SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

CHESTERMAN JA

Appeal No 522 of 2010
SC No 1 of 2006

OTTO REMELY	**Appellant**
and	
ACTING REGISTRAR A SANNA	**First Respondent**
and	
GEOFF VANDENBERG and LARAINE VANDENBERG	**Second Respondents**

BRISBANE

DATE 03/02/2010

ORDER

HIS HONOUR: The applicant has sought a stay of execution of the judgment made by Justice Byrne on 22 December last committing the applicant to prison for six months for contempt of Court.

...

HIS HONOUR: The applicant bears the onus of establishing that the term of imprisonment ought to be suspended pending his appeal. There is the obvious point that if the appeal is not heard quickly the - and the judgment is not stayed - the applicant will serve the whole of the term before his appeal can be heard and if successful the appeal will have been nugatory.

The other point the applicant must establish is that he has reasonable grounds for arguing that the order ought not to have made. As to that his only point seems to be that the learned Judge did not deal with his point that the proceedings, in the course of which he refused to answer questions, was a nullity.

The transcript of the proceedings shows that the Judge did in fact deal with the point, though briefly. Furthermore, the point seemed to be quite without substance, so whether the Judge dealt with it or not would not have mattered. There is no reason to doubt the efficacy of the order made that the applicant attend and be examined in the course of which he refused to answer questions. So, there does not seem to be any real arguable point against the order made by the learned Judge. There is a separate point that the sentence imposed may be excessive. About that I express no opinion but it seems to me an arguable point.

The Court has agreed to hear the appeal on the 15th of February, 12 days hence. Mr Remely refuses to accept that date saying he cannot prepare for a hearing so soon, although it would seem to me that little preparation is needed for the second point I mentioned, that the sentence is excessive. Be that as it may he refuses to accept the offer of the early hearing. That being so and there being, as I say, no other discernible ground of appeal that's arguable, the application should be dismissed, and I make that order.

...

HIS HONOUR: Mr Dickson, who appears for the respondents, has asked for an order for costs against the applicant to be assessed on the indemnity basis. I think he's entitled to that order, not because the application brought by the applicant was misconceived. I think it was an appropriate means of achieving the relief that he sought. There are two reasons though which I think make it appropriate to order indemnity costs. The first is that the respondents ought not to be out of pocket when they are seeking to enforce, on behalf of the public as it were, the orders of the Court.

The second reason is I regard Mr Remely's refusal of the Court's offer to hear his appeal, at least against the severity of the sentence, as quite unreasonable. So, I make those orders. Adjourn the Court please.