

SUPREME COURT OF QUEENSLAND

CITATION: *Re: Gunter* [2015] QSC 358

PARTIES: **RICHARD STEPHEN GUNTER**
(applicant)

FILE NO: SC No 11799 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 20 November 2015

DELIVERED AT: Brisbane

HEARING DATE: 20 November 2015

JUDGE: Atkinson J

ORDER: **Application dismissed.**

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant filed an application for leave to institute a proceeding in relation to an appeal filed in the Court of Appeal – where the material before the judge did not indicate the appeal had any prospects of success if the application were allowed – where the arguments raised appeared to be substantially the same as those that led to the applicant’s being declared a vexatious litigant – whether the application for leave to institute a proceeding should be allowed

Vexatious Litigants Act 1981 (Qld) s 8, s 9
Vexatious Proceedings Act 2005 (Qld) s 11(2), s 11(3), s 12(1)(b)

Lohe v Gunter [2003] QSC 150 cited

COUNSEL: The applicant appeared for himself

[1] **ATKINSON J:** This is a hearing of an originating application filed by Richard Stephen Gunter seeking leave of the court, pursuant to section 11(2) of the *Vexatious Proceedings Act* 2005 (Qld) (‘the Act’), to institute an appeal and associated application in the Queensland Court of Appeal. This matter is governed by the Act and a Practice Direction issued under that Act, Practice Direction 5 of 2010.

- [2] The applicant was declared to be a vexatious litigant on 16 April 2003 in a judgment of this court in the matter of *Lohe v Gunter*.¹ There, Holmes J, as her Honour then was, set out in great detail the reasons why her Honour made the declaration that the respondent is a vexatious litigant.
- [3] Such a litigant is required to make an application for leave to institute a proceeding in this court, which includes an application for leave to institute an appeal. Accordingly, Mr Gunter has, quite properly, filed an originating application seeking that leave. Subsection (3) of section 11 provides that, on such application:

The applicant must file an affidavit with the application that—

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

- [4] Accordingly, each of 3(a), (b) and (c) must be satisfied in the affidavit filed with the application.
- [5] The applicant has done his best, it appears, to list all occasions on which he has applied for leave under this section or under sections 8 or 9 of the *Vexatious Litigants Act 1981* (Qld), and listed other proceedings that he has instituted in Australia, including proceedings instituted before the commencement of this section. Therefore, it remains to be determined whether or not he has disclosed all facts material to the application, whether supporting or adverse to the application, that are known to him in an affidavit filed with the application.
- [6] The applicant has filed two affidavits with the application which refer to the matter which he seeks leave to institute. It appears, although not from that material, that the factual situation which has led to his seeking leave to institute proceedings in the Court of Appeal is that, on 1 October 2015, he was issued with an eviction order from property in which he is a tenant. It appears, although I am not making any finding, that he was a tenant in property subject to a 12-month lease. After the lease expired, the owners of the property wished to reside in the property. Instead of giving him the two months' notice required by statute, they gave three months. Nevertheless, Mr Gunter has not moved out of the property.
- [7] The lessors, by their agent, were successful in obtaining an eviction order in QCAT and a warrant of possession was issued. The eviction order was made on 1 October 2015. After application by the applicant for a stay, an interim stay was granted on the papers on 26 October 2015 which meant that the warrant of possession, which was due to be executed on 5 November 2015, was not executed. On 10 November 2015, the applicant's application for a stay was dismissed and the warrant of execution re-issued with the requirement that the applicant vacate the premises on 23 November 2015. Unfortunately,

¹ [2003] QSC 150.

none of those facts, which are material to the application, appear in the supporting affidavit. However, they do appear in the Court of Appeal file to which the applicant asked me to have regard and I have.

- [8] What is essentially material to the application, however, is whether or not the application before the Court of Appeal is genuinely about that dispute or is, in fact, just another opportunity for the applicant to re-agitate arguments which led to his being declared a vexatious litigant in the first place. It is apparent from the terms of the affidavits which the applicant has filed before me and the material filed in the Court of Appeal that it is those matters which led Mr Gunter to be declared a vexatious litigant which he wishes to litigate against the unfortunate lessors of the land on which he has been a tenant.
- [9] There is nothing at all before me in the written material which would lead me to entertain the slightest suggestion that the applicant would be successful on the appeal or, indeed, that he has even any argument other than those which caused him to be a vexatious litigant to be put before the court. In oral submissions before me, he raised a hardship argument. That is, of course, a matter of fact rather than a matter of law which could and should have been brought before QCAT. It is not a ground on which leave to appeal to the Court of Appeal would be entertained.
- [10] Accordingly, I am satisfied that the proceeding in the Court of Appeal is a vexatious proceeding and, under section 12(1)(b) of the Vexatious Proceedings Act 2005 (Qld), I am required to dismiss the application. I accordingly dismiss the application filed by the applicant.