SUPREME COURT OF QUEENSLAND

CITATION:	*Gilfoyle and Ors v Conde* [2010] QSC 14
PARTIES:	**JULIE GILFOYLE** (first applicant) **BURCHILL & HORSEY LAWYERS** (second applicant) **MYLTON BURNS** (third applicant) **McINNES WILSON LAWYERS** (fourth applicant) v **MILTON ARNOLDO CONDE** (respondent)
FILE NO/S:	BS No 13341 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 February 2010
DELIVERED AT:	Brisbane
HEARING DATE:	25 January 2010
JUDGE:	Byrne SJA
ORDER:	**1. The applicants have leave pursuant to s. 5 (2) of the *Vexatious Proceedings Act 2005* to bring this application.** **2. The following proceedings instituted by Milton Arnoldo Conde be stayed pursuant to s. 6 (2)(a) of the *Vexatious Proceedings Act 2005*:** **(a) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers (BS 13341 of 2009);** **(b) Milton Arnoldo Conde v Ross Dickson (BS 13445 of 2009);**

(c) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers (BS 17 of 2010);

(d) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers and Ross Dickson (BS 18 of 2010);

(e) Milton Arnoldo Conde v Ross Dickson (BS 165 of 2010);

(f) Milton Arnoldo Conde v Burchill & Horsey Lawyers and Julie Gilfoyle (CA 14595 of 2009).

3. Pursuant to s. 6 (2)(b) of the *Vexatious Proceedings Act 2005* ("the Act"), Milton Arnoldo Conde be and is hereby prohibited from instituting any proceeding (within the meaning of that word in the definition of "proceeding" in the dictionary in the schedule to the Act) in a court or tribunal of the State of Queensland without prior leave of a Judge of the Supreme Court of Queensland granted pursuant to Part 3 of the Act.

4. Milton Arnoldo Conde pay the applicants' costs of and incidental to the application to be assessed on an indemnity basis.

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – GENERALLY – *Vexatious Proceedings Act 2005* (Qld) – where person instituted numerous proceedings against lawyers and the Chief Justice – where claims have no reasonable prospect of success – whether orders should be made pursuant to s. 6 (2) staying proceedings and prohibiting a person from instituting proceedings in a Queensland court or tribunal

Vexatious Proceedings Act 2005 (Qld) ss. 5, 6

Bhamjee v Forsdick [2004] 1 WLR 88, considered
Brisbane City Council v Mathews [2006] QSC 025; No 729 of 2006, 9 February 2006, considered
Von Risefer v Permanent Trustee Company Limited [2005] 1 Qd R 681, considered

COUNSEL: R B Dickson for the first, second, third and fourth applicants

The respondent appeared on his own behalf

J M Horton for the Attorney-General as *amicus curiae*

SOLICITORS: McInnes Wilson Lawyers for the applicants

The respondent appeared on his own behalf

G R Cooper, Crown Solicitor for the Attorney-General as *amicus curiae*

Nature of the Application

[1] The applicants seek orders pursuant to s. 6(2) of the *Vexatious Proceedings Act 2005* ("the Act") staying proceedings Mr Conde has brought and also prohibiting him from instituting proceedings in a Queensland court or tribunal in future.

[2] The Honourable the Attorney-General appears as *amicus curiae*.

Opposition Lawyers

[3] Of the more than two dozen court proceedings Mr Conde has launched since May 2009, most have been brought against lawyers who acted for clients of theirs Mr Conde sued. The applicants fall into that class.

[4] In September 2008, the Sandgate Magistrates Court made a protection order against Mr Conde under the *Domestic and Family Violence Act 1989* on the application of a woman who had retained Burchill & Horsey Lawyers as her solicitors. Those lawyers employed Ms Gilfoyle, a solicitor. Ms Gilfoyle represented the woman in the case. On Mr Conde's appeal, on 20 May 2009, the District Court set the protection order aside. The appeal was allowed on the basis of apparent bias on the part of the Acting Magistrate.

[5] On 10 August 2009, by separate claims filed in this Court, Mr Conde sued Burchill & Horsey[1] and Ms Gilfoyle[2] claiming damages for malicious prosecution[3]. The statements of claim asserted many things, including that, in unspecified ways, Ms Gilfoyle had "wilfully…mislead" the Magistrates Court and maliciously committed a variety of criminal offences, including fabricating evidence, corruption of witnesses and conspiring to defeat justice. General, aggravated and punitive damages were sought – $900,000 against the firm; $450,000 against Ms Gilfoyle – "for injury to reputation…pain and suffering, distress, stress…mental suffering… injury to health…false imprisonment and pecuniary loss".

[6] Burchill & Horsey and Ms Gilfoyle instructed Mylton Burns, the principal of McInnes Wilson Lawyers, to defend them. Mr Burns wrote to Mr Conde drawing attention to his pleadings, claiming that the "wide range of assertions of mixed law and fact" they contained were susceptible of being struck out by court order. Mr Conde replied, refusing to amend. His letter also warned Mr Burns not to underestimate him: to do so, he wrote, would be the same "huge mistake" Ms Gilfoyle and Burchill & Horsey had made; adding, "if you do, then I am legally entitled to sue you and McInnes Wilson Lawyers for Malicious Prosecution".

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1 BS 8609 of 2009.

2 BS 8610 of 2009.

3 No filing fees were paid, Mr Conde having deposed to lack of means. This happens every time Mr Conde starts litigation.

[7] Conditional notices of intention to defend Mr Conde's claims were filed on behalf of the lawyers, disputing jurisdiction; and those defendants applied to have the claims dismissed.

[8] The Chief Justice determined those applications, ordering that the claims and statements of claim be struck out, and that Mr Conde pay costs. His Honour held that a large part of the claims was brought in contravention of s. 9(1) of the *Personal Injuries Proceedings Act 2002*. That provision requires that, before commencing litigation based on a damages claim founded on a liability for personal injury, written notice must be given to the prospective defendant, which Mr Conde had not done. His Honour also decided that the pleadings were in substantial disconformity with the *Uniform Civil Procedure Rules*, mentioning the allegations of criminal offences – all unsupported by stated grounds – and other instances of mere conclusory assertion, such as protestations of malicious conduct by the lawyers: they, too, were not supported by statements of material facts that could arguably sustain the contentions.

[9] Mr Conde had not paid costs ordered against him in District Court proceedings[4]. A bankruptcy notice issued for that judgment debt, and Mr Conde became a bankrupt on 7 October.

[10] Mr Conde appealed against the Chief Justice's orders. Burchill & Horsey and Ms Gilfoyle filed applications seeking security for the costs of the appeal, particulars of a contention in the Notice of Appeal that the orders were obtained by fraud, and that paragraphs of the Notice be struck out.

[11] Three days later, in this Court, Mr Conde filed a claim[5] against Ms Gilfoyle, Burchill & Horsey, Mr Burns and his firm seeking $4,000,000 against each for "…pain and suffering, distress, stress…mental suffering…family breakdown, huge pecuniary loss…job opportunities loss", alleging:

> "The Defendants Julie Gilfoyle (Solicitor), Burchill & Horsey Lawyers, Mylton Burns (Solicitor) and McInnes Wilson have engaged in an Abuse of Legal Process for improper purposes to gain a collateral advantage (that is, other than of winning the action) by fraudulently, unlawfully, willfully, knowingly, maliciously, premeditated, callously, contrary to the *Uniform Civil Procedure Rules* 1999 (UCPR) and with scant regards to the rules of pleading, on the 23 November 2009, filed in the Court of Appeal, Supreme Court of Queensland, Brisbane, the Abusive Application Number: CA11377/09 (BS8609/09 – BS8610/09), to obtain security for costs, exemption and extension to file and serve their submissions or to submit a draft to Appeal Book, further directions that the Appellant give more particulars regarding the allegations of fraud, and to struck out a lot paragraphs of the Notice of Appeal, costs of Appeal, costs of Application, and further orders, etc. The Defendants are and have wrongly or using *Rules 671, 761 and 72(1)* of the UCPR 1999, and inducing the Court, Judges or Judicial Officers to apply Misuse of Legal Powers."

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4 See para [23].

5 BS 13341 of 2009.

[12] Mr Dickson, a barrister, had been retained by the lawyers to argue the security for costs application. Two days after his outline of argument was filed, Mr Conde sued him[6]. Mr Dickson was alleged to have abused court process because of the outline of argument. General, ordinary, aggravated and punitive damages of $6,000,000 were sought "for injury to reputation and feelings, loss of reputation, humiliation, loss of dignity, loss of self-esteem, loss of enjoyment of life, pain and suffering…mental anguish, discomfort, loss of time, family breakdown, huge pecuniary loss, study loss and job opportunities loss".

[13] As with the proceedings against the other lawyers, the claim and statement of claim against Mr Dickson involved conclusory assertions of improper motive or other misconduct, unaccompanied by any statement of primary fact to indicate that there might be substance in any of the several scandalous assertions.

[14] Mr Conde was not finished.

Chief Justice sued

[15] The day before the application for security for costs of the appeal against the Chief Justice's orders was to be heard by a judge of appeal, Mr Conde sued[7] the Chief Justice claiming "misuse of legal powers" and "actual bad faith". Unsurprisingly, neither claim nor statement of claim mentioned a single fact that might by any possibility sustain any of the nasty assertions raised.

[16] On 1 December, Holmes JA ordered $25,000 security for costs of the appeal; that, after giving security, Mr Conde particularise the fraud alleged; that many paragraphs of the Notice be struck out; and that Mr Conde pay costs.

More Suits

[17] On Christmas Eve, Mr Conde appealed against the decision of Holmes JA[8].

[18] On that day, conditional notices of intention to defend were filed by the lawyers sued in 13341 and 13445 of 2009. Those notices prompted Mr Conde to launch fresh proceedings against the lawyers.

[19] Claim 17 of 2010 sought damages for the by now familiar indignities, personal injury and economic loss for having filed "the Abusive Conditional Notice of Intention to Defend" in 13341 of 2009. $4,000,000 was sought against each lawyer. The same day, Mr Conde filed another claim[9] against those defendants, this time adding Mr Dickson, claiming another $16,000,000 because the lawyers had delivered conditional notices of intention to defend in 8609 and 8610 of 2009. Two days later, Mr Conde sued[10] Mr Dickson for $6,000,000 simply because he had filed a conditional notice of intention to defend in 13445 of 2009.

Pattern

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6 BS 13445 of 2009.
7 BS 13461 of 2009.
8 CA 14595 of 2009.
9 BS 18 of 2010.
10 BS 165 of 2010.

[20] There is a pattern to Mr Conde's litigation within the last year. Typically, his claims:

- allege that lawyers who have acted for his opponents maliciously prosecuted him and abused court process;
- do not state facts that could arguably sustain the conclusory imputations of bad faith and other improper motive advanced;
- are centred on ordinary steps in litigation taken by lawyers apparently acting properly for clients: such as defending a case, applying to a court for orders, and enforcing a costs order by bankruptcy proceedings;
- involve extravagant, unparticularised claims for compensation for a broad range of grievances, personal injury and economic loss;
- have no reasonable prospect of success, on the face of the proceedings or on the evidence;[11] and
- do not conform with the *Uniform Civil Procedure Rules* governing pleadings.

Lawyers other than the Applicants

[21] A few examples drawn from other recent cases also illustrate such characteristics.

[22] Mr Conde started a proceeding in 2007 in the Queensland Anti-Discrimination Tribunal ("QADT") alleging that John Hunter had racially vilified him by offensive remarks. After a three day hearing in November 2008 before that tribunal constituted by Peter Roney, a barrister, the case was dismissed last May. Mr Conde's evidence about the remarks was not accepted.

[23] Mr Conde also sued Mr Hunter for defamation in the District Court. His amended statement of claim alleged that Mr Hunter had insulted him. Mr Hunter brought an application complaining of deficiencies in the pleading. On 14 November 2008, a judge struck it out, gave leave to re-plead, and ordered that Mr Conde pay costs[12].

[24] On 17 August 2009, in this Court, Mr Conde sued[13] Anthony Macklin, who was Mr Hunter's solicitor in the defamation litigation, claiming $550,000 "compensation for general, ordinary, aggravated, and punitive damages for injury to reputation and feelings, loss of reputation, harm caused such as: humiliation, loss of dignity, loss of self-esteem, loss of enjoyment of life, pain and suffering, distress, stress, emotional trauma, mental suffering, discomfort, injury to health, loss of time, and pecuniary loss". Assertions were made that "the defendant always acts unlawfully, wilfully, knowingly, recklessly, maliciously, by misleading the Courts and have (sic) committed the following offences…": and then reference is made to provisions of the *Criminal Code* relating to fraud, perjury, fabricating evidence, conspiracy to bring false accusations, conspiring to defeat justice, attempting to pervert justice, and false declarations. That day, by a separate claim, Mr Conde sued Connor Hunter Law Firm, which employed Mr Macklin, making substantially the same

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11 Mr Conde has not sought to prove facts that might suggest a reason to allow him to re-plead in any of the extant proceedings against the applicants. His recent proceedings are not just badly pleaded. Factually, they appear to lack arguable merit.

12 There was a further order that the defamation proceedings be stayed pending payment. On 13 October 2009, the Court of Appeal refused Mr Conde's application for an extension of time within which to appeal and ordered that he pay $11,000 costs.

13 BS 8910 of 2009.

allegations against that firm. Damages of more than $1,000,000 were sought. Mr Conde's other similar claim filed that day was against John Hunter. None of the claims had reasonable prospects of success. On 3 September, Mullins J dismissed them; and more costs orders were made against Mr Conde.

[25] A week later, Mr Conde filed another claim in this Court against Mr Macklin. On 23 September, he initiated claims against Connor Hunter and John Hunter for malicious prosecution. These proceedings were based on the fact that Mullins J had refused applications by Mr Macklin, Connor Hunter and Mr Hunter for orders under the Act. Douglas J struck those claims out, with costs against Mr Conde.

[26] On 19 October, Mr Conde sued[14] Mr Hunter, Mr Macklin, Connor Hunter and a barrister, Matthew Foley, for abuse of legal process. Those lawyers had advanced Mr Hunter's successful application in the District Court defamation case[15].

[27] On 4 November, Mr Conde sued[16] Mr Hunter and others, including a barrister, Craig Eberhardt, who had represented Mr Hunter in the QADT. Next day, another claim[17] was initiated against the same defendants because they had arranged for a defence to be delivered in proceeding 11721 of 2009.

[28] On 10 December, Mr Conde sued[18] Mr Eberhardt, Dan Rogers, a solicitor, and the firm which employed Mr Rogers, Robertson O'Gorman. For their temerity in representing clients in an apparently proper fashion, Mr Conde sought $15,000,000 for abuse of legal process. His complaint was that the lawyers had applied to strike out Mr Conde's 4 November claim. His pleading was struck out by Margaret Wilson J on 20 January; and another costs order was made against Mr Conde.

[29] In yet another unmeritorious claim, Mr Conde sued Mr Roney because of his decision when presiding in the QADT. Mr Conde was ordered to pay costs in respect of that litigation.

Frequently vexatious claims

[30] Where a person "has frequently instituted or conducted vexatious proceedings in Australia", s. 6 (2) of the Act authorises the making of the following orders:

> "(a) an order staying all or part of any proceeding in Queensland already instituted by the person;
> (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland;
> (c) any other order the Court considers appropriate in relation to the person."

By the definition in the Schedule, "vexatious proceeding" "includes –

[14] BS 11721 of 2009.
[15] The costs order against Mr Conde was the foundation of the sequestration order made in respect of Mr Conde's estate.
[16] BS 12325 of 2009.
[17] That hopeless claim was struck out by Douglas J on 16 December, with costs against Mr Conde on an indemnity basis.
[18] BS 13994 of 2009.

(a) a proceeding that is an abuse of the process of a court or tribunal; and
(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
(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 achieve another wrongful purpose".

[31] Mr Conde has frequently instituted proceedings in Australia. And those proceedings to which reference has been made, with one exception[19], all look to have been instituted without reasonable ground[20].

Section 5(2) Leave

[32] This is a proper case to grant the applicants leave to bring this application[21]. To do so advances the public interest.

Staying Pending Claims

[33] The prosecution of the five originating proceedings on foot against the applicants and Mr Dickson should be stayed. Those cases have no reasonable prospect of success.

Staying Appeal

[34] The appeal against Holmes JA's decision is not shown to have a real prospect of success either. The decision was a discretionary one concerning matters of practice. And Mr Conde has not even attempted to identify a fairly arguable ground of appeal. That appeal, too, should be stayed, pursuant to the power conferred by s. 6 (2)(b)[22].

Preventing more Abuses

[35] The high probability is that Mr Conde will, unless restrained, commence more vexatious litigation. His propensity to do so is amply demonstrated by the course of events related. Moreover, he made his inclinations clear on the hearing of this application. He considers it right, he indicated, to initiate new proceedings against opposing lawyers if, in litigation Mr Conde brings against them or their clients, they take a step with which he disagrees.[23]

[36] And the history demonstrates that there is every likelihood that he would, unless restrained, start vexatious proceedings against others not yet sued.

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[19] The successful appeal to the District Court against the protection order.
[20] In view of this conclusion, it is unnecessary to decide whether proceedings were "instituted to…annoy".
[21] See s. 5 (2) of the Act; cf *Brisbane City Council v Mathews* [2006] QSC 025 at p 9.
[22] That "proceeding" is defined to include (see para (c)) "any calling into question of the decision…whether by appeal, challenge, review or in another way".
[23] T 1-80; ll 10-58.

[37] The serious mischief[24] that Mr Conde would cause absent an order pursuant to s. 6 (2)(b) generally prohibiting him from instituting any proceedings requires that such an order be made, with the consequences for which Part 3 of the Act provides.

Disposition

[38] Subject to anything further the parties may say concerning the form of order,

the Court orders that:

1. The applicants have leave pursuant to s. 5 (2) of the *Vexatious Proceedings Act 2005* to bring this application.

2. The following proceedings instituted by Milton Arnoldo Conde be stayed pursuant to s. 6 (2)(a) of the *Vexatious Proceedings Act 2005*:

   (a) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers (BS 13341 of 2009);

   (b) Milton Arnoldo Conde v Ross Dickson (BS 13445 of 2009);

   (c) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers (BS 17 of 2010);

   (d) Milton Arnoldo Conde v Julie Gilfoyle and Burchill & Horsey Lawyers and Mylton Burns and McInness Wilson Lawyers and Ross Dickson (BS 18 of 2010);

   (e) Milton Arnoldo Conde v Ross Dickson (BS 165 of 2010);

   (f) Milton Arnoldo Conde v Burchill & Horsey Lawyers and Julie Gilfoyle (CA 14595 of 2009).

3. Pursuant to s. 6 (2)(b) of the *Vexatious Proceedings Act 2005* (“the Act”), Milton Arnoldo Conde be and is hereby prohibited from instituting any proceeding (within the meaning of that word in the definition of “proceeding” in the dictionary in the schedule to the Act) in a court or tribunal of the State of Queensland without prior leave of a Judge of the Supreme Court of Queensland granted pursuant to Part 3 of the Act.

4. Milton Arnoldo Conde pay the applicants’ costs of and incidental to the application to be assessed on an indemnity basis.

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[24] cf *Bhamjee v Forsdick* [2004] 1 WLR 88; *Von Risefer v Permanent Trustee Company Limited* [2005] 1 Qd R 681, 687-688.