

COURT OF APPEAL

**CARMODY CJ
GOTTERSON JA
MORRISON JA**

**Appeal No 5483 of 2014
SC No 9148 of 2013**

JAMES BOYD THOMPSON

Applicant

v

**CAVALIER KING CHARLES SPANIEL
RESCUE (QLD) INC**

First Respondent

LAURENCE JOHN PITTS

Second Respondent

KATHERINE LEPELAAR

Third Respondent

BEVERLEY ANN HUSH

Fourth Respondent

CAROLYN SHEPHERD

Fifth Respondent

ELIZABETH MACMILLAN

Sixth Respondent

SHIRLEY SMITH

Seventh Respondent

BRISBANE

THURSDAY, 19 FEBRUARY 2015

JUDGMENT

GOTTERSON JA: On the 27th of September 2013, the applicant, James Boyd Thompson, commenced proceedings against Cavalier King Charles Spaniel Rescue (Queensland) Incorporated, a charitable organisation, and some six individuals, who are all members and

office-holders in it. The applicant is a former member of the organisation. The proceedings concerned the termination of his membership on or about the 21st of July 2011. He seeks relief of an injunctive nature and also damages with respect to the termination.

The applicant's case is elaborated in a statement of claim to which the defendants, who are respondents to this application, pleaded a defence on the 4th of November 2013. A reply dated the 22nd of November 2013 followed. The applicant made numerous requests for disclosure of documents beyond those disclosed by the defendants. On the 17th of April 2014, the defendants filed an application for directions as to discovery of further documents requested by the plaintiff applicant.

The application was heard on the 1st of May 2014. At the hearing, the learned primary judge had before her the pleadings as well as the following two exhibits. Firstly, there was exhibit 1, which was a four-page table of documents or categories of documents, which the applicant had emailed to the defendants' solicitor on the 28th of April 2014. There were undisclosed documents which the applicant maintained were disclosable. I should say these were undisclosed documents which the applicant maintained were disclosable. Secondly, there was exhibit 2, which was the response from the solicitor in tabular form, stating the reasons why the documents sought were not disclosable. This response was emailed to the applicant on the 29th of April 2014. A reason frequently given was "not relevant". There were other reasons as well.

At the conclusion of argument on the 1st of May 2014, the learned primary judge delivered reasons for an order she then made that the defendants are not required to disclose some six categories of documents. Her Honour's reasons dealt individually with each of the six categories. It is unnecessary to read aloud the order being made.

The applicant wishes to appeal against this order. He failed to file a notice of appeal in a timely manner. On the 16th of June 2014 he filed an application to this Court for an extension of time within which to appeal. He also filed an affidavit sworn by him in support of the application. The applicant swears to a number of factual circumstances by way of

explanation for the delay. They need not be detailed. Having regard to them, the very short delay period and the absence of any evidence of prejudice occasioned by the delay to the respondents, I would grant the extension of time sought.

Curiously, the application also seeks leave to appeal. The appeal is one that may be brought without leave under s 62 of the *Supreme Court of Queensland Act* 1991. However, it is an appeal against a discretionary decision at an interlocutory stage relating to practice and procedure. In *Adam P Brown Male Fashions Proprietary Limited v Philip Morris Incorporated* (1981) 148 CLR 170, the High Court endorsed the approach which Sir Frederick Jordan stated should be taken to appeals in such circumstances. His Honour said, in *Re the Will of F B Gilbert (deceased)* (1946) 46 SR NSW 318 at page 323:

“If a tight rein were not kept on interference with the orders of judges of first instance, the result would be disastrous to the proper administration of justice. The disposal of cases could be delayed interminably and costs heaped up indefinitely if a litigant with a long purse or a litigious disposition could, at will, in effect transfer all exercises of discretion in interlocutory applications from a judge in chambers to a Court of Appeal.”

In my view, this appeal must be so approached. The applicant’s material contains, as exhibit 4, a proposed notice of appeal. This is the notice of appeal for which time for filing is extended. That document signals an appeal against the order at first instance, so far as it relates to the first, fourth and sixth categories of documents, and requests clarification and direction with respect to aspects of the second and third categories. With respect to those two categories, it is not for this Court to provide clarification and direction with respect to orders made at first instance. To the extent that that relief is sought, the appeal is incompetent.

The grounds of appeal set out in the notice of appeal do not contend for any error of law on the part of the learned primary judge in her reasons. They do not identify any principle of law which it is contended was misunderstood or misapplied by her Honour. The same may be

said of the written submissions, including those in reply, filed by the applicant. They consist largely of a denigration of submissions made by the respondents' legal representatives at the hearing and comments upon correspondence between the applicant and the legal representative. They do not refer to any aspect of her Honour's reasons for the purpose of demonstrating legal error in them.

The appeal does not raise any point of legal principle. No error in law is shown. The appellant also raised a denial of procedural fairness. A review of the transcript reveals that there is no substance in the point. In light of this, and having regard to the approach endorsed by the High Court, this clearly is an appeal that must be dismissed.

I would mention briefly two other matters. Firstly, on my reading of her reasons, the learned primary judge had a clear understanding of the relevant legal principles and applied them correctly to the dispute before her. Secondly, both sides sought to adduce additional evidence on the hearing of the appeal. None of this evidential material has a direct relevance to the issues for the Court in this appeal. For this reason, at least, I would refuse all applications to adduce further evidence. Costs ought follow the event. I therefore propose the following orders:

1. Extension of time until the 16th of June 2014 to file the notice of appeal granted;
2. Leave to adduce further evidence refused;
3. Appeal dismissed; and
4. Appellant to pay the respondents' costs of the appeal on the standard basis.

THE CHIEF JUSTICE: I agree.

MORRISON JA: I agree.

THE CHIEF JUSTICE: The orders will be, as proposed, that:

1. The extension of time until 16 June 2014 to file the notice of appeal be granted.
2. Leave to adduce further evidence refused;

3. The appeal dismissed;
4. The appellant to pay the respondents' costs of the appeal on the standard basis.