

SUPREME COURT OF QUEENSLAND

CITATION: *Spain v Commonwealth of Australia* [2015] QSC 258

PARTIES: **ERIC RAYMOND SPAIN**
(plaintiff)
v
COMMONWEALTH OF AUSTRALIA
(defendant)

FILE NO: 2923 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 15 July 2015 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 15 July 2015

JUDGE: Daubney J

ORDERS: **1. The Defendant has leave to bring the present application.**

2. The Plaintiff's Claim and Statement of Claim are struck out.

3. The Plaintiff pay the Defendant's standard costs of the proceeding including any reserved costs.

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – JURISDICTION AND GENERALLY – OTHER MATTERS – where an Application has been filed by the defendant to set aside the Claim filed by the plaintiff pursuant to r 16 of the *Uniform Civil Procedure Rules 1999* – where in the alternative, the defendant seeks that the Claim filed by the plaintiff be dismissed pursuant to r 658 of the *Uniform Civil Procedure Rules 1999* – where further, and in the alternative, the defendant seeks that pursuant to r 171(2) of the *Uniform Civil Procedure Rules 1999* that the Statement of Claim filed by the plaintiff be struck out – where an Application has been filed by the plaintiff to set aside the Application filed by the defendant – where further, the plaintiff seeks Judgment

pursuant to rr 658 and 288 of the *Uniform Civil Procedure Rules* 1999 – whether the Claim and Statement of Claim filed by the plaintiff discloses a reasonable cause of action – whether the Claim and Statement of Claim filed by the plaintiff is frivolous or vexatious – whether the Claim and Statement of Claim filed by the plaintiff proceeding is otherwise an abuse of process of the Court – whether the Statement of Claim filed by the plaintiff has a tendency to prejudice or delay the fair trial of the proceeding

Kruger v Commonwealth (1997) 190 CLR 1

Donoghue v Stevenson [1932] AC 562

COUNSEL: The plaintiff appeared in person
G Del Villar for the defendant

SOLICITORS: Australian Government Solicitors for the defendant

[1] HIS HONOUR: On the 23rd of March 2015 the plaintiff, Mr Spain, filed in this Court a claim by which he sought the following relief against the Commonwealth of Australia:

“1. *An order for the Commonwealth to repair the Constitution.*

2. *An order for the Commonwealth to pay the sum of one million seven hundred and fifty thousand dollars.*”

[2] Filed with the claim was a statement of claim which runs to some 21 pages.

[3] I observe at the outset that the first of the claims for relief made by the plaintiff is a claim unknown to law. It is simply not possible, under the law of this country, for this Court to make an order that “the Commonwealth repair the Constitution”. To that extent, the claim is simply not maintainable and pursues relief, as I have said, which is unknown to law.

[4] The balance of the claim seems to be, although this is difficult to discern from the document entitled “Statement of Claim”, some sort of claim for damages by the plaintiff personally, but the precise legal basis upon which that claim for damages is founded is difficult, if not impossible, to discern from the “statement of claim”.

[5] The matters articulated and ventilated in the “statement of claim” seem to arise out of a concern held by Mr Spain that a speech given in 2003 by the then Prime Minister

justifying Australian involvement in the war in Iraq amounted to a breach of the blessing invoked in the preamble to the Constitution of the Commonwealth of Australia, and that somehow, as a consequence of that breach of the Constitution, and perhaps, of God's blessing, the plaintiff has suffered loss and damage. Precisely how he suffered that loss and damage is not at all made plain or even hinted at in the "statement of claim".

[6] Some further elucidation of the basis on which the plaintiff would seek to pursue this claim against the Commonwealth of Australia is derived from the written submissions which he has provided in response to today's application by the Commonwealth to have the claim and statement of claim struck out.

[7] In the introduction to his written submissions, the plaintiff said, at paragraph 1C:

"Primarily, my claim involves God's desire to withdraw His blessing from the Constitution Act, and the torts that have been created against me because of His [ie God's] intention and Prime Minister Howard's address to the nation on 20 March 2003."

[8] Fundamental and central to the plaintiff's position seems to be the notion that in bringing this proceeding, he is acting as God's representative before this Court. So, for example, in paragraph 1E of his written submissions, he says:

"However, I say the defendant's application should be disallowed because if God can't choose citizens to represent His view in a constitutional matter in Court, then He is a figment of Parliament's imagination."

[9] This is reinforced when one looks at Mr Spain's argument, which is, in effect, his argument in support of his standing to bring and pursue this proceeding before this Court. He argues that the Court ought be seized of the matter in its ecclesiastical jurisdiction. In his written outline, he said:

"a. As I have indicated in my statement of claim, the structure of God disallows Him to personally appear before a Court by virtue of the fact that He is a Ghost. Or similar to a deceased person, God does not have a lawful or

natural body in which He can personally seek relief from the Court to protect His blessing or will and testaments.

b. However, the Supreme Court of Queensland has an ecclesiastical jurisdiction that concerns wills and testaments of the deceased. Therefore, because God is a spirit or the same in structure as a deceased person; if the need arises He can also choose an Australian citizen as his representative to apply to the Court for an order against the Commonwealth to adhere to His written words or will and testaments.”

[10] It is necessarily implicit in the passage to which I have just referred, that Mr Spain considers that he is now acting as God’s representative in applying to the Court for the present orders. Unfortunately, the passage to which I have referred gravely misapprehends the extent and function of the Court’s ecclesiastical jurisdiction. Whilst that historical title continues to apply to the functions of the Court insofar as it exercises powers and discretions with respect of the administration of deceased estates, there is no divine component to the Court’s ecclesiastical jurisdiction.

[11] There are a number of bases, for want of a better word, on which Mr Spain seeks to set out his claims against the Commonwealth. One of them is in reliance on the reference in the preamble to the Constitution to the blessing of the Almighty. It seems to be argued by Mr Spain that the actions of the Prime Minister in 2003, and perhaps also of the Parliament in 2003, were contrary to the divine approbation conferred by the Almighty’s blessings as referred to in the preamble to the Constitution.

[12] Whatever one might think of the moral correctness or otherwise of the involvement of Australia in any international dispute, the simple fact of the matter is that those sorts of political and military decisions have absolutely nothing to do with the invocation of the blessing referred to in the preamble to the Constitution.

[13] To the extent that this is a matter upon which Mr Spain relies in support of some personal right of action for which he might contend as a basis for a claim for damages, and even if it were able to be said that the matters about which he complains constituted contraventions of the Constitution, (which I expressly find they were not), it is clear, on

authority, that such contravention is not a contravention of private rights which are enforceable directly by an action for damages. See *Kruger v The Commonwealth* (1997) 190 CLR 1, per Brennan CJ at 46.

[14] There are other elements to Mr Spain's arguments. He contends, for example, that the conduct of the then Prime Minister constituted a breach of the ninth commandment. In his written outline, he spells out that argument in these terms:

“e. Further, the rules of faith supporting the people's reliance on God's blessing include the Ten Commandments, because they represent His will and testaments concerning how His name and principles are to be portrayed and/or implemented.

f. So common laws and legislation that reflect God's blessing allow a Court to rule on any constitutional challenge concerning the applicable rules of faith against the Commonwealth. Example; perjury falls within the Court's legislative jurisdiction. The ninth commandment says providing false testimony is forbidden. Mr Howard's address to the nation on 20 March 2003 included false testimony against Iraq.

g. Thus, based on Mr Howard's false testimony to the nation, because the rules of faith governing God's blessing are reflected by common laws and legislation; not only does the Court have jurisdiction, but there is reasonable cause for any citizen to initiate a constitutional challenge against the Commonwealth.”

[15] There is no doubt that in the development of the common law, principles of law have been honed and refined by reference to moral virtues that have been founded in the Judaeo-Christian tradition. So, for example, there is a considerable body of learned literature that traces and identifies the basis in that tradition of Lord Atkin's neighbour principle, enunciated in *Donoghue v Stevenson* [1932] AC 562.

[16] The reflection of moral virtue enunciated in, relevantly, the Judaeo-Christian tradition in the development of the common law, however, is a far cry from the bald proposition

which Mr Spain would seek to assert, which is simply that a breach of any one of the Ten Commandments gives rise to a private cause of action, apparently in tort. There is simply no authority for such a proposition, and it is a matter which gives rise to a claim unknown to law.

[17] He also sought to gain a foothold in some sort of quasi-contractual argument founded on the fact that under the relevant standing orders of the House of Representatives and the Senate, the Houses at the commencement of each sitting acknowledge country and read prayers. He submitted:

“b. Accordingly, asking God to perform certain requests by parliamentary prayer is no different than a contractual promise where one party requires another to perform a duty. Thus, constituting the written terms in the contract of prayers. So a binding representation of trust in God by the Parliament for the people is identifiable. This is also supported by the people’s reliance upon His blessing in the Constitution Act.

c. For example; it is common for statements to be classified as a term of a contract and/or representation. So since I am citizen and God is the guardian of federation, by virtue of His blessing I have constitutional privilege to enforce His will by Court order over the Commonwealth, for standing orders 38 and 50 are the written recitals agreeing to the facts.”

[18] Leaving aside the question as to the implicit assertion that Mr Spain is acting in this matter as God’s representative, the simple fact of the matter is that no contractual relations are created by the fact that members of Parliament say the words of prayers at the commencement of each sitting. Accordingly, Mr Spain’s quasi-contractual argument has no basis.

[19] The matters advanced by Mr Spain in his statement of claim are, with the greatest respect to him, a complete legal futility. In paragraph 3D of the statement of claim, he says:

“This claim is about venting anger, because the facts will prove that the decision to invade Iraq was unconstitutional, and Australia’s sovereignty is still at risk. But

since there was an initial requirement to protect sovereignty, I had to lose a court case in 2003 where, normally I had evidence to prove my claim. In essence, my business life was metaphorically sacrificed to protect Australia's sovereignty."

[20] Insofar as Mr Spain has brought this proceeding for the purposes of "venting anger", this is completely the wrong forum for that action. This is a Court of law in which parties' rights are determined, and in which disputes are resolved by the administration of justice according to law. It is not a forum for citizens who disagree with political actions to vent their anger.

[21] The futility can also be seen from the summary of Mr Spain's written submissions, in which, amongst other things, he said:

"g. Therefore, God feels Australia can no longer operate under its current constitutional structure, and so must rescind the Constitution Act completely. Alternatively, if the people want to maintain their Constitution and receive forgiveness by a renewal of God's blessing, statutes that set out the way in which the Crown is appointed must be adjusted to allow for an Australian born head of state.

h. This proves the Australian and English Crowns have been unconstitutional since at least 2003. So my claim is not vexatious or frivolous, and includes reasonable cause as God's blessing can be rescinded by Court order, or by a plebiscite that provides a choice for Australia to have a new constitutional blessing from Him or not."

[22] As I have just observed, Courts of law are precisely that: they are the forum in which, in our society, disputes between citizens are resolved by the administration of justice according to law. They are not forums in which one seeks to guess or second-guess what the wishes of the Almighty are, let alone what the Almighty's constitutional desires might or might not be.

[23] The claim brought by Mr Spain not only involves, as I have observed, a claim which is simply unknown to law, it is clear that there is simply no basis in law for any of the

claims that he makes nor any basis for him to pursue any relief against the Commonwealth of Australia.

[24] The proceeding does not disclose any cause of action known to law. It is, for the reasons that I have identified, frivolous and vexatious within the meaning of those terms under the authorities. Accordingly, the claim and statement of claim will be struck out.

[25] ...

[26] HIS HONOUR: There will be the following orders: (1) the defendant has leave to bring the present application; (2) the claim and statement of claim are struck out; (3) the plaintiff to pay the defendant's standard costs of the proceeding.