
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : MAY -v- THE STATE OF WESTERN AUSTRALIA
[2015] WASC 24

CORAM : MITCHELL J

HEARD : 22 JANUARY 2015

DELIVERED : 22 JANUARY 2015

PUBLISHED : 23 JANUARY 2015

FILE NO/S : CIV 1080 of 2015

BETWEEN : MARIANA ELIZABETH MAY
Plaintiff

AND

THE STATE OF WESTERN AUSTRALIA
Defendant

Catchwords:

Application for leave to issue proceedings - Application for injunctive relief -
Turns on own facts

Legislation:

Animal Welfare Act 2002 (WA), s 5, s 33, s 44
Associations Incorporation Act 1987 (WA), s 14, s 15
Rules of the Supreme Court 1971 (WA), O 67 r 5

Result:

Application dismissed

Category: B

Representation:

Counsel:

Plaintiff	:	In person
Defendant	:	No appearance

<i>Amicus Curiae</i>	:	Mr E Greaves
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Solicitors:

Plaintiff	:	In person
Defendant	:	No appearance

<i>Amicus Curiae</i>	:	Squire Patton Boggs
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Case(s) referred to in judgment(s):

Castlemaine Tooheys Ltd v South Australia (1986) 161 CLR 148
Petelin v Cullen (1975) 132 CLR 355

MITCHELL J:

(This judgment was delivered extemporaneously on 22 January 2015 and has been edited from the transcript.)

1 This is the plaintiff's application for leave to file an originating summons and for injunctive relief. Leave is required because a registrar of this court refused to file or issue the summons on the ground that it appeared to the registrar to be an abuse of the process of the court or a frivolous or vexatious proceeding.

2 Because she is a proposed defendant to the proceedings which the plaintiff seeks leave to commence, and because injunctive relief is sought against her, I granted leave to counsel for Ms Amanda Swift to appear in the proceedings before me.

3 But because the matter was listed urgently before me, in circumstances where the applicant was self-represented and was concerned that her animals were about to be euthanised, I proceeded with some informality and allowed factual material to be handed up from the Bar table and for the plaintiff to make factual statements which are not yet supported by any evidence in admissible form.

Facts

4 From that material it appears uncontentious that, in December 2012, Ms Swift, purportedly acting as an inspector under the *Animal Welfare Act 2002* (WA), seized 138 animals from properties belonging to Ms May.

5 Subsequently, criminal proceedings were commenced in the Magistrates Court by an inspector of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) against Ms May for offences against the *Animal Welfare Act* in relation to the seized animals.

6 A number of those charges were subsequently discontinued and 13 charges remain on foot. In addition, Ms Swift has commenced civil proceedings against Ms May in the Magistrates Court, seeking an order for forfeiture of the seized animals under s 44(8) of the *Animal Welfare Act*.

7 Ms May has also commenced proceedings against the RSPCA in the State Administrative Tribunal seeking the return of the animals.

8 On or about 10 November 2014, the applicant signed a deed of settlement to which Ms Swift and the RSPCA were also parties (although

I note that the copy of the deed provided to me was not in fact executed by either Ms Swift or the RSPCA). It was signed by the applicant, and before me the applicant ultimately accepted that her signature was marked on the deed.

- 9 The deed sets out a process for resolving the proceedings on foot when the deed was executed and attached a number of minutes of consent orders in the Magistrates Court which had been signed by the applicant, one of which included an order for forfeiture of certain animals.

Validity of the deed

- 10 The applicant asserted to me that the settlement deed was invalid and unenforceable for three reasons.

- 11 First, she said she did not understand what she was signing when she executed the settlement deed.

- 12 Secondly, she contended that neither the RSPCA nor Ms Swift had the capacity to enter into the deed.

- 13 Thirdly, she contended that the deed sought to remove proceedings from the jurisdiction of the Magistrates Court.

- 14 In my view, there is no arguable basis for either the second or third contention.

- 15 As to the second contention, s 5 of the *Animal Welfare Act* recognises the existence of the RSPCA as an incorporated association. Section 33 of the *Animal Welfare Act* provides for members of staff of the RSPCA to be appointed as inspectors under that Act. Ms Swift claims to be an inspector appointed in that manner and there is no evidence before me to suggest that she is not.

- 16 In any event, Ms Swift, as a natural person, has the capacity to enter into an agreement compromising pending legal proceedings brought by or against her.

- 17 As an incorporated association, the RSPCA has a similar contractual capacity under s 14 and s 15 of the *Associations Incorporation Act 1987* (WA).

- 18 As to the applicant's third contention, there is nothing in the settlement deed which purports to deprive the Magistrates Court of any of its jurisdiction. While the deed requires the parties to take certain steps in

pending proceedings, including to consent to certain orders, it does not preclude the Magistrates Court from doing anything.

19 Even when presented with the consent of the parties to the proceeding, it is a matter for the court to determine what orders, if any, will be made. The deed does not purport to deprive the Magistrates Court of that capacity.

20 The applicant's first contention, that the deed is unenforceable because she did not understand what she was signing, would have greater merit if established by admissible evidence. Such a case would still, however, face substantial challenges as the non est factum defence is available only in the rarest of cases.

21 As the High Court noted in *Petelin v Cullen* (1975) 132 CLR 355:

The class of persons who can avail themselves of the defence is limited. It is available to those who are unable to read owing to blindness or illiteracy and who must rely on others for advice as to what they are signing; it is also available to those who through no fault of their own are unable to have any understanding of the purport of a particular document. To make out the defence a defendant must show that he signed the document in the belief that it was radically different from what it was in fact and that, at least as against innocent persons, his failure to read and understand it was not due to carelessness on his part. Finally, it is accepted that there is a heavy onus on a defendant who seeks to establish the defence (359).

22 There has been no indication that the other parties to the deed knew of the circumstance in which the applicant claims to have signed the documents or did anything to induce her belief that the document was other than that which, on its face, the deed purported to be, so as to deprive Ms Swift or the RSPCA of the status of 'innocent parties'. The applicant also faces a substantial hurdle in showing that she did not exhibit carelessness disqualifying her from the defence when she signed a document without reading it.

Injunction

23 Against that background, I turn to deal with the plaintiff's applications before me today. I will begin by considering the application for injunctive relief, which, in my view, should be refused for the following reasons.

24 Courts dealing with applications for interlocutory injunctions commonly consider whether the applicant has established a serious question to be tried (in the sense that if the evidence remains as it is there

is a probability that, at the trial of the action, the applicant will be held entitled to relief); whether the applicant will suffer irreparable injury for which damages will not be an adequate remedy; and whether the balance of convenience favours the granting of an injunction: see *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148, 153.

25 As the authors of *Civil Procedure in Western Australia* note at [52.0.3], those factors are all reflections of what is necessary to prevent injustice at the interlocutory stage of an action or other proceeding and decisions which illustrate the manner in which a discretion is commonly exercised in particular categories of cases should not be regarded as laying down rules applicable to all cases in those or other categories.

26 The applicant has expressed a concern that her seized animals will be killed tomorrow if injunctive relief is not now granted. She has not produced any evidence beyond her own assertion to show that this may occur.

27 Counsel for Ms Swift indicates that tomorrow is the last day for the applicant to comply with a default notice issued under the settlement deed. That notice recites certain alleged failures by the applicant to comply with the terms of the deed and states that certain action will be taken if the default is not remedied.

28 The proposed action in response to the default includes the filing of a signed minute of consent and the moving of the Magistrates Court by counsel for Ms Swift for orders in terms of that minute. One of the orders in that minute of consent is an order for forfeiture of animals under the *Animal Welfare Act*.

29 Counsel for Ms Swift has indicated that neither she nor the RSPCA intend to take any action beyond continuing to hold the seized animals unless a forfeiture order is obtained. There is no evidence or other material before me to suggest otherwise.

30 It is significant that the source of the right asserted by Ms Swift to deal with the animals is the *Animal Welfare Act* and a forfeiture order which she hopes to secure from the Magistrates Court. Although she plans to tender the minute of consent to persuade the Magistrates Court to make the order, Ms Swift does not rely on the terms of the deed to authorise her to deal with the seized animals.

31 When orders are moved and the minutes of consent tendered, it will be for the Magistrates Court to decide what orders should be made. It will

be open to the applicant to attend and seek to persuade the Magistrates Court that orders should not be made despite her having signed the minute of consent. Whether or not that submission was accepted would be a matter for the Magistrates Court in the exercise of its jurisdiction under the *Animal Welfare Act*.

32 In my view, there is no arguable basis on which I should pre-empt the exercise by the Magistrates Court of its powers and jurisdiction under that Act. Any apprehended action by Ms Swift or the RSPCA will be taken only on the authority of an order of the Magistrates Court.

33 I do not see any basis on which I should restrain Ms Swift from the opportunity of seeking that authority from a court which will decide the matter according to law and be subject to appeal if it does otherwise.

34 Therefore, in my view, the plaintiff has not established a serious question to be tried or that the balance of convenience favours the grant of injunctive relief in circumstances where the jurisdiction of the Magistrates Court remains to be exercised.

Leave to file originating summons

35 I turn then to the application for leave to file the originating summons dated 16 January 2015. In my view, the registrar was correct to reject that document for filing.

36 The originating summons proposes action against the State and the Minister for Agriculture, neither of whom are parties to the settlement deed, without any arguable legal basis which is evident to me.

37 Further, pars 2 - 8 of the originating summons contain a number of allegations which do not appear to have any basis at law or on the facts as the applicant has described them to me.

38 Those paragraphs of the originating summons also make a number of scandalous allegations in rather colourful language without any evidential basis.

39 Paragraph 1 of the originating summons comes closest to describing a recognisable cause of action, being that the settlement deed is unenforceable by reason of 'fraud, duress and unconscionability of the defendant'. Which defendant is not specified. Further, it is pleaded that such duress was wielded by the defendants through the plaintiff's solicitors.

40 The facts as related by the plaintiff do not show any reasonable basis for asserting that the defendants or one of them acted through the plaintiff's solicitor or that they otherwise acted fraudulently or unconscionably. The originating summons does not actually plead a case of non est factum or that the applicant did not know what she was signing when she applied her signature to the deed.

41 The registrar refused to accept the document for filing under O 67 r 5 of the *Rules of the Supreme Court 1971* (WA) which relevantly provides that if a process which is presented for filing appears to the registrar to be an abuse of process of the court or a frivolous or vexatious proceeding, the registrar shall refuse to file or issue such process without the leave of a judge first had and obtained by the parties seeking to file or issue it.

42 It has been said that the rule reinforces the inherent power of the court to protect its own processes from unwarranted wastage of time and resources and to avoid loss caused to those who have to face actions which lack any substance. Proceedings will constitute an abuse of process if they can be clearly seen to be foredoomed to fail: see *Civil Procedure in Western Australia* [67.5.1]. In my view, the proceedings proposed by this originating summons (which do not actually include a claim based on the non est factum rule) can be seen to be doomed to fail.

43 I have considered whether the applicant should be given leave to amend the document to plead a new and more confined case that the deed is unenforceable because she did not know what she was signing.

44 However, in my view, there is no real benefit in adopting that approach. My decision refusing leave to file the originating summons dated 16 January 2015 does not preclude the applicant from filing a different originating process in proper form which confines itself to asserting a reasonably arguable cause of action. If such a document was presented for filing, there is no reason to think that the registrar would not accept it.

45 For these reasons, I refuse leave to file the originating summons dated 16 January 2015 and order that the application for injunctive and other relief referred to in the originating motion dated 20 January 2015 be dismissed.