HIGH COURT OF AUSTRALIA

BEECH-JONES J

QIZHI CHEN   **PLAINTIFF**

AND

A JUDGE OF THE FEDERAL COURT OF AUSTRALIA & ORS   **DEFENDANTS**

[2024] HCASJ 24
Date of Judgment: 14 June 2024
M3 of 2024

ORDERS

1. *To the extent necessary, the order made on 24 May 2024 be amended pursuant to r 3.01.2 of the High Court Rules 2004 (Cth) so that it states "Determined pursuant to Rule 25.09.1" instead of "Determined pursuant to Rule 13.03.1".*
2. *The plaintiff is to pay the second to fourth defendants' costs of the proceedings up to and including 24 May 2024.*

Representation

The plaintiff is unrepresented

The first defendant is unrepresented

The second, third and fourth defendants are represented by Clayton Utz Lawyers

1   BEECH-JONES J.   On 24 May 2024, the Court ordered that the plaintiff's application for a constitutional or other writ be dismissed without a hearing.[1] The form of order published by the Registry recorded that order, but against the heading "Appearances" indicated that the application was "Determined pursuant to Rule 13.03.1". The second to fourth defendants seek a correction of that part of the "order" on the basis that it is clear from the Court's reasons that the plaintiff's application was dismissed pursuant to r 25.09.1 of the *High Court Rules 2004* (Cth), and it was for that reason that there was no hearing and no appearances. The plaintiff opposes the correction. Although it does not appear to form part of the "order", the reference to r 13.03.1 in the document is clearly an error. It will be corrected.

2   The second to fourth defendants also seek an order for the costs of the proceedings in this Court. In their substantive submissions in response to the plaintiff's application and in accordance with Form 12A,[2] under the heading "Costs" they submitted that "the second, third and fourth defendants do not seek any special costs order". In a submission made after the Court's reasons were published, the second to fourth defendants contended that they had (implicitly) sought the usual costs order made in accordance with the Court's "general rule" that costs follow the event. They contended that their application for costs remains undetermined and the Court should now correct the omission under r 3.01.2 of the *High Court Rules* and deal with it. In the alternative, they seek the making of a costs order under r 50.01 of the *High Court Rules*. The plaintiff contended that the omission to deal with the costs of these proceedings was deliberate and no costs order should be made.

3   The absence of any reference to costs in the Court's reasons was deliberate. No matter how one parses a submission that a party does "not seek any special costs order", that is not an application for costs to otherwise be paid on the usual basis. If a party seeks an order for costs, it should do so expressly. The second to fourth defendants did not do so. However, they now seek an order for costs. Given the findings that have been previously made, there is no reason why the second to fourth defendants should not be awarded their costs up to and including 24 May 2024. The plaintiff's application was completely untenable.[3] No question arises as to whether s 570 of *the Fair Work Act 2009* (Cth) precludes the making of such an

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1   *Chen v A Judge of the Federal Court of Australia & Ors* [2024] HCASJ 20 at [13].

2   Pursuant to r 25.07.2 of the *High Court Rules 2004* (Cth).

3   *Chen v A Judge of the Federal Court of Australia & Ors* [2024] HCASJ 20 at [10]-[13].

order as, even if s 570 was applicable to the plaintiff's application, these proceedings were initiated "without reasonable cause".**4**

4   The Court orders that:

    (1)   To the extent necessary, the order made on 24 May 2024 be amended pursuant to r 3.01.2 of the *High Court Rules 2004* (Cth) so that it states "Determined pursuant to Rule 25.09.1" instead of "Determined pursuant to Rule 13.03.1".

    (2)   The plaintiff pay the second to fourth defendants' costs of the proceedings up to and including 24 May 2024.

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4   *Chen v A Judge of the Federal Court of Australia & Ors* [2024] HCASJ 20 at [10].