SUPREME COURT OF QUEENSLAND

CITATION:	*Rowe v Emmanuel College & Anor* [2015] QSC 2
PARTIES:	**CHAD EVERETT ROWE** (applicant) **v** **EMMANUEL COLLEGE** ACN 010 563 256 (first respondent) **ALISON JANE SCHULTZ** (second respondent)
FILE NO/S:	9508 of 2014
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	16 January 2015
DELIVERED AT:	Brisbane
HEARING DATE:	22 October 2014
JUDGE:	Martin J
ORDER:	**Application dismissed.**
CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant gave an undertaking that he would not institute particular proceedings without bringing an application for leave as if he were subject to a vexatious proceedings order under the *Vexatious Proceedings Act* 2005 – where this proceeding is such an application – whether the applicant has complied with the requirements of the *Vexatious Proceedings Act* 2005 *Vexatious Proceedings Act* 2005, s 11(3)
COUNSEL:	Applicant in person
SOLICITORS:	Applicant in person

[1] On 15 July 2013 Mr Rowe gave an undertaking to the Court that he would not institute any proceeding in Queensland against Emmanuel College or any director or employee of Emmanuel College (in that person's capacity as such) without bringing an application for leave to the court to institute the proceeding, as if he were subject to a vexatious proceedings order under the *Vexatious Proceedings Act* 2005 prohibiting him from instituting proceedings in Queensland against the first applicant or any director or employee of the first applicant.

[2] Mr Rowe has commenced a number of matters. Most are against Emmanuel College and Ms Schultz. Ms Schultz is Mr Rowe's former wife. Those matters have included applications in the Queensland Civil and Administrative Tribunal, applications to the Federal Circuit Court, an application for leave to appeal filed in the Federal Court of Australia, an appeal to the Federal Court of Australia, a complaint to the Anti-discrimination Commission which was referred to QCAT, an application in this Court in which Mr Rowe sought damages in the sum of $3.55 million, an appeal to the Court of Appeal and miscellaneous applications for leave to appeal.

[3] On 13 November 2013 Mr Rowe entered into a deed with Emmanuel College and Ms Schultz which was designed to bring all the matters between the parties to an end.

[4] Mr Rowe now seeks leave to institute a proceeding against the respondents in which he says that Emmanuel College has failed to comply with an obligation it has under the deed to make available to Mr Rowe copies of all relevant documents and information pertaining to his daughter. He says that that was a breach of the deed. On 20 November 2013 Mr Rowe sent a "Notice to Remedy Breach" to Emmanuel College. On 28 November 2013 he purported to terminate the deed of settlement for "serious breach of the deed".

[5] In this application Mr Rowe wishes to commence a matter in which he would seek an order that the order of Dalton J made on 21 November 2013 in BS5853 of 2013 as extended by the order of Byrne SJA on 26 November 2013 and further extended on 27 November 2013 be set aside and that the undertakings recorded in the order entered by the Registrar on 17 December 2013 in that proceeding also be set aside. Those orders concerned the carrying out of terms of the deed.

[6] The undertaking given by Mr Rowe on 15 July 2013 has the same effect as if an order in the same terms had been made. He is, therefore, required to comply with the provisions of the *Vexatious Proceedings Act* 2005 should he seek to institute a proceeding.

[7] One of the requirements for an applicant for leave to institute a proceeding under that Act is contained in s 11(3). It provides:

> "(3) The applicant must file an affidavit with the application that—
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> (a) lists all occasions on which the applicant has applied for leave under—
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> (i) this section; or
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> (ii) before the commencement of this section, the *Vexatious Litigants Act 1981*, section 8 or 9; and
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> (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
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> (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant."

[8] The court is required by s 12 to dismiss the application in certain circumstances. The section reads:

> "(1) The Court must dismiss an application made under section 11 for leave to institute a proceeding if it considers—
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> (a) the affidavit does not substantially comply with section 11(3); or
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> (b) the proceeding is a vexatious proceeding.
>
> (2) The application may be dismissed even if the applicant does not appear at the hearing of the application."

[9] Mr Rowe has purported to comply with s 11(3) in an affidavit filed on 8 October 2014 in which he deposes that the affidavit has been completed in accordance with s 11 of the Act "to confirm what applications I have made".

[10] In that affidavit he deposes to having made two applications which fall under s (11)(3)(a) and 23 applications which fall under s 11(3)(b).

[11] Mr Rowe has failed to disclose four applications made in this Court.

[12] On 29 August 2013 Mr Rowe was given leave to file an application in the following form:

> "Take notice that the respondent [Mr Rowe] is applying to the Court for the following orders:
>
> 1. Leave to file an appeal to the Court of Appeal in relation to a decision of the Supreme Court dated 20 August 2013.
> 2. Alternatively, leave to file an appeal to the Court of Appeal in relation to a decision of the Queensland Civil and Administrative Tribunal dated 29 July 2013.
> 3. That the application be heard on an ex parte basis without any need for an appearance by the applicant or second applicant."

[13] On 6 September 2013 Mr Rowe filed an application in the following form:

> "Take notice that the respondent [Mr Rowe] is applying to the Court for the following orders:
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> 1. Leave to file an appeal to the Court of Appeal in relation to a decision of the Supreme Court dated 27 August 2013.
> 2. That the application be heard on an ex parte basis without any need for an appearance by the applicant or second applicant."

[14] On 4 December 2013 Mr Rowe filed an application in which he sought:

> "Leave to file a claim and/or application to set aside the orders of this court dated 27 November 2013."

[15] The Court file for BS5853 of 2013 also reveals that Mr Rowe made an oral application on 19 December 2013 without having filed any application. The submissions which were filed were similar to those relied upon in this matter. That application was dismissed.

[16] In each of those applications the proposed respondents were Emmanuel College and Ms Schultz.

[17] The failure by Mr Rowe to include references to the four applications made to this Court means that his affidavit relied upon in the instant application does not substantially comply with s 11(3). It follows that the application as against Emmanuel College must be dismissed.

[18] Ms Schultz was not covered by the undertaking given on 15 July 2013. She has, though, been the subject of many applications by Mr Rowe in this Court and in other courts and tribunals. He does not allege any breach of any obligation by Ms Schultz. The application, so far as it concerns Ms Schultz, was misguided.

[19] The application is dismissed.