SUPREME COURT OF QUEENSLAND

CITATION:	*National Australia Bank Ltd v Freeman* [2006] QSC 086
PARTIES:	**NATIONAL AUSTRALIA BANK LIMITED** **ACN 004 044 937** (applicant) **v** **LYNTON NOEL CHARLES FREEMAN** (respondent)
FILE NO/S:	BS 2195 of 2006
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 May 2006
DELIVERED AT:	Brisbane
HEARING DATE:	31 March 2006
JUDGE:	Muir J
ORDER:	**The plaintiff by himself, his servants and agents, be restrained from commencing any new proceedings (apart from an appeal in these proceedings) in any Queensland Court against the applicant, its servants or agents, arising out of or concerning any of the allegations made in proceedings BS 4103 of 1998 at first instance or on appeal, without the prior leave of a judge of the Trial Division of the Supreme Court.**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – GENERALLY – where eight year history of litigation between applicant and respondent – where litigation sought to challenge issues finally determined – where applicant seeks order that the respondent be prevented from instituting proceedings against the applicant – whether respondent is a person who has frequently instituted or conducted vexatious proceedings in Australia *Vexatious Proceedings Act* 2005 (Qld), s 5, s 6 *Bhamjee v Forsdick* [2004] 1 WLR 88, applied *Hunter v Chief Constable of the West Midlands Police* [1982] 1 AC 529, cited *Hunter v Leahy* (1999) 91 FCR 214, cited

Jones v Cusacks (1992) 66 ALJR 815, applied
Moevao v Department of Labour (1980) 1 NZLR 464, cited
Rogers v The Queen (1994) 181 CLR 251, cited
Von Risefer & Ors v Permanent Trustee Co Pty Ltd & Ors [2005] QCA 109, cited

COUNSEL: I Perkins for the applicant
The respondent appeared on his own behalf

SOLICITORS: Mallesons Stephen Jaques for the applicant
The respondent appeared on his own behalf

[1] By an application filed 15 March 2006, the applicant seeks an order pursuant to the *Vexatious Proceedings Act* 2005 (Qld) ("the Act") that the respondent be prevented from instituting proceedings against the applicant, its officers or agents in any Queensland Court without first obtaining leave of the Supreme Court. Other orders are sought in the alternative.

The history of litigation between the applicant and the respondent

[2] The applicant first commenced proceedings against the respondent in the Supreme Court (BS4103 of 1998) ("the first proceedings") claiming moneys alleged to be owing by the respondent to the applicant and seeking recovery of possession of a grazing property over which the respondent had given security in favour of the applicant.

[3] The respondent defended the claim and counterclaimed, inter alia, to have set aside a Deed of Mediation dated 4 December 1997, entered into between the applicant and the respondent. The Deed was entered into between the parties at the conclusion of a mediation between them. In it, the respondent released the applicant and its officers and agents from all claims which the respondent might have otherwise had against the applicant, except as specified in the Deed. The respondent, by his counterclaim, sought to have the Deed of Mediation set aside on the grounds that the applicant unconscionably took advantage of the respondent's lack of mental competence at the time. The respondent also alleged economic duress.

[4] The applicant succeeded on its claim and on the counterclaim. The respondent appealed unsuccessfully to the Court of Appeal, which dismissed the appeal on 2 November 2001. On the appeal the respondent unsuccessfully sought to introduce new matters, including an allegation that the applicant had failed to take into account in a timely fashion a deposit of $2,205 made by the respondent on the last day of the term of the subject bill facility as an interest payment to extend the bill facility.

[5] The respondent then sought leave to appeal to the High Court of Australia. He was unsuccessful and the application for special leave was dismissed with costs on 14 March 2003. In support of that application, the respondent alleged:

(a) failure by the applicant to give proper discovery;
(b) deliberate inaccurate accounting by the applicant,
(c) false accounting and erroneous bank practices by the applicant;
(d) error on the part of the Court Appeal in not permitting the tender of a report on "shadow ledgers"; and

(e) that the respondent engaged in false and misleading conduct in relation to the mediation and the Deed of Mediation.

[6] The applicant presented a petition for the respondent's bankruptcy on 9 February 2001. It was resisted on grounds including:

> "fraud at trial, fraud, intent to defraud, deceit, false pretences, false evidence, fabricated evidence, perverting justice… unconscionable conduct and the non-compliance with discovery order in the Supreme Court, negligence."

[7] In a motion filed by the respondent in the Federal Court bankruptcy proceedings he sought discovery of documents, including bank statements, the applicant's business banking handbook, manuals and other documents. In reasons given on the dismissal of the application the learned Federal Court judge who heard the matter observed:

> "I am satisfied that the other documents sought by Mr Freeman amount to a fishing expedition as Mr Freeman tries to establish fraud on the part of the Bank in its dealings with him. As I stated to Mr Freeman at the hearing of the motion, the proceedings before this Court are not an inquiry into the banking industry. Any concerns he had in relation to the amount of the debt should have been raised before the Supreme Court."

[8] A sequestration order was made on 12 March 2002. The respondent appealed unsuccessfully and the appeal was dismissed on 26 August 2003.

[9] In reasons for judgment delivered by Spender J on 14 March 2002 in the bankruptcy proceedings, his Honour said:

> "Despite the voluminous nature of the material which has been put forward by Mr Freeman, no substantial reason has been shown for questioning whether there is in truth and reality a debt due to the petitioning creditor."

His Honour remarked that no prima facie case of fraud or collusion or miscarriage of justice had been made out by the respondent "such as to impeach the judgment that was obtained after a full investigation at a trial…". His Honour found also that the respondent had not made out his allegations that the subject property had been sold by the applicant at undervalue, so as to give rise to a claim by the respondent against the applicant on that account.

[10] In an application made on 8 October 2003 for annulment of the sequestration order, the respondent relied on matters previously raised and rejected in the first proceedings and in the bankruptcy proceedings. The application was dismissed on 18 February 2004. The respondent appealed and in the notice of appeal he again sought to re-litigate matters determined against him in the Supreme Court and the Federal Court.

[11] On 31 October 2003 the respondent applied in the Federal Court for an order that his trustees in bankruptcy be compelled to prosecute Supreme Court proceedings, including proceedings which sought to re-litigate some of the matters determined on the first proceedings. That application was dismissed on 31 October 2003.

[12] In his reasons for judgment concerning the material relied on by the respondent on the hearing, Spender J remarked: "Much of the material seeks to re-canvass the

question of whether the judgment of Ambrose J [in the first proceedings] was correct…".

[13] The respondent appealed against the 31 October 2003 dismissal of his application. On appeal the respondent again sought to re-argue matters determined in the first proceedings and the bankruptcy proceedings. The appeal was unsuccessful.

[14] In their reasons the members of the Full Federal Court observed:

> "The appellant placed a large volume of material before us which was primarily directed towards establishing that the decision of Ambrose J was wrong… There was little focus on the issues…"

[15] The reasons for judgment of Spender J on 22 December 2005, in an application by the respondent for orders pursuant to Order 21 rule 2 of the *Federal Court Rules*, reveal the following. On 6 February 2004, Dowsett J rejected an application made by the respondent to annul the sequestration order of 12 March 2002. The respondent's appeal to the Full Federal Court was stayed on 7 May 2004, pending payment by the respondent of security for costs. In his reasons for ordering that stay, Spender J remarked:

> "As the submissions by Mr Freeman on his own behalf… confirm, what he is seeking to do is to demonstrate what he has been unsuccessful in demonstrating thus far in many proceedings, namely that decisions in favour of the National Australia Bank from the time of the first trial before Ambrose J and in successive proceedings, have been erroneously determined in favour of the bank and adversely to Mr Freeman."

[16] The respondent, unsuccessfully, sought leave to appeal from the security for costs order. On 11 March 2005 the respondent filed an application for an order that his trustees in bankruptcy assign to him two actions commenced by him in the Supreme Court prior to his bankruptcy. That application was dismissed on 6 May 2005, as was a subsequent appeal to the Full Court of the Federal Court. The respondent filed a "defence and cross-claim" in the applicant's vexatious litigant proceedings commenced on 3 June 2005. In his reasons dated 22 December 2005, Spender J set out passages from the "defence and cross-claim" document to illustrate the point that the respondent "continues to make, strenuous efforts to re-ventilate in this Court the matters which have been determined against him on a number of occasions, both in this Court and in the Supreme Court of Queensland". His Honour said:

> "In this proceeding alone, Mr Freeman has filed some 1500 pages of affidavit material, most of which is seeking to reargue that the decision of Ambrose J is wrong and that he is not indebted to the Bank but rather has a substantial claim against it. This is a matter was (sic) decided adversely to Mr Freeman in 2001 in which he has sought to challenge and re-challenge since that time in both this court and the Supreme Court of Queensland."

[17] There has also been a history of litigation in the Supreme Court in which the respondent has attempted to re-litigate matters decided against him.

[18] On 11 March 2002, the respondent commenced proceedings (BS 2339 of 2002) in the Supreme Court against the applicant claiming damages for sale of the grazing property at undervalue.

[19] The respondent applied on 29 August 2003 to set aside the orders made by the trial judge in the first proceeding. That application was dismissed on the basis that the respondent, being an undischarged bankrupt, lacked standing to make the application. In the application the respondent sought to re-litigate matters decided against him in the first proceeding.

[20] On 6 July 2005 the respondent commenced proceedings in the Supreme Court against the applicant, in which he again sought to re-agitate matters finally determined in the first proceedings. On 12 December 2005 I struck out part of the respondent's claim as being abuse of process and vexatious, and gave summary judgment to the applicant on the remainder of the claim. On the hearing of the strike out and summary judgment applications in that matter, the respondent re-argued matters finally determined against him in the first proceedings.

[21] The respondent appealed from the 12 December 2005 determination. In his notice of appeal he applied under rule 668 of the *Uniform Civil Procedure Rules* 1999 (Qld) to vary the order of the Chief Justice, made on 15 October 2003, dismissing a previous application of the respondent under rule 668.

[22] On 12 July 2002 in the Magistrates Court, the respondent filed a criminal complaint against the applicant for "fraudulent trickery". This complaint concerned matters litigated in the first proceedings. Applications were made in the District Court to stay orders made in the Magistrates Court requiring the payment of security for costs. The Magistrates Court proceedings were dismissed and the respondent applied for leave to appeal from the Magistrates Court decision. The application for leave to appeal was withdrawn by consent.

Relevant statutory provisions and principles

[23] The applicant has standing to bring this application by under s 5 of the Act. Orders under s 6 of the Act may be made if the Court is satisfied that a person is a person who has frequently instituted or conducted vexatious proceedings in Australia.

[24] For the purposes of such a determination the Court may have regard to proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of section 6.

[25] "Vexatious proceedings" are defined in the dictionary to the Act as including:

> "(a) a proceeding that is an abuse of the process of a court or tribunal;…
>
> (c) a proceeding instituted or pursued without reasonable ground; and
>
> (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or to achieve another wrongful purpose."

"Proceeding" is defined so as to include interlocutory proceedings.

[26] A court has an inherent jurisdiction to ensure that its processes are not abused and, to that end, to restrain a party to proceedings from commencing other proceedings in any court in Queensland against another party to the first-mentioned aimed at re-litigating issues already finally determined against such other party.[1] In *Bhamjee v Forsdick*[2] Lord Phillips MR, in handing down the judgment of the Court, observed:

> "The court, therefore, has power to take appropriate action whenever it sees that its functions as a court of justice are being abused. The advent of the Civil Procedure Rules makes the nature of those functions more transparent. A court's overriding objective is to deal with cases justly. This means, among other things, dealing with cases expeditiously and allotting to them an appropriate share of its resources (while taking into account the need to allot resources to other cases). This objective is thwarted and the process of the court abused if litigants bombard the court with hopeless applications. They thereby divert the court's resources from dealing with meritorious disputes, delay the handling of those disputes, and waste skilled and scarce resources on matters totally devoid of any merit."

Conclusion

[27] As the above history shows, many of the proceedings instituted by the respondent constitute attempts to re-litigate matters finally determined against the respondent in earlier proceedings.

[28] The attempted re-litigation of issues disposed by earlier proceedings constitutes an abuse of process.[3]

[29] Consequently, many of the proceedings referred to above are "vexatious" within the meaning of s 6 of the Act. The above history also establishes that such proceedings have been "frequently instituted or conducted".

[30] "Frequently" is defined in the *Shorter Oxford English Dictionary* as: "At frequent or short intervals, often repeatedly; numerously". Whether proceedings have been instituted or conducted "frequently" must be looked at in the context of litigation. In that sense "frequently" is a relative term.[4] In my view, it is impossible to resist the conclusion that the vexatious proceedings instituted and/or conducted by the respondent against the applicant have been "frequently instituted". Such proceedings have been instituted and conducted in profusion within a relatively short period. Those proceedings do not include the first proceedings with its appeal and special leave application. Nor do they include the proceedings in the Court commenced on 6 July 2005, except to the extent that the respondent sought to re-litigate issues determined in the first proceedings.

[31] On the hearing of this application the respondent was unable to resist the temptation to re-litigate issues dealt with in the first proceedings (and in many proceedings thereafter). He raised:

---

1 *Hunter v Leahy* (1999) 91 FCR 214; *Von Risefer & Ors v Permanent Trustee Co Pty Ltd & Ors* [2005] QCA 109 and *Bhamjee v Forsdick* [2004] 1 WLR 88.

2 [2004] 1 WLR 88 at 93.

3 *Rogers v The Queen* (1994) 181 CLR 251 at 255, 256; *Hunter v Chief Constable of the West Midlands Police* [1982] 1 AC 529 at 536; *Moevao v Department of Labour* (1980) 1 NZLR 464 at 481; and *Hunter v Leahy* (1999) 91 FCR 214.

4 *Jones v Cusacks* (1992) 66 ALJR 815 at 816.

(a) alleged deceitful conduct of the applicant which caused his loss;
(b) alleged incorrect accounting by the applicant;
(c) inadequate discovery; and
(d) the giving of wrong or false evidence by officers of the applicant in earlier proceedings.

[32] Under the Act, the power to make an order against a person who has frequently instituted or conducted vexatious proceedings is discretionary. In the circumstances outlined above it is appropriate that the discretion be exercised in favour of the applicant. If the Act did not permit the making of the order about to be made, the circumstances would also warrant the making of such an order in the Court's inherent jurisdiction. Whilst one may sympathise with the respondent in his misfortune, the Court cannot countenance the continued abuse of its processes resulting from the respondent's inability to accept the finality of judicial determinations.

[33] It will be ordered that the plaintiff by himself, his servants and agents, be restrained from commencing any new proceedings (apart from an appeal in these proceedings) in any Queensland Court against the applicant, its servants or agents, arising out of or concerning any of the allegations made in proceedings BS 4103 of 1998 at first instance or on appeal without the prior leave of a judge of the Trial Division of the Supreme Court.