

SUPREME COURT OF QUEENSLAND

CITATION: *Zaczane Holdings Pty Ltd v Lockyer Valley Regional Council*
[2013] QSC 41

PARTIES: **ZACZANE HOLDINGS PTY LTD**
ACN 100 464 631
(applicant)
v
LOCKYER VALLEY REGIONAL COUNCIL
(respondent)

FILE NO/S: 11922 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 5 February 2013

DELIVERED AT: Brisbane

HEARING DATE: 5 February 2013

JUDGE: Atkinson J

ORDER: **1. The time for service of this application be shortened.**
2. The following subpoenas be set aside:
a. the subpoena to give evidence issued to the Lockyer Valley Regional Council and the number of individuals listed therein;
b. the subpoena for production and to give evidence issued to Luke McDonald of Corrs Chambers Westgarth, acting for the Lockyer Valley Regional Council, served on 1 February 2013; and
c. the subpoena issued to Tim Smith of Cardno Humphreys Reynolds Perkins Pty Ltd.

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – where the respondent applied for orders that the time for service of an application be shortened and subpoenas be set aside – where the application was urgent because the matter

was due for review and subpoenas returnable on the next day
– whether the time for service of the application should be
shortened and the subpoenas be set aside

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COUNSEL: The applicant appeared on his own behalf
N Andreatidis for the respondent

SOLICITORS: The applicant appeared on his own behalf
Corrs Chambers Westgarth for the respondent

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HER HONOUR: This is the hearing of an application by the respondent, the Lockyer Valley Regional Council, which has applied for orders that the time for service of an application be shortened and the following subpoenas be set aside:

1. A subpoena to give evidence issued to the Lockyer Valley Regional Council and a number of individuals listed therein;

2. A subpoena for production and to give evidence issued to Luke McDonald of Corrs Chambers Westgarth acting for the Lockyer Valley Regional Council, served on 1 February 2013;

3. A subpoena issued to a Mr Tim Smith of Cardno Humphreys Reynolds Perkins Pty Ltd.

The application has some urgency attached to it because the matter is due for review tomorrow, 6 February 2013, and the subpoenas are returnable tomorrow. So it is appropriate to hear this application to set aside the subpoenas before their return date. Today is the last day on which such an application could be heard.

The subpoenas were issued at the request of the applicant in the overall application, Zaczane Holdings Proprietary Limited. Mr Hammoud, who tells the Court that he is the sole director of that company, asked for leave to appear on the company's behalf and that application was not opposed by the Lockyer Valley Regional Council (the Council).

Mr Hammoud has appeared by telephone and has provided written and oral submissions in support of his case. I have taken those submissions into account.

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I should say something about the background to the matter before I proceed to determine the application. On 11 December 2012, the applicant, Zaczane Holdings, filed an originating application for judicial review. It is not necessary to go into that in any detail except to say the application is to review what is said to be the failure of the Council to issue a caravan park permit to the applicant for the Helidon Spa Caravan Park at premises located at 7828 Warrego Highway.

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The application sets out the reasons why the applicant is aggrieved, the claim that is made and the grounds of the application. That application came before the Court in the ordinary way for directions and on 18 December 2012 Justice Daubney gave certain directions. Those were:

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1. This matter be adjourned for further review on 6 February 2013.

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2. The respondent is to file and serve any affidavit material in response to the originating application by 18 January 2013.

3. The applicant is to file and serve any affidavit material in response to the respondent's material provided in accordance with Order 2 by 1 February 2013.

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Costs were reserved.

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It can be seen from the order made by Justice Daubney that he set the matter down for further review, that is for further directions to be made. It is important in an application for judicial review that it be properly prepared for hearing and I assume that that is the reason why Justice Daubney made the orders which he did. It should be noted that it is not set down for hearing tomorrow, 6 February 2013.

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Mr Hammoud has urged upon me the urgency of his application for judicial review and the hardship that he is suffering, both generally and because the application for judicial review has not yet been heard. However, that application must be properly prepared, as I have said, and there will be further directions given in it tomorrow in accordance with the order made by Justice Daubney, by whichever Judge hears it tomorrow.

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That is the context in which I turn to consider the subpoenas that have been issued. The material filed on behalf of the Council shows the width and breadth of the subpoenas that have been issued. However, there is a point that it makes which should be dealt with first and that is tomorrow is a date set for further review, that is for directions to be given, not for the hearing of evidence. It is therefore entirely inappropriate to have subpoenas issued to be returnable tomorrow and they should, on that ground, be set aside.

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Lest it be thought that the subpoenas are otherwise in regular

form, I should say that each of the criticisms made of the subpoenas in the written submissions filed on behalf of the Council seems to me to be well-justified and if the subpoenas were otherwise properly returnable tomorrow they would be set aside, nevertheless, as being oppressive.

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Subpoenas can only be issued in proper form for the calling of evidence which would be relevant to the matters in issue and do not require the creation of documents, reports, et cetera. It is unnecessary for me to go through chapter and verse everything that is wrong with the subpoenas that have been issued because, as I've said, they should be set aside because the further review, which is set down for tomorrow 6 February 2013, is not the occasion for the giving of evidence.

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No doubt Mr Hammoud's request to have the matter dealt with urgently is something that can be taken into account in the giving of proper directions tomorrow. But that must be consistent with everything being properly before the Court so the Court can make a proper decision on his application for judicial review on full evidence given by the parties.

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So, the orders will be that the time for service of this application is shortened and the following subpoenas are set aside:

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1. the subpoena to give evidence issued to the Lockyer Valley Regional Council and the number of individuals listed therein;

2. the subpoena for production and to give evidence issued to Luke McDonald of Corrs Chambers Westgarth, acting for the Lockyer Valley Regional Council, served on 1 February 2013; and

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3. the subpoena issued to Tim Smith of Cardno Humphreys Reynolds Perkins Pty Ltd.

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