

HIGH COURT OF AUSTRALIA

BEECH-JONES J

IN THE MATTER OF AN APPLICATION BY PHILIP
PROIETTI FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 13
Date of Judgment: 29 February 2024
S23 of 2024

ORDER

- The application for leave to file or issue the document entitled "Application" dated 15 January 2024 is dismissed without an oral hearing.*

Representation

The applicant is unrepresented

1 BEECH-JONES J. This is an application for leave to issue or file an application
for a constitutional or other writ. For the reasons that follow, leave should be
refused.

2 On or about 15 January 2024, the applicant, Philip Proietti, sought to file an
application for a constitutional or other writ. On 24 January 2024, Edelman J
directed the Registrar of this Court to refuse to issue or file that document without
the leave of a Justice first had and obtained by the party seeking to issue or file it.¹
Mr Proietti now seeks that leave. He relies on an affidavit that he affirmed on
5 February 2024.

Background

3 On 28 November 2019, Mr Proietti's mother, Miranda Proietti, passed
away. By a will dated 17 March 2016, she devised and bequeathed her entire estate
on trust to be divided equally between Mr Proietti and his brother, Peter Proietti.
The estate included a property in Marsfield. Probate of that will in common form
was granted to Mr Proietti and Peter Proietti in 2020. A will executed by Ms
Proietti in 2015 had made a similar provision but also included a stipulation that
Mr Proietti be allowed to live at the Marsfield property for four years after her
death.

4 In January 2022, Peter Proietti commenced proceedings in the Supreme
Court of New South Wales seeking orders under s 66G of the *Conveyancing Act*
1919 (NSW) that trustees be appointed to sell the Marsfield property. Mr Proietti
sought to resist those orders on various bases that are unnecessary to describe. On
30 June 2022, Kunc J published reasons for granting Peter Proietti's application.²

5 Mr Proietti appealed that decision to the Court of Appeal of the Supreme
Court of New South Wales. His grounds of appeal were mostly comprised of
procedural complaints. On 17 November 2022, his appeal was dismissed.³

6 Mr Proietti applied to this Court for special leave to appeal the Court of
Appeal's decision. On 9 March 2023, his application was dismissed by Gordon and

1 *High Court Rules 2004* (Cth), r 6.07.2.

2 *Proietti v Proietti* [2022] NSWSC 875.

3 *Proietti v Proietti* [2022] NSWCA 234.

Steward JJ.⁴ Their Honours observed, inter alia, that the Court of Appeal's decision was "plainly correct".⁵

The application

7 Mr Proietti's application dated 15 January 2024 seeks orders setting aside this Court's dismissal of his application for special leave to appeal and the orders made by the Court of Appeal consequential on that Court dismissing his appeal. He also seeks a stay of the orders made by Kunc J.

8 The discretion conferred by r 6.07.3 of the *High Court Rules 2004* (Cth) to refuse leave to issue or file a document will ordinarily be exercised where the document appears "on its face" to be "an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".⁶ The concept of abuse of process includes "an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable".⁷ The exercise of the discretion to refuse leave is appropriate "only in the clearest of cases".⁸

9 The documentary material filed by Mr Proietti in support of his present application does no more than seek to re-agitate the merits of his application for special leave to appeal. His complaints about the Court of Appeal's decision were considered by this Court when it dismissed that application. Mr Proietti does not raise any arguable basis for re-agitating that application. His application is manifestly untenable.

10 The application for leave to issue or file the document entitled "Application" dated 15 January 2024 is dismissed without an oral hearing.

4 *Proietti v Proietti* [2023] HCASL 15.

5 *Proietti v Proietti* [2023] HCASL 15 at [1].

6 *High Court Rules* (Cth), r 6.07.1.

7 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.

8 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.