SUPREME COURT OF QUEENSLAND

CITATION:	*Hodgens v Townsville City Council* [2012] QSC 53
PARTIES:	**ERROL VIVIAN THOMAS HODGENS** (applicant) **v** **TOWNSVILLE CITY COUNCIL** (respondent)
FILE NO:	BS 11970 of 2011
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	24 February 2012
DELIVERED AT:	Brisbane
HEARING DATE:	24 February 2012
JUDGE:	Fryberg J
ORDERS:	**1. Leave granted to the applicant to amend the application for review 11970/11 to delete Compliance Notice dated 2 February 2012 and to insert in lieu Compliance Notice CSDOG/12/00484 dated 10 February 2012;** **2. Application the Townsville City Council, including its servants, agents, employees or associates or contractors to be restrained from seizing the dogs described in CSDOG/12/00484 until the decision is reviewed by the Supreme Court is dismissed; and** **3. Each party have liberty to apply with two days clear written notice.**
CATCHWORDS:	Equity – Equitable Remedies – Interlocutory Injunction – Relevant considerations – Balance of Convenience
COUNSEL:	K Greenwood for the applicant A Bligh (solicitor) for the respondent
SOLICITORS:	Stephenson McNamara for the plaintiff A Bligh, Townsville City Solicitor

HIS HONOUR: In matter 11970 of 2011, grant leave to the applicant to amend the application to review by deleting the words "compliance notice dated 2 February 2012" and

inserting in lieu "compliance notice CSDOG/12/00484 dated 10 February 2012".

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HIS HONOUR: This is an application for an interlocutory injunction to restrain the Townsville City Council from seizing dogs described in a specified notice.

The originating application seeks an order that the restraint last until the decision to seize the dogs is reviewed by the Supreme Court.

Interlocutory relief would not ordinarily be granted for such a duration. There is no evidence of how long it will take for that to happen but the ordinary course of litigation does not suggest that it is likely to happen with any particular speed.

The issues, as Ms Greenwood rightly submitted in her outline of argument, are whether there is a serious question to be tried and the balance of convenience.

The evidence discloses that in breach of *Local Law No. 2* of the Townsville City Council, the present applicant, Mr Hodgens, is keeping some eight dogs at his property. The maximum number which he can keep, excluding puppies of a certain size, is four. Mr Hodgens does not dispute that he is keeping more than four dogs at his property.

He has put very little evidence before the Court. It consists solely of an affidavit by his solicitor made on information and belief and that really seems to consist of a set of letters identifying the relevant notices. Apart from that, the evidence demonstrates Mr Hodgens' assertion that he has been in emergency treatment at the Townsville Hospital, and there is no reason to doubt that.

It also shows two other facts said to be relevant. One is that at some time in the past Mr Hodgens has re-homed seven dogs in a 14 week period and the other that Mr Hodgens asserts that five of his puppies were removed in late November and after six weeks in the pound they were underweight for their age, they were being fed dry kibble, not fresh meat, they were not being vaccinated properly and that while they were at the pound there was an outbreak of kennel cough and no tests were conducted to determine the type of strain, so that vaccine was therefore on a hit-and-miss basis. These allegations are substantively answered or denied by the affidavit filed on behalf of the council.

Mr Hodgens has, in fact, been keeping more dogs than the bylaw allowed for over two years. He has plainly, in my view, demonstrated an unwillingness to comply with the bylaw and he has advertised in the newspaper asserting his objections to the bylaw. He also said in the advertisement, published on Christmas Eve that he was going to move the dogs to the extent necessary to comply with the bylaw. The fact is that he has not done so.

Mr Hodgens must do more than prove the matters to which I have referred. He must show that he has a good, arguable case. The case he must show is for obtaining a permanent injunction restraining the seizure of the dogs until the determination of the judicial review proceedings. To demonstrate that, he needs to show prospects of success in the judicial review proceedings. The notice which was issued over a fortnight ago is before me. On its face, I see nothing which is likely to attract adverse comment in the judicial review proceedings, except perhaps that the name of the officer who issued it does not appear to be identified in it, nor is it apparently signed. Those were not matters of which complaint was made by Mr Hodgens.

For Mr Hodgens, Ms Greenwood went through the various grounds of review that were used in relation to an earlier notice which has now been withdrawn. I am unpersuaded that any of those grounds can be demonstrated to affect the decision which is embodied in the notice now before the Court. I am, in other words, not satisfied that there is a case which raises a serious question to be tried.

Furthermore, it seems to me that balance of convenience favours the dogs being removed from the property. Mr Hodgens has informed his solicitor of his ill health and he has, it seems, spent the past few days in or at the Townsville Hospital, particularly the emergency department. He is, on the face of the evidence, likely to be impeded in his ability to care for the dogs and certainly, given that

he apparently alleges a heart condition, not likely to be fit to undergo the stresses which may be involved in effecting removal of the dogs.

The council has indicated that should Mr Hodgens be successful in his judicial review proceedings, there will be no charges levied against him for poundage if the dogs are removed tomorrow as the notice contemplates. That, therefore, cannot be a factor which adversely will affect him in such a way as to influence the decision on the question of the balance of convenience.

The dogs will be looked after in the pound. I am not persuaded on the evidence that they will not be adequately looked after and it seems to me that the practical course is to allow what is envisaged in the notice to take place.

I am, therefore, not prepared to grant an interlocutory injunction. However the originating application, for that is how the matter was brought before the Court, remains on foot and I am prepared, if asked, to make the directions about the further hearing of the matter in terms, if necessary, of pleadings and disclosure of documents.

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HIS HONOUR: The oral application for an interlocutory injunction is dismissed.

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HIS HONOUR: I will treat the application then as an interlocutory application filed in the judicial review proceedings.

I have already made the order sought in paragraph 1.

I dismiss the application insofar as it relates to paragraph 2 of the application.

In relation to paragraph 3, I make no order on the application upon the council, by its solicitor, undertaking not to impose a penalty with respect to failure to comply with the notice specified in the application until the decision is reviewed by the Supreme Court.

I grant each party liberty to apply with two clear days' written notice. No application has been made to me regarding costs.

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