

**COURT OF APPEAL**

**HOLMES JA  
GOTTERSON JA  
DALTON J**

**Appeal No 608 of 2015  
SC No 1057 of 2014**

**GREGORY RAYMOND YOUNG**

**Applicant**

**v**

**GOLD COAST CITY COUNCIL**

**Respondent**

**BRISBANE**

**THURSDAY, 2 APRIL 2015**

**JUDGMENT**

**GOTTERSON JA:** On the 19th of December 2014 a Judge of the trial division made an order dismissing a proceeding that Mr Gregory Young had commenced against the Gold Coast City Council. The order was made on the Council's application for summary judgment. Later, on the 27th of February 2015, his Honour ordered Mr Young to pay the Council's costs of the proceeding and the application on the standard basis. Mr Young filed a notice of appeal against the dismissal order. He did so on the 14th of January 2015.

Today, there are a number of applications before the Court. The Council has applied to have the notice of appeal struck out and the appeal dismissed. Alternatively, an order for security for costs of the appeal is sought. Mr Young, on the other hand, has filed several applications relating to different aspects of the appeal. In one of the applications, an application filed on

the 23rd of February 2015, leave is sought to file an amended notice of appeal and to adduce evidence in the appeal by way of an affidavit of Ronald Clark sworn on the 12th of January 2015. In the other, an application filed on the 2nd of March 2015, stays are sought of the orders made on the 19th of December 2014 and the 27th of February 2015, respectively.

Having considered the submissions from both sides, for reasons which I shall later explain I do not consider that the notice of appeal should be struck out. Parts of it should be struck out and an order for security for costs of the appeal should be made.

I propose to deal, first, with Mr Young's application filed on the 23rd of February 2015. The proposed amended notice of appeal is exhibit GY4 to an affidavit sworn by Mr Young on the 23rd of February 2015. The document is unconventional. It describes itself as intending to serve three purposes: firstly, to be submissions on the costs argument, which at that date in February was to be held three days later; secondly, to amend the notice of appeal; and, thirdly, to set out the best parts of Mr Young's outline of argument and authorities.

Rule 747, subrule (1) of the *Uniform Civil Procedure Rules* states that a notice of appeal must be in the approved form and state whether the whole or part of the decision is appealed from. It must briefly and specifically state the grounds of appeal and the decision that the appellant seeks. Mr Young's proposed amended notice of appeal does not conform to the rule. It includes extraneous matter in the form of submissions on costs of the application at first instance and submissions on the appeal. The degree of non-compliance with rule 747(1) is both manifest and intolerable. The application to amend the notice of appeal must be refused. I should say the application to file the amended notice of appeal must be refused.

Turning to Mr Clark's affidavit, I note that it is replete with expressions of his personal opinions about whether a prosecution undertaken by the Council in 2007 was in the public interest and involved a waste of public funds, legal conclusions as to whether the conduct by the Council breached a deed of release it had entered into with Mr Young, and personal opinion about whether any such breach adversely affected Mr Young's employability. Mr Clark's opinions are irrelevant to the summary judgment application that was before the

primary Judge, as are his expressions of legal conclusions. Leave to adduce the affidavit must be refused on that ground. A further reason for refusing leave is that on its face the affidavit is one that could have been obtained for the hearing of the summary judgment application, yet Mr Young has not sworn that it was not obtainable then, notwithstanding reasonable diligence on his part.

For these reasons, I would make the following orders on the application filed by Mr Young on the 23rd of February 2015:

1. The application is refused.
2. The applicant is to pay the respondent's costs of the application on the standard basis.

I now turn to the Council's application. The summary judgment application was made after a history of successful attacks on the statement of claim, and to a point where the application was argued on a sixth further amended statement of claim for which Mr Young had sought leave to file. A focal point of the attack on the pleadings was whether a factual basis on which he could establish that losses claimed by him were caused by breaches of clauses 9 and 10 of the deed of release had been pleaded. In Mr Young's pleading before the primary Judge, paragraph 24 alleges breach of clause 9, and paragraph 25 breach of clause 10. Detailed particulars of each breach are pleaded in the paragraphs which precede them. The particulars are all associated with the prosecution to which I have referred in the pleading. It is referred to as the "Douglas proceedings".

His Honour's reasons for judgment record that for the purposes of the summary judgment application the Council accepted that it had breached clauses 9 and 10. Despite this acceptance, his Honour made observations with respect to the meaning and scope of clause 9 and expressed conclusions about certain particularised aspects of the Douglas proceedings. The conclusions are to the effect that in certain respects the Council had not breached clause 9, as Mr Young alleges. They may even be read as putting into question whether there was any breach of clause 9 at all. These conclusions were influential in his determination of the

summary judgment application. That is to be expected, given that whether a particular loss is caused by a breach of contract is, of course, dependent upon the nature and extent of the breach.

By grounds (f) and (g) of the notice of appeal, Mr Young seeks to challenge these conclusions. Grounds (h) and (i) of the notice of appeal seek to challenge a different conclusion reached by the primary Judge. His Honour concluded that Mr Young had not sufficiently made out a case that, as a result of breaches of clauses 9 and 10 by the Council, he had in 2007 lost the opportunity of advantageous employment by the Brisbane City Council. In my view, it is legitimate for Mr Young to pursue by way of appeal the matters raised in grounds (f), (g), (h) and (i) of the notice of appeal. Those grounds are not incompetent in the legal sense such as might warrant their being struck out. By contrast, ground of appeal (e) contents, firstly, that the primary Judge effectively decided that the Council's reliance on a Crime and Misconduct Commission recommendation meant that it had not breached clause 9 and, secondly, that his Honour had, effectively, decided that Mr Young himself had breached clauses 9 and 10 by commencing his proceeding. Grounds (a) to (d) set up the contentions in ground (e). As I read his Honour's reasons, he did not make these two decisions either expressly or implicitly. Grounds (a) to (e) are misconceived and should be struck out. I also consider that orders (b) to (d) sought in the notice of appeal should be struck out. Even if the appeal were to succeed, this Court would not make the orders there sought. They go to matters of practice concerning the future progress and conduct of the litigation.

The application for security for costs is made on affidavit evidence conceded by Mr Young that he does not own any real property in Queensland. The Council's solicitors have asked him to provide evidence of his capacity to meet an order for costs of the appeal. He has provided evidence of a bank account in his name with an apparent credit balance of about \$13,000. He has not otherwise responded to the request. In these circumstances, the Council is justifiably concerned that Mr Young may not be able to pay its costs if the appeal fails. Whilst a number of grounds of appeal have survived, it does not at all follow that they have

good prospects of success. The impression I have is that their prospects are, at best, very modest. That, too, weighs in favour of an order for security for costs.

The Council has adduced evidence of an estimate of the legal costs it will incur in defending the appeal. It is for an amount of slightly more than \$80,000. The Council seeks security for costs in that amount. This figure exceeds, of course, the amount of costs that the Council would recover on an order that its costs of the appeal be paid on the standard basis.

The Court need be mindful that an order for security for costs ought not stifle litigation, especially where the party against whom it is sought is a natural person. This consideration is moderated a little here, where the security is sought in an appeal from a decision at first instance, which Mr Young has lost and where, knowing of the amount of the security sought, he has not put on evidence from which an inference could reliably be drawn of the amount of security that he could give without prejudicing his appeal. He at all times has been conducting the litigation on his own behalf and has not incurred professional legal costs.

In all the circumstances, I consider that Mr Young should be required to provide security for costs of the appeal. I consider that a fair exercise of the discretion is for security in the amount of \$30,000. I would allow 30 days for provision of it.

For these reasons, I would make the following orders on the Council's application filed on the 25th of February 2015:

1. Grounds (a) to (e) inclusive and paragraphs (b) to (d) inclusive of the orders sought in the notice of appeal filed on the 14th of January 2015 are struck out.
2. Within 30 days of today the appellant is to provide security for costs of the appeal in the amount of \$30,000, such security to be in a form suitable to the registrar.
3. The costs of the application are to be costs in the appeal.

4. The application is otherwise refused.

As to Mr Young's stay application, in my view it is misconceived insofar as it relates to the order made on the 19th of December 2014. That order dismissed this proceeding against the Council. There is no action by enforcement or otherwise that the Council might take on the strength of that order that needs to be stayed in order to protect Mr Young's position pending the determination of the appeal.

The position with the costs order made on the 27th of February 2015 is different. The Council would be at liberty to enforce it. It is true that Mr Young has not yet appealed against the costs order. However, it is not inconceivable that, should his appeal succeed, he would be given leave at that point to appeal the costs order and that it would be set aside. There is, therefore, a justifiable basis for staying this order. The stay should be conditioned upon Mr Young giving security for costs of the appeal as ordered by this Court.

Accordingly, I would make the following orders on the application filed by Mr Young on the 23rd of February 2015:

1. Subject to the provision by the appellant of security for cost of the appeal as ordered by this Court, the order for costs made on the 27th of February 2015 is stayed until further order of the Court or a Judge thereof.
2. The costs of the application are to be costs in the appeal.
3. The application is otherwise refused.

Further, I would mention briefly two other matters. One is that on the 5th of March 2015 Mr Young filed a further application, the substance of which has been dealt with in the orders proposed by me. The application is to strike out the respondent's application and an order that he not be required to give security for costs. As Mr Young accepted this morning, this application is redundant. It should be dismissed.

The other matter is an application filed by Mr Young on the 1st of April 2015. This is an application to call Mr Clark to testify at the hearing of the appeal. This application appears to be made on the basis that if the appeal succeeds this Court would re-hear the summary judgment application. That is a misapprehension; that will not occur. This application, too, should be dismissed.

**HOLMES JA:** I agree.

**DALTON J:** I agree.

**HOLMES JA:** The orders will be as Justice Gotterson has indicated. Anything further?