

SUPREME COURT OF QUEENSLAND

CITATION: *Chidgey v State of Queensland* [2015] QCA 149

PARTIES: **DAVID STANLEY CHIDGEY**
(applicant)
v
STATE OF QUEENSLAND
(respondent)

FILE NO/S: Appeal No 2804 of 2015
DC No 5014 of 2014

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane – [2015] QDC 19

DELIVERED EX TEMPORE ON: 20 August 2015

DELIVERED AT: Brisbane

HEARING DATE: 20 August 2015

JUDGES: Holmes and Morrison JJA and Mullins J
Separate reasons for judgment of each member of the Court, each occurring as to the orders made

ORDERS: **1. Application for leave to appeal refused.**
2. The applicant must pay the respondent's costs of the application.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – OTHER CASES – where applicant sought a declaration in the District Court that *Uniform Civil Procedure Amendment Rule (No 4) 2007* (Qld) and *Uniform Civil Procedure (Fees) Amendment Regulation (No 1) 2007* (Qld) were invalid and sought an order setting aside costs assessments associated with that legislation as an abuse of process by the respondent – where summary judgment given against the respondent in the District Court as the claim did not disclose a cause of action – where applicant contends the primary judge erred in giving summary judgment against him and in failing to allow the applicant a trial by jury – whether applicant should be given leave to appeal

Uniform Civil Procedure Rules 1999 (Qld), r 293, r 472

Barmettler & Anor v State of Queensland [\[2010\] QCA 198](#), followed

COUNSEL: The applicant appeared on his own behalf
M H Hindman for the respondent

SOLICITORS: The applicant appeared on his own behalf
G R Cooper, Crown Solicitor for the respondent

MULLINS J: The applicant, Mr Chidgey, filed a claim and statement of claim in the District Court on 19 December 2014 in which he sought a declaration that the *Uniform Civil Procedure Amendment Rule (No 4) 2007* (Subordinate Legislation No 315 of 2007) and *Uniform Civil Procedure Fees Amendment Regulation (No 1) 2007* (Subordinate Legislation No 316 of 2007) were invalid and for an order setting aside the costs assessments associated with that subordinate legislation that was used against him and for an order that all costs assessments against him be set aside as abuse of process by the respondent.

In his statement of claim, Mr Chidgey elected for trial by jury under rule 472 of the *Uniform Civil Procedure Rules 1999*. At the same time as he filed his claim and statement of claim, Mr Chidgey filed an application seeking orders in terms of those endorsed on the claim and statement of claim and an affidavit that swore to the facts alleged in the statement of claim. The return date for the application was 28 January 2015. The respondent filed an application on 22 January 2015 with the same return date seeking leave to apply (without having filed a notice of intention to defend) for summary judgment for the respondent pursuant to rule 293, sub-rule (2) of the UCPR or alternatively, the striking out of the statement of claim or the dismissal of the proceeding.

After hearing oral submissions, the learned primary Judge reserved the decision and gave judgment on 18 February 2015, making the orders that facilitated giving the respondent summary judgment pursuant to rule 293 of the UCPR, dismissing Mr Chidgey's application filed on 19 December 2014 and ordering Mr Chidgey to pay the respondent's costs of the proceeding: *Chidgey v State of Queensland* [2015] QDC 19 (the reasons).

Mr Chidgey applies for leave to appeal this summary judgment on the basis that the primary Judge erred in giving judgment against him and also, that he was denied procedural fairness as he elected for a trial by jury and the primary Judge gave judgment against him, sitting without a jury.

Mr Chidgey's claim had its genesis in a proceeding brought against him by his former lawyer claiming unpaid legal fees and outlays. The primary Judge summarised the facts alleged in the statement of claim and the factual circumstances behind Mr Chidgey's complaint, based on various decisions of the Courts and Queensland Civil and Administrative Tribunal in proceedings to which Mr Chidgey was a party. The primary Judge noted at [13] of the reasons that Mr Chidgey had not articulated what powers the District Court had to invalidate the subordinate legislation. The primary Judge concluded at [14]:

“It is, as counsel for the State of Queensland submitted, simply impossible for Mr Chidgey's material to make out any actual cause of action that he has or might have against the State of Queensland arising from the matters touched upon in the statement of claim or in his affidavit.”

The primary Judge recited in the reasons at [15] that Mr Chidgey did not oppose the making of the orders that facilitated the respondent's application for summary judgment. On the basis of the primary Judge's conclusion at [17] that Mr Chidgey's case was clearly untenable and could not possibly succeed, the primary Judge proceeded under rule 293 of the UCPR to give summary judgment for the respondent against Mr Chidgey.

I will deal with the first ground that is relied on by Mr Chidgey in support of his application that the primary Judge erred in giving summary judgment for the respondent. Mr Chidgey advances submissions in support of his appeal concerned with the validity of the subordinate legislation identified in his statement of claim on the basis they operated retrospectively in the circumstances that concerned him. Mr Chidgey's written and oral submissions missed the point that the facts he pleaded in the statement of claim, even supplemented by his affidavit filed at the same time as the statement of claim, disclosed no cause of action and will never support an

actionable claim against the respondent. There was no error made by the primary judge in concluding that there was no cause of action.

As was his right, Mr Chidgey, in the statement of claim, had elected for a trial by jury as provided for in rule 472 of the UCPR. That election, however, did not preclude the application of other procedures under the UCPR. As was held in *Barmettler & Anor v State of Queensland* [2010] QCA 198 at [14], the election for a trial by jury does not remove a judge's power to order summary judgment under rule 293, sub-rule (2) of the UCPR when there is no real prospect of the claim succeeding and there is no need for a trial of the claim. It follows that the orders which should be made are:

1. Application for leave to appeal refused.
2. The applicant must pay the respondent's costs of the application.

HOLMES JA: I agree.

MORRISON JA: I agree also.

MULLINS J: The orders will be that the application for leave to appeal is refused. The applicant is to pay the respondent's costs of the application. Adjourn the Court.