

COURT OF APPEAL

**MCMURDO P
MUIR JA
FRASER JA**

**Appeal No 405 of 2010
SC No 12397 of 2009
SC No 11721 of 2009
SC No 11580 of 2009
SC No 10532 of 2009**

MILTON ARNOLDO CONDE

Appellant/Plaintiff

v

JOHN LAWRENCE HUNTER

First Respondent/Defendant

ANTHONY JAMES MACKLIN

Second Respondent/Defendant

CONNOR HUNTER LAW FIRM

Third Respondent/Defendant

MATTHEW FOLEY

Fourth Respondent/Defendant

**Appeal No 406 of 2010
SC No 12325 of 2009**

MILTON ARNOLDO CONDE

Appellant/Plaintiff

v

JOHN LAWRENCE HUNTER

First Respondent/Defendant

ANTHONY JAMES MACKLIN

Second Respondent/Defendant

CONNOR HUNTER LAW FIRM

Third Respondent/Defendant

CRAIG EBERHARDT

Fourth Respondent/Defendant

BRISBANE

DATE 06/05/2010

JUDGMENT

THE PRESIDENT: These appeals, CA405 of 2010 and CA406 of 2010 are from orders made by a Judge of the trial division of this Court on 16 December 2009 striking out the appellant's claims and statements of claim against the respondents; restraining him from taking any further steps in the proceedings; and ordering that he pay the respondents' costs of the applications on an indemnity basis.

...

THE PRESIDENT: The appellant filed the notices of appeal on 12 January 2010. On 17 February 2010 on the application of the Attorney-General of Queensland Byrne SJA ordered that a number of proceedings instituted by the appellant, including these appeals, be stayed under s 62A *Vexatious Proceedings Act* 2005 (Qld), ("the Act").

On 25 March 2010 Fraser JA refused the appellant's application for leave to proceed under s 11 of the Act in respect of a number of proceedings including the present appeals: See *Conde v Attorney-General for the State of Queensland* [2010] QCA 66.

By that time the fourth respondent in appeal number 406 of 2010 had filed a brief outline of argument in which he stated his intention not to make further oral submissions but seeking orders that the appeal be struck out with costs on an indemnity basis.

On 30 March 2010 the second, third and fourth respondents to appeal number 405 of 2010 made brief written submissions requesting that the appeal be dismissed with costs.

On 6 April 2010, despite the stay, the appellant filed an 11 page outline of argument containing false and offensive allegations, including many against the judicial system and its officers.

These matters have been listed for hearing despite Justice Byrne's staying of them so that the Court may finally dispose of the request made by a number of respondents that the appeals be struck out or dismissed with costs, perhaps on an indemnity basis.

None of the respondents have appeared today. Each has been informed of the hearing. Many of the respondents have stated in writing that they will not be appearing today. A number of the respondents have requested that the matter be dealt with on the papers. In the circumstances that seems the appropriate course.

The appellant, despite sending papers to the Registry indicating that he would not appear today, did appear. He again represented himself. He made oral submissions but these submissions did not seem to relate to the matters before this Court. They made no sense. He left the Court during the course of my delivery of these reasons.

None of the matters raised by the appellant in his written or oral submissions or material suggests that the appeals, which in any case have been stayed, have any prospect of success. Nor has the appellant demonstrated that any renewed application for leave to proceed under the Act would have any prospect of success. In those circumstances both appeals should be dismissed with costs.

The conduct of the appellant in respect of both appeals has groundlessly prolonged proceedings in respect of plainly untenable claims which were always bound to fail: See *Conde-v Attorney-General for the State of Queensland* [2010] QCA 66 at pages 5 to 7.

In those circumstances the respondents in each of these appeals should be awarded costs on an indemnity basis: See *Colgate-Palmolive v Cussons Pty Ltd* (1993) 46 FCR 225 and *Smits v Tabone; Blue Coast Yeppoon Pty Ltd-- Tabone* [2007] QCA 337 at paragraphs 42 to 47.

I propose that this Court vary the stay imposed by Byrne SJA on 17 February 2010 to order that both appeals be dismissed with costs on an indemnity basis.

MUIR JA: I agree.

FRASER JA: I agree.

THE PRESIDENT: The order is in both appeals the stay imposed by Byrne SJA on 17 February 2010 is varied to order that the appeal is dismissed with costs on an indemnity basis.

I direct that a transcript be provided of today's hearing, including delivery of these reasons.