[2013] QCA 112

COURT OF APPEAL

MUIR JA

Appeal No 2903 of 2013
SC No 8211 of 2012

TONY KRAJNIW	**Applicant**
v	
THE HONOURABLE DR BRUCE FLEGG MP, MINISTER FOR HOUSING AND PUBLIC WORKS	**First Respondent**
THE HONOURABLE JARROD BLEIJIE MP ATTORNEY-GENERAL AND MINISTER FOR JUSTICE	**Second Respondent**
THE PUBLIC TRUSTEE	**Third Respondent**

BRISBANE

WEDNESDAY, 15 MAY 2013

JUDGMENT

MUIR JA: On 10 September 2012 the applicant, by originating application, sought a number of orders including an order that the nine respondents to the application give a statement of reasons pursuant to s 32 of the *Judicial Review Act* 1991(Qld) (the JR Act) in respect of an alleged decision by the respondent dated 27 July 2012 to sell the Monte Carlo Caravan Park. Fryberg J made orders on 28 September 2012 removing the first, fourth, fifth, sixth, seventh and ninth respondents from the proceedings and giving leave to amend the originating application to make the claim under s 20 of the JR Act and to delete the claim for a statement of reasons.

An amended application for a statutory order of review was filed on 5 October 2012. The document contained many claims and assertions in respect of the alleged decision to sell the caravan park. On 14 December 2012, after a hearing on 22 November 2012, Martin J, on application by the respondents, ordered that the amended originating application be dismissed with costs. The case sought to be made by the applicant before Martin J was that the decision under challenge was judicially reviewable as it was:[1]

> "… a decision of an administrative character made … by an officer or employee of, the State or a State authority or local government authority under a non-statutory scheme or program involving funds that are provided or obtained (in whole or part)—
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> (i) out of amounts appropriated by Parliament; or
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> (ii) from a tax, charge, fee or levy authorised by or under an enactment."

There was unchallenged evidence before the primary judge, which he accepted, from the Deputy Director-General Housing Services, Department of Housing and Public Works that no proposal to establish "a Caravan Park Accommodation Program" was ever implemented and no such program was ever formally established. There was further unchallenged evidence before his Honour that there was no "line of funding in the Department budgets or sources of revenues ... allocated or directed to 'a Caravan Park Accommodation Program'".[2] On the basis of that evidence, the primary judge held that the subject decision was not one to which the JR Act applied. The primary judge remarked that the applicant "has relied upon every ground available under the Act. In so doing, he has simply recited the grounds as set out in the Act and provided no submissions or argument in support of them."[3] His Honour noted also that the subject decision was made pursuant to a policy of the executive government and that no obligation to afford procedural fairness to the applicant existed.

The applicant applied on 23 January 2013 for a stay of the decision pursuant to s 29 of the JR Act. At least that was the import of paragraph 2 of the 12 paragraph application. The application was heard by Peter Lyons J on 25 January 2013 and dismissed with costs.

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1 *Judicial Review Act* 1991 (Qld), s 4(b).
2 *Krajniw v Flegg & Ors* [2012] QSC 392 at [11].
3 *Krajniw v Flegg & Ors* [2012] QSC 392 at [19].

On 26 February 2013, the applicant filed two applications, one for a statutory order of review of the decision to sell the caravan park and the other for a statement of reasons in relation to that decision. The respondents applied, on 4 March 2013, for an order dismissing those applications and for an order restraining the applicant from making any application in relation to the decision to sell the caravan park. The respondents' application was heard by Daubney J on 12 March 2013. His Honour dismissed the applications filed by the applicant on 26 February 2013 and ordered that the applicant be restrained from making any application in relation to the sale of the Monte Carlo Caravan Park "including any application for orders relating thereto as claimed in the two applications filed on 26 February 2013".

The application for a statutory order of review of the decision filed on 26 February 2013 included a claim for an order that the court stay or suspend the operation of the decision "until such time as the Court makes a ruling on the validity and legality of the assessment process and decision, for compliance with the relevant statutes".

The applicant applied to this court on 27 March 2013 for an extension of time within which to make an application for leave to appeal against the orders made by Martin J on 14 December 2012.

On 10 April 2013, the applicant filed the application before me today. In the application he seeks an order for a stay of the operation of the respondents' "decision to give away (to transfer into private ownership) the State owned Monte Carlo Caravan Park" pending the outcome of the proposed appeal. In support of his application, the applicant filed a 199 paragraph "outline of argument". It purports to identify an excess of 140 errors on the part of Martin J. Many of these errors are said to be jurisdictional. The submissions invoke concepts or principles such as the separation of powers, human rights and the interests of democracy. They are replete with unsubstantiated and scurrilous allegations of incompetence, bias, criminal misconduct, mendacity, chicanery, cronyism and nepotism. Insulting and abusive statements are freely scattered about.

I note, however, that in the proceedings before me the applicant conducted himself with admirable propriety and restraint, making his submissions in a careful thoughtful manner.

The application for judicial review made on 26 February 2013 was an abuse of process. It claimed the relief sought in the application dismissed by Martin J. It is unsurprising that it was ordered to be dismissed by Daubney J and that the applicant was restrained from making a similar application. The applicant has not appealed against Daubney J's order and the fact that the stay application falls within its terms provides a sufficient reason for dismissing the application. In so concluding, I do not intend to express implicit approval of the scope of paragraph 2 of the 12 March 2013 orders.

The applicant's outline of argument is oppressive, vexatious and an abuse of process. I would be justified in ignoring it in its entirety and ordering that it be removed from the court file. I do not, however, intend to take that course. I simply observe that I found nothing in it of assistance to the applicant.

The 53 page proposed notice of appeal, which bears a marked similarity in content to the outline of argument, itself provides a strong reason for the refusal of leave to appeal, but that of course is not a matter for me, at least directly.

There is nothing before me, however, which suggests that the applicant is likely to obtain leave to appeal or that, in the unlikely event that he obtained leave to appeal and succeeded on his appeal, he would suffer any irretrievable prejudice were the stay sought not to be ordered. There is material before me which suggests that the security of the caravan park residents, such as the applicant, is to be protected in the implementation of current proposals by the relevant authorities. The applicant does not accept that. He relies in particular on a media release by the former Minister, Mr Flegg. However, the sworn material shows that that document is a matter of historical interest only. I understand the applicant's concerns and I have no doubt that they are genuine but, the applicant needs to take into account the fact that although he is concerned about what changes new management might bring about, there can be no certainty that any management, about which he could not have any conceivable objection were the status quo maintained, might itself, or themselves, bring about changes over which he and other residents would have no control.

The proposals, which contemplate the continued operation of the caravan park by a not for profit organisation, would appear to make the applicant's challenge to the subject decision academic. That is because the decision under challenge is very much now a matter of historical interest only.

For the above reasons I would order that the application be dismissed with costs.