

HIGH COURT OF AUSTRALIA

EDELMAN J

SOPHIA MCGINN

PLAINTIFF

AND

FEDERAL COURT OF AUSTRALIA

DEFENDANT

[2024] HCASJ 38

Date of Judgment: 10 October 2024

S125 of 2024

ORDER

- The application filed on 25 September 2024 for a constitutional or other writ is dismissed without hearing under r 25.09.1 of the High Court Rules 2004 (Cth).*

Representation

The plaintiff is unrepresented

Submitting appearance for the defendant

1 EDELMAN J. The plaintiff is a party to a proceeding, NSD1070/2024, in the Federal Court of Australia by which she says that she is seeking judicial review of a decision made by the Office of the Australian Information Commissioner. The plaintiff says that she applied for an interim suppression order in those proceedings but that the order was refused by Yates J. The plaintiff says that she requested written reasons for that decision under s 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Yates J refused this request on the basis that the decision not to make an interim suppression order is not a decision to which s 13 applies. The plaintiff alleges that this statement by Yates J was "false".

2 In return email correspondence, the plaintiff was advised that should she seek an order that Yates J disqualify himself from the proceeding, that application should be brought in accordance with r 17.01 of the *Federal Court Rules 2011* (Cth). The plaintiff did not make that application for disqualification under r 17.01 of the *Federal Court Rules*. In her affidavit she prefaces the requirement that she lodge an interlocutory application for disqualification of Yates J from the proceedings with the description of "an unwarranted demand to defraud me".

3 The plaintiff applies for a constitutional or other writ seeking (i) an order in the nature of prohibition precluding Yates J from presiding over proceeding NSD1070/2024; and (ii) an order in the nature of prohibition precluding Yates J from presiding over future proceedings in which the plaintiff is a party.

4 The submissions by the plaintiff include the following allegations: that the conduct of Yates J in dealing with the plaintiff's request for an interim suppression order and informal allegation of actual bias warrant the orders sought in this Court; that an application for disqualification is not an interlocutory application that may be made under r 17.01 of the *Federal Court Rules*; and that the advice to her to make an interlocutory application for disqualification under r 17.01 was an unwarranted demand made by a Commonwealth public official contrary to s 139.2 of the *Criminal Code* (Cth).

5 There are numerous issues that arise from the plaintiff's application. One issue is that the plaintiff refers to (unspecified) "parties" to her application for judicial review. But those parties to her application who would be directly affected by any writ of prohibition were not joined by the plaintiff to her application in this Court. A second issue is whether the Federal Court of Australia, rather than Yates J as a Judge of the Federal Court of Australia, is the proper defendant to the constitutional writ. A third issue is whether the plaintiff's application is an abuse of process because it circumvents the usual appellate processes.¹ That issue concerns whether it is an abuse of process for the plaintiff to seek a constitutional

1 *Dimitrov v Supreme Court of Victoria* (2017) 263 CLR 130 at 138-139 [19].

writ for the disqualification of Yates J without first having properly sought a ruling from his Honour and then brought an appeal from any orders made.²

6 It is unnecessary to deal with those issues which were not addressed in the plaintiff's application. It suffices to say that the plaintiff's application discloses no arguable basis for any relief by this Court. The plaintiff's application is an abuse of process in the sense that it is "manifestly untenable"³; that is, it is "manifestly hopeless".⁴ The application for a constitutional or other writ should be dismissed without being listed for a hearing under r 25.09.1 of the *High Court Rules 2004* (Cth) on each of the bases that it does not disclose an arguable basis for the relief sought and that it is an abuse of process and orders should be made, and reasons given, in accordance with r 25.09.2 of the *High Court Rules*.

7 On 8 October 2024, the plaintiff filed a further document, styled as a "consent" but signed only by her. In that "consent" the plaintiff consented to the orders which she sought in her application for a constitutional or other writ. Apparently the plaintiff considered that she could obtain an order from this Court by "consent" if, as plaintiff, she signed the application and added "submitting appearance filed" in place of the signature of the defendant. But an order is not sought by "consent" if the consent is only that of the party seeking the order. In any event, a court issuing a constitutional writ must be satisfied that the writ should issue. The duty of a court remains one of "adequate and careful inquiry".⁵ This application is plainly one where the relief sought by the plaintiff should be refused.

8 On 9 October 2024, the plaintiff filed another document, styled as a "reply". The "reply" purported to be replying to the "consent" that the plaintiff had unilaterally sought to give to the orders that she sought. In the "reply" the plaintiff requested an opportunity for further "reply" if the Court should "have reasons to refuse". But, as stated above, the plaintiff's application is hopeless and no further oral or written submissions should be permitted under r 25.09.1 of the *High Court Rules*.

2 *QYFM v Minister for Immigration* (2023) 97 ALJR 419 at 442 [94], 453 [152], 460 [193], 477 [283]; 409 ALR 65 at 90, 105, 114, 137.

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

4 *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at 246-247 [73].

5 *Federated Engine-Drivers and Firemen's Association of Australasia v Broken Hill Pty Co Ltd* (1911) 12 CLR 398 at 428.