

SUPREME COURT OF QUEENSLAND

CITATION: *Conde v Attorney-General for the State of Queensland* [2010] QCA 66

PARTIES: **MILTON ARNOLDO CONDE**
(respondent/applicant)
v
ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND
(applicant/respondent)

FILE NO/S: Appeal No 2487 of 2010
SC No 627 of 2010

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application (Civil)

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 25 March 2010

DELIVERED AT: Brisbane

HEARING DATE: 25 March 2010

JUDGES: Fraser JA

ORDER: **Application dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – OTHER MATTERS – where applicant sought to appeal against orders made pursuant to the *Vexatious Proceedings Act 2005* (Qld) staying the applicant’s proceedings or requiring him to obtain leave to proceed – where the applicant applied under s 11 of the Act for leave to institute an appeal against the orders – whether the Court is required to dismiss the application pursuant to s 12 of the Act – whether there is a reasonable ground for the proposed appeal and whether it is vexatious

Vexatious Proceedings Act 2005 (Qld), s 6(2)(a), s 6(2)(b), s 6 (2)(c), s 10, s 11, s 11(3), s 12(1)(b)

Gilfoyle and Ors v Conde [\[2010\] QSC 14](#), cited

COUNSEL: The applicant appeared his own behalf
No appearance for the respondent

SOLICITORS: The applicant appeared on his own behalf
No appearance for the respondent

FRASER JA: On 17 February 2010, the primary judge, Justice Byrne, made orders pursuant to s 6(2)(a) of the *Vexatious Proceedings Act 2005* (Qld), staying three separate proceedings commenced by Mr Conde in the Trial Division of the Supreme Court, four separate appeals commenced by Mr Conde in this Court, and one proceeding in the District Court. The primary judge also made orders pursuant to s 6(2)(c) of the Act, prohibiting Mr Conde from taking a step in seven separate proceedings he had commenced in the District Court without the prior leave of a judge of that court.

Mr Conde wishes to appeal from those orders. He faces the obstacle that on 4 February 2010 Justice Byrne had made an order pursuant to s 6(2)(b) of the Act prohibiting Mr Conde from instituting any proceeding in a court or tribunal in the State of Queensland without prior leave of a judge of the Supreme Court of Queensland granted pursuant to Part 3 of the Act. That vexatious proceeding order remains in effect, though Mr Conde has appealed against it. That appeal has not yet been determined. Under s 10 of the Act the vexatious proceedings order, which remains in force, prohibits Mr Conde from instituting his proposed appeal against the subsequent orders of 17 February 2010 without the leave of the Court.

Mr Conde has now applied under s 11 of the Act for leave to institute his proposed appeal against those orders. As required by s 11(4) the applicant apparently has not served a copy of his application or supporting affidavit on any person. Section 12 provides that the Court must dismiss an application made under s 11 for leave to institute a proceeding if the Court considers either that the affidavit does not substantially comply with s 11(3) or that the proceeding is a vexatious proceeding. The term “vexatious proceeding” is defined in the schedule of the Act to include:

- “(a) a proceeding that is an abuse of the process of the court or tribunal; and
- (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued without reasonable ground; and
- (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.”

Subsection 11(3) required the applicant to file an affidavit which (a) listed all occasions on which the applicant had applied for leave under that section or the similar provisions in the earlier *Vexatious Litigants Act* 1981, (b) listed all other proceedings the applicant had instituted in Australia, and (c) disclosed all facts material to the application whether supporting or adverse that were known to the applicant.

As to the requirement in s 11(3)(a) the applicant has deposed that this is the first time he has applied for leave “under s 11(3)(a) of the *Vexatious Proceedings Act* 2005 (the Act).” The applicant should instead have deposed that this was the first time he had applied for leave under s 11 of that Act and that he had not applied for leave under the *Vexatious Litigants Act* 1981. That error may be treated as insubstantial. Next, in apparent conformity with s 11(3)(b) the applicant has listed all the other proceedings which he deposes he has instituted in Australia. There are 43 proceedings in the list.

It is necessary next to advert to the applicant’s response to s 11(3)(c). Mr Conde’s affidavit appropriately exhibits the proposed notice of appeal and other formal documents. Otherwise the affidavit consists mainly of argumentative assertions. He asserts, for example, that his affidavit complies with the Act, that the proceedings are not vexatious, that the orders against which he wishes to appeal are contrary to the Act and invalid or void, that his proceedings are in the public interests for various reasons, and that there is nothing vexatious about them. Those are arguments rather than facts. Mr Conde also deposed that “Pursuant to section 11(3)(c) of the *Act*, the Applicant has disclosed all facts material to the Application, whether supporting or adverse to the Application that are known to the Applicant.” If that is correct, the only facts considered by the applicant to be material to the application are those contained elsewhere in his affidavit.

Apart from formal matters, the only fact to which that might refer is Mr Conde’s statement in his affidavit that Justice Byrne “failed to give the Reasons for Judgment.” However, the file includes a transcript of his Honour’s reasons for each of the orders against which Mr Conde seeks leave to appeal. This morning, Mr Conde acknowledged that he was

present when Justice Byrne gave those reasons. Although Mr Conde apparently did not have the benefit of the transcript when he swore his affidavit, he must have known and he acknowledges did know that those reasons were given upon the conclusion of argument in relation to each of the separate proceedings Mr Conde had started. For example, in relation to Mr Conde's proceeding in *Conde v Eberhardt & Ors* (BS 13994 of 2009) the primary judge gave the following reasons for staying that proceeding pursuant to s 6(2)(a) of the Act:

“The proceeding claims an extravagant amount for damages for abuse of legal process in respect of actions on the part of lawyers which appear to have been of an ordinary kind and taken in the protection of their client's interests in other litigation. The claim (see paragraph 11 of the former statement of claim which was struck out) appears to be founded upon the filing of an application in respect of another proceeding to strike out or set aside the claim and statement of claim. It is a particular illustration of the general tendency to which reference is made in paragraph 20 of my reasons in *Guilfoyle and Others v Conde*, BS13341 of 2009, 4 February 2010. The claim appears to have no reasonable prospect of success, however, it might be repleaded.”

The reference to paragraph 20 is to the reasons Justice Byrne gave for making of the vexatious proceeding orders in relation to Mr Conde (*Gilfoyle and Ors v Conde* [2010] QSC 14). In that judgment, his Honour conducted a detailed analysis of two dozen or so cases started by Mr Conde within the last year and concluded that typically, Mr Conde's claims:

- “alleged that lawyers who have acted for his opponents maliciously prosecuted him and abused court process;
- do not state facts that could arguably sustain the conclusory imputations of bad faith and other improper motive advanced;
- are centred on ordinary steps in litigation taken by lawyers apparently acting properly for clients: such as defending a case, applying to a court for orders and enforcing a costs order by bankruptcy proceedings;
- involve extravagant, unparticularised claims for compensation for a broad range of grievances, personal injury and economic loss;
- have no reasonable prospect of success, on the face of the proceedings or on the evidence; and
- do not conform with the *Uniform Civil Procedure Rules* governing pleadings.”

The transcript records that after the primary judge gave those reasons for the first order, his Honour heard argument about and gave separate reasons for orders concerning the

other proceedings started by Mr Conde. Contrary to Mr Conde's affidavit, the primary judge gave reasons for each of the orders against which Mr Conde seeks to appeal. Nevertheless, I am reluctant to conclude that Mr Conde's affidavit does not substantially comply with s 11(3)(c) on this ground. The mistake may have arisen simply through poor expression and although Mr Conde speaks English it is not his first language. He may have intended to convey only that no printed reasons were delivered. So much was submitted by Mr Conde this morning and I am inclined to accept that submission. What is clear is that Mr Conde has not given evidence in his affidavit of any additional fact which he contends is material to his present application.

I turn then to the question whether the proposed appeal is vexatious. The primary judge gave reasons for concluding that Mr Conde's proceedings in the Supreme Court were vexatious because they were lacking any reasonable prospects of success. I have referred by way of example to the reasons given by the primary judge for staying Mr Conde's proceedings in *Conde v Eberhardt* (BS 13994 of 2009). The reasons for the other orders are in similar terms. In relation to Mr Conde's various District Court proceedings, with one exception, the orders pursuant to s 6(2)(c) of the Act do not exclude but instead qualify Mr Conde's right to prosecute those proceedings, by requiring him to obtain the prior leave of a judge of that Court. The primary judge found that this was justified by his Honour's finding of fact that though Mr Conde's allegations in his District Court claims apparently supported the claimed causes of action, it was very likely that each of those proceedings depended upon incorrect and baseless factual assertions. On that basis, it was appropriate in each case to require Mr Conde to obtain the prior leave of a District Court judge before he was permitted to prosecute his claim. The exceptional District Court proceeding in which the primary judge ordered a stay under s 6(2)(a) of the Act was proceeding BD 281 of 2008. Mr Conde's claim in that proceeding was based upon what the primary judge found was the hopeless assertion that Mr Conde had been defamed by allegations of false and defamatory allegations of unchastity against the woman who had once been Mr Conde's de facto partner.

Each of the orders against which Mr Conde seeks to appeal was authorised by the Act and the primary judge's reasons explain why the exercise of discretion was justified by the judge's findings of fact and law. But although Mr Conde's proposed notice of appeal contains 24 grounds of appeal, no ground asserts any particular error in any of the primary judge's reasons. Rather, the grounds assert broad conclusions without identifying any factual or legal basis for those conclusions. For example, Mr Conde contends that the primary judge took into account irrelevant considerations and ignored relevant considerations, but he does not say what those considerations were; he contends that the primary judge failed to confer procedural fairness and acted contrary to the rules of natural justice, but he does not say how or in what particular respect either thing occurred; and he contends that the judge was biased, but he does not say how or why or what the judge said or did or failed to do. The grounds of the proposed notice of appeal make other serious allegations without any supporting fact or detail. For example, Mr Conde contends in his notice of appeal that the judge was "abusive" and "discriminatory" because Mr Conde was a self represented litigant from a non English speaking background. But Mr Conde does not say what the judge said or did in that respect. Mr Conde contends that the judge classified him as a "lower class citizen, an inferior human being, a moron" and "stripped and took away the Appellant's Human and Legal Rights to have a fair hearing," but again, Mr Conde does not say what the judge said or did and nor does he explain otherwise how this is supposed to have occurred.

If there were any factual basis for any of Mr Conde's allegations of bias and other misconduct, s 11(3)(c) of the Act obliged him to disclose the relevant facts but he did not depose to any fact in support of any of those allegations. Furthermore, all of the grounds of appeal including the many grounds which make allegations of serious misconduct, are in the form of general conclusions, without reference to facts said to justify those conclusions, any evidence, or any rational argument. In Mr Conde's written and oral submissions, he submitted that his litigation was not vexatious and that there was no basis

for the orders made against him, but consistently with the form of his Notice of Appeal, he did not give any particulars, point to any evidence, allege any facts or identify any particular error in the primary judge's reasons. There is one exception to that statement. In the course of argument today Mr Conde submitted that the primary judge erred in finding, in relation to the case of *Conde v Eberhardt* (BS 13994 of 2009), that the proceeding claimed an "extravagant amount for damages." Mr Conde submitted that this was an error. However Mr Conde said that the claim for damages was \$15,000,000 in a case in which he claimed that legal advisers of his opponents had acted improperly in an earlier proceeding concerning a case in which Mr Conde alleged that he had been wrongly been called a terrorist in a shopping centre. There, of course, could be no arguable error in characterising \$15,000,000 damages as extravagant in such a case.

The Court is used to applying the Court's procedural rules in a flexible way in order to meet the particular disadvantages which are suffered by some unrepresented litigants. However, making every allowance for the fact that Mr Conde is unrepresented and that English is not his first language, the form of the Notice of Appeal and Mr Conde's arguments make it plain that he would conduct his proposed appeal in a way such as would harass, annoy and cause delay and beyond the bounds of what might reasonably be expected from a litigant who lacks legal skills or training. More importantly, for the reasons given above, the inference is inevitable that there is no reasonable ground for Mr Conde's proposed appeal. It follows that the proposed appeal is a vexatious proceeding. The Court is therefore obliged by s 12(1)(b) to refuse Mr Conde's application for leave.

I dismiss the application.