

COURT OF APPEAL

**MARGARET McMURDO P
FRASER JA
DAUBNEY J**

**Appeal No 9249 of 2012
SC No 12291 of 2009**

**GARRY ANTHONY MOON &
TANIA MAREE MOON**

Appellants

v

**SECURE FUNDING PTY LTD
ACN 081 982 872**

First Respondent

**ASSURED CREDIT MANAGEMENT PTY LTD
ACN 096 859 872**

Second Respondent

PAUL EDWIN STEVENSON

Third Respondent

**CONCATE PTY LTD
ACN 109 832 797**

Fourth Respondent

BRISBANE

DATE 18/04/2013

ORDER

THE PRESIDENT: The first respondent brought an action in the Trial Division to enforce its rights under a loan agreement with the appellants, following their default. The loan was secured by a mortgage over the appellants' property. The appellants defended that action and brought a counterclaim, alleging that the fourth respondent, acting through the third respondent, was agent for the first and second respondents and breached the duties owed as mortgage brokers to the appellants.

The appellants claimed damages from the third and fourth respondents and sought an order that the loan and mortgage should be set aside. The appellants were self-represented in the

two day trial. The primary judge ordered that the first respondent have possession of the appellants' property, that the appellants pay the first respondent the amount owing plus interest, and dismissed the appellants' counterclaim against the first to fourth respondents.

The appellants have appealed from those orders. Their grounds of appeal are as follows:

"The [appellants] reject the entire proceedings of hearings, trial, judgment and all costs awarded on the basis that not once, has the matter been heard in a court of competent jurisdiction, in accordance with chapter III of the Commonwealth of Australia Constitution 1900, as upheld by the High Court in *Forge V ASIC*

- Further, allegations of unconscionable conduct were not addressed
- The First Defendant was prevented from cross examining the Plaintiffs witness on matters of breaches of the Consumer Credit Code
- Grant leave to amend defence and counterclaim to enable the courts consideration of ALL the allegations in the defendants Affidavit, including breaches of the Consumer Credit Code.
- Grant leave to examine ORIGINALS, of photocopies of alleged faxed documents presented as evidence by 3rd & 4th Defendant that appear to contain anomalies.
- Grant leave to submit compelling new evidence of a technical nature" (errors in original).

On 6 December 2012, the appellants filed an application in this appeal, "[t]hat the Appeal be correctly re-classified a Rehearing, pursuant to UCPR 765 – No (1)(2)" (errors in original). They also filed a separate application in the appeal to adduce further evidence. They attached affidavit material in support of that application, the relevance of which is hard to comprehend.

In addition to the material included in the more than 1,000 pages contained in the two volumes of the appeal record book, the appellants have filed about 300 further pages of printed material, none of which seems helpful to them. They filed their outline of argument in

support of their grounds of appeal, together with a three page affidavit, which seems largely concerned with their challenge to jurisdiction.

The respondents have also filed written outlines of argument, and the first and second respondents are legally represented today. The third respondent, who was self-represented at trial and represented the fourth respondent, his company, chose not to appear at the hearing of the appeal and to rely on his written outline of argument.

On Tuesday 16th of April, two days ago, the first appellant sent an email to the Court of Appeal Registry containing various attachments, none of which seem relevant to this appeal.

The email included the following:

"As a result of, a lack of response, to my recent requests for 'Validation of Authority', sent to registry staff, as well as chief justice and state attorney general, I am left with no choice but to cancel the upcoming appeal (CA 9249/12) due to the absence of demonstrated authority.

This request (Validation of Authority) was issued in accordance with section 24F of the Commonwealth Crimes Act 1914

The overwhelming evidence reveals that our government, state and commonwealth, and subsequently all of the public service network, are in fact corporations masquerading as government, as is the case now throughout the world, certainly in western 'democracies' with central banking systems, or more accurately 'was the case' due to the UCC filings by OPPT (One Peoples Public Trust) that comprehensively foreclosed on all corporations, banking systems, including corporations masquerading as government, worldwide, announced on 25th of December 2012.

...

Pursuant to the OPPT foreclosure which effectively cancels all contracts and eliminates all debt, in addition to the unrebutted affidavits relating to

the judgment [subject to this appeal], and fraudulent claim by [the first respondent], I DECLARE JUDGMENT IN MY FAVOUR, and hereby consider this matter concluded.

Anyone that chooses to ignore this, does so with unlimited personal liability, fully informed, duly noticed, completely devoid of authority, nor legal, or lawful standing. That party also accepts the terms of the attached courtesy notices.

Both the alleged Bailiffs office, real estate agents, and Police department are being informed and duly noticed as well.

Hereinafter, anyone attempting to enter my property ... will be under video surveillance, arrested, detained, and subject to common law private prosecution" (errors in original).

In light of that email, it is not surprising that the appellants are not represented today, either by lawyers or in person. But as they have lodged a written outline of argument and have not filed a Notice of Abandonment of their appeal, it is prudent that this Court considers the grounds of appeal and their arguments in support of those grounds.

Much of the appellants' filed material seems to focus on their application for leave for further discovery. The public interest in the finality of litigation is a consideration that weighs heavily against making such an extraordinary order. The appellants have not established any proper reason for doing so. The application for leave to examine original documents presented as evidence at the trial should be refused.

The appellants contend the primary judge did not have jurisdiction to hear the claim and counterclaim, the subject of this appeal. They did not raise any jurisdictional issue before the primary judge, but that may not matter if, in truth, the primary court had no jurisdiction. The primary judge, as a member of the Trial Division of the Supreme Court of Queensland, clearly had jurisdiction to hear the matters which fell within the court's civil jurisdiction. The

appellants, in their submissions, misunderstand the effect of the comments they rely on in *Forge v Australian Securities and Investments Commission*.¹ Nothing in that case brings into question the jurisdiction of the primary court in this case. This ground of appeal is not made out.

The appellants contend that allegations of unconscionable conduct were not addressed. That is because they did not plead or raise issues of unconscionable conduct at trial. Had they done so, it is certain that the trial would have been conducted differently to meet these issues. The public interest in the finality of court proceedings means that appellate courts are loathed to allow points not argued at trial to be canvassed for the first time on appeal.

This is especially so where, as here, they concern factual issues which, if raised at trial, would have resulted in the trial being conducted differently. I note that whilst the second appellant did not give evidence at trial, the first appellant and third respondent each gave evidence about the critical issues. The trial judge found that the third respondent was "an honest and straightforward witness" whose version of events was supported by documentary evidence.²

His Honour found that the first appellant's evidence demonstrated he was prepared to be dishonest to obtain the loan and that he was dishonest in his evidence at trial.³ The appellants have not challenged those findings of fact in their grounds of appeal. The findings do not suggest that the appellants' allegations of unconscionable conduct have any merit.

Although the appellants have not applied to amend their grounds of appeal in their outline of argument, they list alleged breaches of contract law, such as mistake, misrepresentation of fact, duress and lack of capacity. These matters were not canvassed at first instance. The appellants also seem to be alleging that the title deeds to their mortgaged property have been retained unlawfully.

I surmise that these matters are the allegations which the appellants now seek leave to include in their defence and counterclaim by way of amendment. Clearly, had they pleaded these

¹ [2006] HCA 44.

² See *Secure Funding Pty Ltd v Moon & Anor* [2012] QSC 244; [33]-[35].

³ Above, [36]-[40].

matters originally, the trial would have been conducted very differently. The appellants have not established any proper reason for the granting of leave to amend their pleadings to raise these matters after the trial has been finalised.

The appellants contend that the judge wrongly prevented them from cross-examining witnesses about breaches of the *Consumer Credit Code*. This seems to relate to the first appellant's cross-examination of Ms Lorraine Taylor, a team leader of settlements employed by the first respondent. Counsel for the first respondent objected to the first appellant's question of her as to whether she was familiar with s 70 of the *Code*. The first appellant stated:

"I just simply wanted to quote that-----

HIS HONOUR: You can refer to sections of legislation in argument to me, assuming they are relevant to matters you have pleaded, but you can't really ask a witness to confirm that the legislation says something, for example, or that it means something, has a particular meaning."⁴

The first appellant did not pursue the issue further in cross-examination. Later, his Honour upheld the objection of counsel for the first respondent and refused to allow the first appellant to rely on s 70 of the *Code* as it was not pleaded and the case, which was then in its second day, had not been conducted on that basis.

The first appellant stated, "I have to accept that, your Honour."⁵ The appellants have not demonstrated any reason to doubt the correctness of that ruling. This contention is not made out.

The appellants have applied for leave to submit compelling new evidence of a technical nature. It is unclear from the material they have placed before this Court exactly what this compelling new evidence is. They, therefore, have not established why they should be granted leave to file further evidence after the trial. Leave to adduce further evidence should be refused.

⁴ T 1-39.

⁵ T 2-22.

It follows that, as none of the grounds of appeal are made out, the appeal should be dismissed.

I would make the following orders:

1. Application to examine original copies of documents tendered as evidence refused.
2. Application for leave to adduce further evidence refused.
3. The applications filed on 6 December 2012 are refused.
4. The appeal is dismissed.

FRASER JA: I agree.

DAUBNEY J: I concur.

THE PRESIDENT: The orders will be as I have proposed.

...

THE PRESIDENT: So, the order 4 will be appeal dismissed with costs.