

# HIGH COURT OF AUSTRALIA

JAGOT J

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IN THE MATTER OF AN APPLICATION BY  
SUSAN JANE SCOTT FOR LEAVE TO ISSUE OR  
FILE

[2024] HCASJ 23  
*Date of Judgment: 14 June 2024*  
A6 of 2024

## ORDER

- The application filed on 10 May 2024 for leave to issue or file an application for a constitutional or other writ be dismissed.*

## Representation

The applicant is unrepresented



1 JAGOT J. On 24 April 2024, Gordon J made a direction under r 6.07.2 of the *High Court Rules 2004* (Cth) that the Registrar refuse to issue or file an application by the applicant in this matter for a constitutional or other writ without leave of a Justice first had and obtained. On 10 May 2024, pursuant to r 6.07.3 of the *High Court Rules*, the applicant filed an ex parte application seeking such leave. The ex parte application is supported by an affidavit filed by the applicant on 11 May 2024. These reasons explain why the ex parte application for leave is dismissed.

2 The application for a constitutional or other writ for which leave to file is sought nominates five proposed defendants, comprising three justices of the Federal Court of Australia, a Registrar of the Federal Circuit Court of Australia, and an incorporated legal practice, Nimlaw Pty Ltd ("Nimlaw").

3 The background to this application concerns a dispute between the applicant and Nimlaw about the liability of the applicant to pay Nimlaw for legal services provided to her. This dispute resulted in a judgment debt being entered against the applicant in favour of Nimlaw in the District Court of South Australia in June 2023 and the service of a bankruptcy notice on the applicant by Nimlaw in July 2023. The applicant subsequently filed an originating application in the Federal Court of Australia seeking to set aside the bankruptcy notice. Charlesworth J dismissed that originating application on 15 November 2023, her Honour stating that although the applicant's "sense of grievance [was] a genuine one ... the grievances to which [the applicant referred were] not grievances that affect[ed] the private rights and obligations as between her and [Nimlaw]".<sup>1</sup> On 19 November 2023, the applicant lodged a notice of appeal against the dismissal of the originating application and sought, in a separate interlocutory application, a stay of the bankruptcy notice until the determination of that appeal. O'Bryan J dismissed the interlocutory application on 24 November 2023 on the basis that the grounds of appeal had "no prospects of success".<sup>2</sup> On 30 November 2023, the applicant lodged a further originating application seeking leave to appeal against O'Bryan J's orders dismissing the interlocutory application for a stay of the bankruptcy notice. On 25 January 2024, McElwaine J dismissed this further originating application on the basis that the applicant's contentions did "not identify why O'Bryan J erred in his reasoning".<sup>3</sup> On 16 February 2024 McElwaine J also dismissed the applicant's appeal against the earlier decision of 15 November 2023 (which had dismissed the application to set aside the bankruptcy notice).

4 In the application for a constitutional or other writ proposed to be filed in this Court, the applicant seeks multiple writs of certiorari, as well as writs of

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1 *Scott v Nimlaw Pty Ltd* [2023] FCA 1420 at [22].

2 *Scott v Nimlaw Pty Ltd [No 2]* [2023] FCA 1472 at [16].

3 *Scott v Nimlaw Pty Ltd* [2024] FCA 26 at [9].

mandamus, quashing these previous decisions. As best as it can be ascertained from the material filed before this Court, the application relies on generalised complaints such as a "denial of [her] legal rights" and a "refusal of procedural fairness ... against [her] reasonable and legitimate expectations, against the incompatibility doctrine of the constitutional judicial role and as actual bias". The applicant also describes the decisions below as involving an "abuse of power as errors of fact, law and equity" and asserts that the "actions of the Federal Court [represent] the abrogation of their constitutional role ... to uphold the constitution and the [r]ule of [l]aw". None of these contentions, or any of the material in the application or supporting affidavit (which, including its exhibits, totals over 1000 pages), identify any legal error in the decisions below or advance any legally intelligible basis for the relief sought. The application, on its face, exposes that it is both frivolous and vexatious and, accordingly, an abuse of process.

- 5 The relevant principles governing the discretion to refuse leave to issue or file a document subject to the direction of a Justice under r 6.07.2 were outlined by Gageler J in *Re Young*, in which his Honour stated:<sup>4</sup>

"The discretion to refuse leave on an application made under r 6.07.3 of the *High Court Rules* falls to be exercised by a Justice by reference to the same criteria as those which inform the action of the Registrar under r 6.07.1. The discretion will ordinarily be exercised to refuse leave to issue or file a document where the document appears to the Justice determining the application '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.

...

The concept of abuse of process cannot be confined within closed categories. Sufficiently for present purposes, it encompasses an attempt to invoke the original or appellate jurisdiction of the High Court *on a basis that is confused or manifestly untenable*."

- 6 Consistent with these principles, the ex parte application filed on 10 May 2024 for leave to issue or file an application for a constitutional or other writ must be dismissed.

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4 (2020) 94 ALJR 448 at 451 [11]-[13]; 376 ALR 567 at 570 (emphasis added).