

HIGH COURT OF AUSTRALIA

STEWARD J

IN THE MATTER OF AN APPLICATION BY
KELLAN JOHN REYNOLDS FOR LEAVE TO ISSUE
OR FILE

[2024] HCASJ 43

Date of Judgment: 5 December 2024

P32 of 2024

ORDER

- 1. Application dated 17 September 2024 for leave to issue or file application for special leave dated 22 August 2024 dismissed.*

Representation

The applicant is unrepresented

1 STEWARD J. By application filed on 17 September 2024, the applicant ("Mr Reynolds") seeks leave to file an application for special leave to appeal dated 22 August 2024. On 29 August 2024, Gordon J directed the Registrar pursuant to r 6.07.02 of the *High Court Rules 2004* (Cth) to refuse to issue or file the application for special leave to appeal without the leave of a Justice of the Court first had and obtained. Mr Reynolds now seeks that leave.

2 The applicant relies on an affidavit affirmed by him on 12 September 2024.

Principles to be applied

3 The discretion conferred by r 6.07.2 of the *High Court Rules* 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".¹ The concept of abuse of process, which cannot be confined within closed categories, encompasses "an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable".² Exercise of the discretion to refuse leave to issue or file a document is appropriate "only in the clearest of cases".³

Application for special leave to appeal and procedural history

4 The facts and legal grounds underlying Mr Reynolds' proposed appeal are not readily apparent from the application for special leave to appeal and supporting affidavit.

5 Mr Reynolds, who is self-represented, seeks special leave to appeal a self-executing order made by the Court of Appeal of the Supreme Court of Western Australia on 20 April 2023,⁴ dismissing his appeal against orders requiring, relevantly, the repayment of a sum in the amount of \$316,455.82, together with interest, owed under a loan agreement, as well as possession of a property over which the respondent, the National Australia Bank, had a mortgage secured. Mr Reynolds also seeks an order that compliance with the time limit in r 41.02.1 of the *High Court Rules* be dispensed with.

1 *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11] per Gageler J; 376 ALR 567 at 570; see also *High Court Rules* at r 6.07.1.

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

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

4 Transcript of proceedings of the Court of Appeal of the Supreme Court of Western Australia on 20 April 2023 in the matter of *Reynolds v National Australia Bank Limited* (CACV 114/2022) before Murphy and Vaughan JJA.

6 Mr Reynolds applies for relief in the form of a "[w]rit praecipe in capite" setting aside orders dated 1 November 2022, a writ of certiorari setting aside orders made on 23 June 2023, a preservation order against property, and an order for Mr Reynolds' costs. The nature of the orders to which Mr Reynolds refers in his prayer for relief is not apparent on the face of the application.

7 The proposed grounds of appeal raised by Mr Reynolds in his application for special leave to appeal are myriad and appear to include, inter alia: that the respondent acquired property on unjust terms contrary to s 51(xxxi) of the *Constitution*; that Mr Reynolds' access to a court of competent jurisdiction may not be denied on the basis that Parliament cannot have intended to limit fundamental rights with respect to real property; and that equity should not allow a judgment obtained by fraud, unconscionable dealings or irregularities to stand.

8 The present application constitutes a second application for special leave to appeal by Mr Reynolds, after Mr Reynolds' initial application for special leave to appeal was refused by Edelman and Jagot JJ on the basis that such an appeal would enjoy no prospects of success.⁵

Consideration

9 It is plain on the face of the proposed application for special leave to appeal and the affidavit supporting leave to issue or file that proposed application that Mr Reynolds' proposed grounds of appeal are entirely devoid of merit. Mr Reynolds seeks to invoke this Court's jurisdiction on a basis that is "confused or manifestly untenable".⁶ Neither the proposed application for special leave to appeal, nor the affidavit filed in support of the application for leave to issue or file, disclose an arguable basis for the relief sought. The proposed application for special leave to appeal would be an abuse of process if the document was filed. Accordingly, it should not be filed, and the present application should be dismissed without an oral hearing pursuant to r 13.03.1 of the *High Court Rules*.

10 The application filed on 17 September 2024 for leave to issue or file the application for special leave to appeal dated 22 August 2024 is refused.

5 *Reynolds v National Australia Bank Limited* [2024] HCASL 5.

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