

HIGH COURT OF AUSTRALIA

EDELMAN A-CJ

IN THE MATTER OF AN APPLICATION BY
YOUHUA MAO FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 31
Date of Judgment: 22 July 2024
S82 of 2024

ORDER

- The application filed on 9 July 2024 for leave to issue or file a writ of summons is refused.*

Representation

The applicant is unrepresented

1 EDELMAN A-CJ. This is an ex parte application under r 6.07.3 of the *High Court Rules 2004* (Cth) for leave to issue or file a writ of summons against the Commonwealth of Australia, the Commissioner of Taxation, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. The applicant requires leave because on 7 May 2024, Steward J, acting under r 6.07.2 of the *High Court Rules*, directed that the Registrar of this Court refuse to issue or file the proposed writ of summons without first obtaining the leave of a Justice of this Court.

2 Since 2016, the applicant has brought various applications that are similar to, related to, or overlapping with, this grievance in this Court. As the applicant says in her proposed writ of summons in this Court, she has, with assistance from another person, "been taking actions to contest the constitutional validity of the impugned legislation". The legislation that she purports to challenge is the *Superannuation Guarantee (Administration) Act 1992* (Cth) and the *Superannuation Industry (Supervision) Act 1993* (Cth). She has brought such related applications in this Court for special leave to appeal, leave to issue or file applications including writs of summons or constitutional writs, and leave to remove proceedings into this Court on at least ten previous occasions.¹ Each of those applications was refused.

3 It is unnecessary to recite the background set out in detail in the applicant's proposed writ, including the details of great sadness to which the applicant refers. It suffices to say that the applicant's claims include: a variety of challenges to the Commonwealth legislation mentioned above; the issue of a "declaration of The Land of Peace Charter"; and damages and exemplary damages. Like the previous applications, this application also has no prospects of success.

4 There is no basis in the applicant's proposed writ or supporting affidavit affirmed on 7 July 2024 for any rational legal argument that could support the relief sought; the claims advanced in the proposed writ and supporting affidavit

1 See, eg, *In the matter of an application by Youhua Mao for leave to issue or file* [2018] HCATrans 21; *In the matter of applications by Youhua Mao for leave to issue or file* [2019] HCATrans 142; *Mao v AMP Superannuation Ltd* [2020] HCASL 45; *Mao v AMP Superannuation Ltd* [2021] HCASL 4; *Mao v BT Funds Management Ltd* [2022] HCASL 100; *In the matter of an application by Youhua Mao for leave to issue or file* (unreported, High Court of Australia, 17 August 2022); *In the matter of an application by Youhua Mao for leave to issue or file* [2023] HCATrans 8; *In the matter of an application by Youhua Mao for leave to issue or file* [2023] HCATrans 57; *In the matter of an application by Youhua Mao for leave to issue or file* [2023] HCATrans 92; *In the matter of an application by Youhua Mao for leave to issue or file* [2023] HCATrans 115. See also, other applications for special leave to appeal: *Mao v AMP Superannuation Fund* [2015] HCASL 188 and *Mao v AMP Superannuation Fund* [2016] HCASL 203.

are manifestly hopeless and it would be an abuse of process if those documents were filed.² The proposed writ and supporting affidavit are vexatious on their face and should not be issued or filed.³

5 The relitigation of issues in a court following refusal of an application can be vexatious and an abuse of process.⁴ Where the relitigation is persistent, and the applications are vexatious, that can also be evidence that the applicant is a vexatious litigant. If this Court is satisfied that a person "has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals", this Court has the power, including on its own initiative or on the application of the Chief Executive and Principal Registrar of the Court, to make vexatious proceedings orders under s 77RN of the *Judiciary Act 1903* (Cth) which could include an order prohibiting the person from instituting proceedings in the High Court.⁵

6 Section 77RN contains two conditions upon the exercise of the Court's discretion to make a vexatious proceeding order: that the person "has ... instituted or conducted vexatious proceedings in Australian courts or tribunals" and that the vexatious proceedings have been instituted or conducted "frequently".⁶ Whether vexatious proceedings have been conducted frequently is informed by "[b]oth the quality of the vexatiousness of a proceeding and the nature of the proceeding" including "occupation of the time and resources of parties and the Court". It has

2 *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 234 [35], [37], 246-247 [72]-[73].

3 See *High Court Rules 2004* (Cth), r 6.07.1; *Re Young* (2020) 94 ALJR 448 at 451 [11]-[12]; 376 ALR 567 at 570.

4 *Re Golding* (2020) 94 ALJR 1014 at 1018 [11]; 384 ALR 204 at 207, applied in *Proietti v Proietti* [2024] NSWCA 48 at [13], [110]. See generally *Walton v Gardiner* (1993) 177 CLR 378 at 393; *Rogers v The Queen* (1994) 181 CLR 251 at 286-287; *Strickland (A Pseudonym) v Commonwealth Director of Public Prosecutions* (2018) 266 CLR 325 at 411-412 [256]-[258].

5 See *In the matter of Jerrod James Conomy*, Matter No P 22 of 2019 (unreported, High Court of Australia, 5 September 2019); *In the matter of an application by Irwin Gomez for leave to issue or file* [2019] HCATrans 185.

6 *In the matter of Jerrod James Conomy*, Matter No P 22 of 2019 (unreported, High Court of Australia, 5 September 2019) at [23], per Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ, citing *Mbuzi v Griffith University* [2016] FCAFC 10 at [99].

3.

been held that these considerations "favour a 'relatively low threshold' before the Court will be satisfied that the test of frequency has been met".⁷

7 The applicant should be aware that there is a real prospect that further filings of vexatious applications in this Court may prompt the Court, or the Chief Executive and Principal Registrar of the Court, to invite submissions and evidence from the applicant on the question whether a vexatious proceedings order under s 77RN(2) should be made against her.

8 The application filed on 9 July 2024 for leave to issue or file a writ of summons is refused.

7 See *In the matter of Jerrod James Conomy*, Matter No P 22 of 2019 (unreported, High Court of Australia, 5 September 2019) at [24]-[25], per Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ, citing *Quach v New South Wales Health Care Complaints Commission* [2017] NSWCA 267 at [113].