial of the proceeding as rendering the proceeding "harassing and vexatious" in the sense discussed by Young J.
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> [68] As a general rule, the law requires defendants to accept the risk that natural persons who litigate viable claims in good faith for their own benefit might not be able to satisfy an order for costs. However, a claimant who "has adopted a vexatious mode of conducting the litigation" may fall outside the general rule. There may be other processes by which such vexation may be remedied, including a stay of

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1 *Craven v Commercial & Process Services Australia Pty Ltd & Anor* [2019] QCA 235; affidavit of Scott Davey Argles filed on 3 December 2019, paragraph [7].

2 Affidavit of Scott Davey Argles filed on 3 December 2019, paragraph [8].

3 *Uniform Civil Procedure Rules* 1999 (Qld), r 674.

4 There was no challenge to the correctness of Applegarth J's analysis of relevant principle when the applicant in that case unsuccessfully sought leave to appeal against the decision: *Mbuzi v Hall & Ors* [2010] QCA 356, [17].

> proceedings. Still, where a party has adopted a vexatious mode of conducting the proceedings, the interests of justice in the case may justify an order for security for costs.
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> [69] The non-payment of existing costs orders may constitute vexation, particularly where the prior costs orders relate to a previous case involving similar disputes. The core element of vexation may be readily identified since "allowing the second case to proceed risks increasing the financial burden upon the defendant, who has already suffered the detriment of unpaid costs orders". The circumstances in which the previous costs orders were made, and the steps taken to have them quantified, assessed and enforced may be relevant. Naturally, any costs orders in favour of the claimant may need to be taken into account."

[5] Applegarth J went on to state:[5]

> "The unmeritorious conduct of interlocutory or related applications that result in unpaid costs orders may evidence a vexatious mode of conducting the litigation. The bare fact that unpaid interlocutory costs orders exist is not sufficient to conclude that a party has adopted a vexatious mode of conducting the litigation. An interlocutory application may have been brought or resisted on reasonable grounds by an impecunious litigant, and the determination of the application may have been finely balanced. In other cases, the unmeritorious prosecution or defence of interlocutory applications, resulting in unpaid costs orders, will evidence a vexatious mode of conducting the litigation.
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> … Such conduct may breach the party's implied undertaking to the Court and to the other parties to proceed with expedition, and therefore warrant sanctions under r 5 of the *UCPR*. Depending on the circumstances, the sanctions may include a stay of the proceeding until the costs are paid, or in exceptional circumstances, dismissal of the proceeding."

[6] As can be seen from the above, proof that Mr Craven may be unable to satisfy a costs order made in favour in of the defendants is not enough to require him to pay security for the defendants' costs. But if it is shown he has conducted proceedings in a manner that is vexatious or harassing, such as by pursuing unmeritorious actions and failing to satisfy existing costs orders, an order may be warranted.

Application of principles

[7] It should first be noted that Mr Craven is a self-represented, but experienced, litigant. In the principal proceedings he appeared for himself in the District Court and the Court of Appeal. He also represented himself in proceedings against the Trustee and in claims for defamation in the District Court at Brisbane. In the course of the defamation proceedings orders for security for costs were made by Williamson QC DCJ[6] and Jarro DCJ.[7] Proceedings against some of the defendants in that matter were dismissed by Porter QC DCJ when the order for security for costs was not satisfied.[8] An attempt by Mr Craven to appeal against this decision was itself the subject of a successful application for security for costs.[9] I refer to these matters not to suggest that the fact orders were made in unrelated litigation itself justifies an order in the present case. The relevance of these matters is what

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5 *Mbuzi v Hall* [2010] QSC 359, [70].
6 *Craven v Globe Valley Pty Ltd & Ors* [2018] QDC 155.
7 *Craven v Globe Valley Pty Ltd & Ors* [2019] QDC 28.
8 *Craven v Globe Valley Pty Ltd & Ors* [2018] QDC 198.
9 *Globe Valley Pty Ltd & Ors v Craven* [2018] QCA 328.

they suggest about Mr Craven's impecuniosity and the manner in which he conducts litigation.

[8] There is no evidence to suggest that Mr Craven has satisfied any of the various orders for security for costs. Mr Craven has also been ordered to pay the costs of parts of the defamation proceedings. However, at least two of these orders have been resolved by a confidential settlement.[10] I do not regard the costs orders that have been settled to be relevant to the present application. I also note that, despite a suggestion by the defendants, it does not appear that Mr Craven is facing the immediate threat of bankruptcy.

[9] In the present proceedings, Mr Craven has not paid the costs ordered by me in March 2019. In his outline Mr Craven refers to an application to set aside this order. That seems to be a reference to a part of his written submissions suggesting I should have reserved costs when dealing with Mr Craven's application for summary judgment. In any event, it is clear from material filed by Mr Craven that he cannot satisfy the costs order of March 2019. He did not satisfy the order for security for costs made by Philippides JA. In the circumstances, it is obvious that Mr Craven would also be unable to satisfy any future costs order that might be made in these proceedings. On its own, this should not be a bar to Mr Craven pursuing his claim if it is viable and done in good faith. It is therefore necessary also to consider the nature of his claim and the circumstances in which it is made.

[10] As has been noted, Mr Craven first made a claim against his daughter and his Trustee in bankruptcy alleging trespass and wrongful eviction. He did not at that time pursue the present defendants. The first proceedings were settled with Mr Craven agreeing to release and indemnify the trustee. Days later Mr Craven commenced the principal proceedings against the present defendants, pursuing essentially the same claims he settled against the Trustee. There appears to be a strong argument that the defendants were acting on the instructions of the Trustee when they did the things that are said by Mr Craven to be actionable. Even if Mr Craven has a legitimate claim against the defendants, they would be entitled to join the Trustee who in turn would be entitled to rely upon the indemnity given to them by Mr Craven. While there may be room for argument about the scope of the indemnity, I do not consider that Mr Craven's claim enjoys great prospects of success.

[11] In his written submissions Mr Craven acknowledges that indemnity would require him to indemnify the Trustee for any contribution claimed by the defendants as agents of the Trustee. However, Mr Craven submits the defendants cannot claim against the Trustee for the defendants' "own torts". If by that Mr Craven means that the defendants, in committing the alleged torts, acted outside the scope of the agency, that is a matter to be raised by the Trustee and not Mr Craven. There is nothing in the material that suggests there is strength to an argument that the defendants acted outside of the scope of the agency.

[12] There is then the manner in which Mr Craven has pursued the litigation. He applied for summary judgment in circumstances where a rational assessment would have indicated such an application had little chance of success. When he attempted to challenge the refusal of his application Philippides JA said the application for leave to appeal had "poor prospects of success".[11] Mr Craven has expressed at least some

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10 Exhibit "SDA5" to the affidavit of Scott Davey Argles filed on 3 December 2019.

11 *Craven v Commercial & Process Services Australia Pry Ltd & Anor* [2019] QCA 235, [7].

interest in seeking special leave to appeal the decision of Philippides JA to the High Court. There remains as well the unsatisfied costs order which Mr Craven frankly concedes he will not be able to satisfy by reason of his impecuniosity. Mr Craven's impecuniosity is not the result of any conduct by the defendants.

[13] In summary, Mr Craven has no prospect of satisfying any costs order that might be made, I do not consider his claim to have a great chance of success, and he has pursued the claim in a manner that suggests obsessiveness rather than rational deliberation. In the circumstances, and having considered the discretionary matters listed in r 671, I am satisfied that justice of the case requires Mr Craven to pay security for the potential costs of the defendants. I appreciate that the effect of such an order will likely be to stifle the litigation. But this is outweighed by the factors that I have noted.

[14] The remaining question is the amount of the security. The defendants claim the cost of a two-day hearing would exceed $86,000 and seek $43,000 as security. In my view this amount is excessive. Whether or not the defendants will have to pay $86,000 to defend the proceedings, it is unlikely that costs, as assessed, would approach this amount. In my view $10,000 is the appropriate amount to order as security for costs, to be paid by 4.00 pm on 20 March 2020. Pursuant to r 674, if the security is not given, the proceeding will be stayed so far as it concerns any steps taken by the plaintiff and the defendants will be entitled to apply to dismiss all or part of the proceeding.

[15] The orders will be:

1. The plaintiff provide security for the first and second defendants' costs of the proceedings in the amount of $10,000 in a form satisfactory to the registrar by 4.00 pm on 20 March 2020; and

2. Costs of the application are reserved.