SUPREME COURT OF QUEENSLAND

CITATION:	*Rado v Golden Casket* [2021] QSC 20
PARTIES:	**KATHY RADO** (applicant) **v** **GOLDEN CASKET** (respondent)
FILE NO/S:	SC No 709 of 2020
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	4 February 2021
DELIVERED AT:	Cairns
HEARING DATE:	3 February 2021
JUDGE:	Henry J
ORDER:	**1. Application dismissed.** **2. The applicant will pay the respondent's costs of the application to be assessed on the standard basis if not agreed.**
CATCHWORDS:	EQUITY – EQUITABLE REMEDIES – GENERALLY - where a division 1 lottery prize has remained unclaimed since 2014 – where the applicant claimed that she purchased the winning ticket but subsequently lost it – where s 131(5) *Lotteries Act 1997* (Qld) confers a discretion on the respondent to pay if satisfied the claimant is entitled to the prize – where the respondent was not satisfied and did not pay the applicant – where seven years later the applicant made an application for disclosure of time-date-type of ticket from the respondent – whether there was an identified cause of action – whether the exercise of the equitable jurisdiction to make orders for preliminary discovery was justified *Lotteries Act* 1997 (Qld), s 131(5) *Uniform Civil Procedure Rules* 1999 (Qld), r 14 *Idoport Pty Ltd v National Australia Bank Ltd* [2004] NSWSC 695, cited *Norwich Pharmacal Co. v Customs and Excise Commissioners* [1974] AC 133, applied *QNI Metals Pty Ltd v Vannin Capital Operations Ltd* [2020] QSC 292, cited

Re Pyne [1997] 1 Qd R 326, considered

COUNSEL:	The applicant appeared on her own behalf F Lubette for respondent
SOLICITORS:	The applicant appeared on her own behalf King & Wood Mallesons for the respondent

HENRY J: The lotto draw on Wednesday 22 January 2014 identified two division 1 winning tickets, each with a prize of $2 million. One of those prizes, relating to a winning ticket sold in Cairns, has not been paid out.

The applicant claimed to the respondent that she purchased the winning ticket, providing information about the circumstances and timeframe within which she alleges she purchased the winning ticket. The respondent did not pay and explained its searches had been unsuccessful in identifying her as the prize-winning lottery ticket.

Such a decision was, on the face of it, open to the respondent to make. In circumstances where a purported claimant has not been paid, for instance, because the claimant cannot produce the winning ticket, s 131(5) *Lotteries Act 1997* (Qld) confers a discretion on the respondent to pay if satisfied the claimant is entitled to the prize. Evidently, the respondent was not so satisfied.

Ms Rado requested a review of the respondent's decision via the Queensland Office of Liquor and Gaming Regulation. By correspondence received 9 September 2014, that office advised the respondent the following:

> "I refer to a request by Ms Kathy Rado to review your decision to refuse her payment of the first division prize for $2 million in Wednesday Gold Lotto Draw 3315. Following an investigation to Ms Rado's claim, it was determined to deny her claim. It is noted that the purchase details supplied by Ms Rado do not correlate with the purchase details of the unclaimed winning entry. Whilst this office does not support Ms Rado's claim, she has been advised that these findings do not preclude her from seeking her own, independent legal advice in this matter."

Many years later on 16 December 2020, the applicant filed the present application in Supreme Court of Cairns. There were amendments made to it. Setting aside the seeking of an order for costs, the substantive order sought in the application as initially filed on 16 December 2020 was:

> "The "secret" disclosure of time-date-type of ticket so I can check with what I have always stated."

An amended originating application was filed, it appears, on 12 January 2021, adding to the end of the previous words of the substantive orders sought, the words "and thereby be entitled to the win of draw 331". A similar version of that originating application was filed, it seems, on the 13th of January 2021. The reference to 331 appears to be missing the fourth number, number 5, apparently because of it being lost at the edge of the page, presumably through photocopying.

Another originating application was filed on 1 February 2021, varying the substantive order formerly sought to now read:

> "(As a course of action) I am seeking the item known as "the secret" which being, in court terms, is the disclosure of lotto data being the time-date-type of ticket/pick/purchase of the winning lotto ticket of draw 3315. This being so I can check with what I have always stated with regards to this draw, and then be entitled, due to matching evidence – finally, the entitlement to the win of draw 3315. That I am the rightful winner and only winner."

The more recent change in wording may have been prompted by a letter the respondent sent to the applicant on 27 January 2021 explaining the various ways in which the application was ill-fated. This included, as the respondent put it:

> "As far as we can tell you have not articulated any reasonable legal basis for a possible cause of action against Golden Casket that would allow the court to order some form of pre-litigation disclosure of information sought."

That observation is correct. An order sought from the court must have some foundation in law. Where the court's order is sought in the civil jurisdiction via an application rather than a claim, the application may itself be filed as part of a claim. That is, as part of a cause of action pursued by the filing of a claim and a company's statement of claim in which the case is pleaded. Some applications may pursue a form of relief which can be resolved without the accompanying pursuit of a claim, but it must seek a pathway to relief recognised by law.

The form of relief sought by the applicant is the disclosure of the type and time and date of purchase of the winning ticket. The wording of the latter half of the substantive order sought in the current version of the originating application seems to be explanatory, rather than seeking some second form of relief. It will be recalled those latter words were:

> "This being so I can check with what I have always stated with regards to this draw, and then be entitled, due to matching evidence – finally, the entitlement to the win of draw 3351. That I am the rightful winner and only winner."

My impression of these words is that they were merely intended to explain the purpose of the exercise, namely, to gather information to show Ms Rado was the purchaser of the winning ticket and thus, the rightful winner. However if I am wrong about that, and the latter words of the order sought are intended to constitute relief in the form of a finding such as a declaration that Ms Rado is the rightful winner, in the circumstances of this case the only proper pathway to such relief in any event would be through the pursuit of a cause of action, not by an application of the present kind.

I am conscious that r 14 *Uniform Civil Procedure Rules* permits me to order an existing application to continue as if started by claim if it should have been started by claim, but the application and the material filed does not support the conclusion the application should have been started by claim. The applicant does not seek relief which can sensibly support the view that it is an attempt to, in substance, seek relief pursuant to a cause of action. At best, it is an attempt to seek relief preliminary to a prospective pursuit of a cause of action, albeit a cause of action not identified in the application.

The applicant presumably added at the commencement of the substantive relief sought, the words "as a course of action", apparently misspelling the word "cause", intending to represent that the relief she was seeking was a cause of action. It is not. To the extent any particular cause of action comes to mind in respect of a dispute of this kind, it is likely in contract. Had the applicant filed a claim in contract against the respondent in time and in proper form then the information sought, that is to say the disclosure of records of the kind sought, would likely be relevant and any dispute about disclosure of the information could be the subject of an application filed within that proceeding for the court's determination.

Applying for such disclosure at a time prior to the pursuit of the cause of action to which it potentially relates is exceptional. The court does retain equitable jurisdiction to make

orders for preliminary discovery known as Norwich Pharmacal orders – see *Norwich Pharmacal Co. v Customs and Excise Commissioners* [1974] AC 133. As was observed in *Re Pyne* [1997] 1 Qd R 326 at 329:

> "[T]he Norwich Pharmacal type of case was sufficient to justify preliminary discovery if the applicant has a cause of action (whether or not he intends to pursue it) and that discovery is necessary to enable justice to be done."

A quintessential example of such a form of relief is a case in which the plaintiff has a cause of action to pursue but has difficulty in identifying the correct corporate respondent against whom the plaintiff's claim should be filed. That kind of case demonstrates there can exist cases where an applicant would be well-positioned to contend that the remedy is necessary to enable justice to be done. However, in this case it is difficult to see how the relief is necessary to enable justice to be done, for it is not and never has been essential to enable Ms Rado to claim, whether in contract or some other cause of action, that which may found her alleged entitlement to be paid the lotto prize.

I accept the information sought by the application might be of some assistance in the pursuit of some future claim, just indeed as it may be of some assistance in the resistance of it. However, it is clear from Ms Rado's submissions that it is not at all essential to the pursuit of a claim for she says she has witnesses and other evidence which support her allegation that she was the purchaser of the winning ticket. Having failed in her attempts to claim the prize from the respondent and in her review of that decision, it has long been open to her, equipped, as she asserts, with strong evidence in support of her position, to initiate a claim. That is to say, for her to sue the respondent in a cause of action, such as breach of contract, claiming some form of breach of obligation to pay the prize to her. She has never done so

In her submissions, Ms Rado disavowed a commercial motivation in the initiation of her application and, in effect, represented her primary motivation was her desire for vindication; her desire to find out and confirm whether she is right. But whether it be a fishing expedition or an application for the purpose of ingratiating curiosity, neither such purpose is sufficient to justify the exercise of the equitable jurisdiction to make orders for preliminary discovery. As was observed by Bond J in *QNI Metals Pty Ltd v Vannin Capital Operations Ltd* [2020] QSC 292 at [49]:

> "Preliminary discovery in equity cannot be permitted to be used for a fishing expedition."

Further, as was observed by Einsten J in *Idoport Pty Ltd v National Australia Bank Ltd* [2004] NSWSC 695 at [130]:

> "Preliminary discovery should not be ordered merely for the ingratiation of curiosity."

In my conclusion then, there is no proper basis to grant the application. To remove doubt, my conclusion in no way reflects any conclusion as to whether Ms Rado was or was not the winner of the unclaimed prize. Further, my conclusion makes it unnecessary to address the significance – potentially, the adverse significance to Ms Rado's position – of limitation periods applicable to any prospective cause of action.

My order is application dismissed.

Now, moving to hear the parties as to costs, I record I was informed, after I reserved this decision, of the filing of some additional material and the receipt of some additional email correspondence to my Associate. It is not my practice to have regard to any attempt to file material when a matter is reserved, nor is it my practice, indeed, my Associate is positively instructed about this, to be informed of the substance of attempts at ex parte communication with me, particularly while a case is reserved. Accordingly, I make plain if there were any additional material filed once I reserved my decision, indicating that it would only be reserved overnight, and in respect of any such emails as may have been directed to my Associate, I have sighted none of that material in reaching my conclusions.

I will hear the parties as to costs.

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My order is the applicant will pay the respondent's costs of the application to be assessed on the standard basis if not agreed.