

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 346 of 2007

MICHAEL EDWARDS

Applicant

and

DISTRICT COURT REGISTRAR AT CAIRNS

First Respondent

and

SECURE FUNDING (formerly known as
LIBERTY FUNDING) ACN 081 982 872

Second Respondent

CAIRNS

..DATE 07/09/2007

JUDGMENT

HIS HONOUR: On the 7th of June 2007 the second respondent obtained a default judgment against the applicant and Mrs Edwards in the District Court for the sum of \$226,936.69 including interests and costs, and for an order for the possession of a property located in Mooroolooloo, Cairns.

1
10

Mr Edwards seeks by this application a judicial review in the nature of an order for certiorari of that decision. When this application was called on at the preliminary call-over Mr Edwards appeared before the Court, indicated his view that the Court had no jurisdiction to deal with the matter and said that he would not take any further part in pursuing his application. He did then hand to the Court the document which I have now marked as Exhibit 1.

20
30

The basis of his contention that this Court had no jurisdiction to deal with the application which he himself brought appears to be that there is some irregularity in the use by the registry of the particular Court seal which is attached to documents. That appears to be the contention relied upon also for his failure to attend to contest the application for default judgment. It is unnecessary for me to consider that contention.

40

I will deal with his application for a judicial review in conjunction with the application filed by the first respondent for the application for review to be dismissed on alternate grounds. Firstly, that the Court has no jurisdiction to deal with the matter as the decision arises under the District

50

Court Act, and by virtue of schedule 1, part 2, it is an enactment to which the Judicial Review Act does not apply. Secondly, my ruling is sought also on the more broadly based and discretionary grounds that there are other avenues for review which, in the interests of justice, ought to have been pursued by the applicant before seeking this review.

1
10

As he indicated, Mr Edwards did not appear when his name was called at the commencement of my dealing with the application. So, the application to strike out his application for judicial review is essentially uncontested.

20

The second respondent was not served with the applicant's application, but it ought to have been served. It was given notice of the proceedings by the first respondent and has appeared before me as it is entitled to appear to contest the application made by the applicant.

30

40

50

I am satisfied that the applicant, Mr Edwards, has been served with all the relevant material to be filed by the first respondent and has received a written outline of submissions made by the first respondent and, as well, the outline of submissions relied upon by the second respondent.

1
10

It is clear to me that the default judgment in the District Court was in proceedings which were conducted pursuant to the District Court Act and monitored by the application of the Uniform Civil Procedure Rules. I regard that as a proceeding which is not reviewable on a judicial review application.

20

But if there is error in so finding on the second ground there was ample opportunity for the applicant and Mrs Edwards to seek the alternative remedy to have set aside the default judgment. This would include making an application to the District Court to set it aside if there was any particular error in the proceeding to that time. The District Court has, in a number of decisions, indicated circumstances in which such a default judgment would be set aside. I am referred particularly to the decision of his Honour Judge White in the matter of Stephen Thomas v. Deputy Commissioner of Taxation, Number 303 of 2003, in which the following remarks were said at paragraph 19:

30

40

"I am sure that a default judgment obtained by means of a fraud on the Court constituted by the Registrar would require such judgment to be set aside ex debito justitiae. Equally if the Registrar made an error in giving judgment because of the evidence and material before him was insufficient to give him jurisdiction to give judgment, the defendant would have a right to have the default judgment set aside ex debito justitiae."

50

There are, indeed, other circumstances in which an application could be made to the District Court to set aside a default judgment entered by the Registrar. There would also be avenues of appeal to the Court of Appeal from any such judgment made on such an application.

1
10

The applicant consistently with the approach that he has adopted to the application for default judgment and, again, to the authority of this Court, asserts that there is no jurisdiction in either Court to deal with the matters raised against him.

20

In those circumstances, it is appropriate that I apply the provisions of section 13 of the Judicial Review Act 1991, which provides "if a provision is made by law, other than in this Act, under which an applicant is entitled to seek a review of the matter by another Court or a Tribunal, authority or person, the Court must dismiss the application if it is satisfied, having regard to the interests of justice that it should do so."

30
40

I am satisfied that the interests of justice require that this application be set aside on the grounds that there were other more appropriate, less expensive means of attending to the grievance which prompted the applicant to make this application.

50

The application is therefore dismissed.

...

1

HIS HONOUR: Each of the respondents seek an order for costs. Mr Edwards was informed of that intention of the parties and was informed by me before his departure from the courtroom at the call-over that such an outcome was likely. He does not appear to oppose the orders for costs. I see no reason why the respondents should not be awarded the costs which they seek.

10

My orders will be that the application for review is dismissed. The applicant, Michael Edwards, pay the costs of the first and second respondents, of and incidental to the application to be assessed on the standard basis.

20

30

40

50