

HIGH COURT OF AUSTRALIA

STEWARD J

RUSSELL JAMES PENTTILA

PLAINTIFF

AND

FEDERAL CIRCUIT AND FAMILY COURT OF
AUSTRALIA (DIVISION 2) & ORS

DEFENDANTS

[2026] HCASJ 22

Date of Judgment: 28 July 2026

B11 of 2026

ORDERS

- 1. The plaintiff's application for a constitutional or other writ filed on 12 February 2026 is summarily dismissed as an abuse of process pursuant to rr 25.09.3(b) and 28.01.2(c) of the High Court Rules 2004 (Cth).*
- 2. The interlocutory applications filed by the plaintiff are dismissed.*
- 3. The plaintiff is to pay the third defendant's costs of and incidental to the application.*

Representation

The plaintiff is unrepresented

The third defendant is represented by MinterEllison

Submitting appearances for the first and second defendants

1 STEWARD J. On 12 February 2026, the plaintiff filed an application in this Court
for a constitutional or other writ, naming three defendants: the Federal Circuit and
Family Court of Australia (Division 2) ("the Federal Circuit Court"), the Federal
Court of Australia ("the Federal Court") and Woolworths Limited ("the
Application"). The plaintiff is unrepresented.

2 For the reasons that follow, the Application is an abuse of process in that it
seeks to invoke this Court's jurisdiction "on a basis that is confused or manifestly
untenable".¹ In these circumstances, it would be futile to grant the substantial
extension of time that the plaintiff seeks. The Application must be summarily
dismissed, with costs, pursuant to rr 25.09.3(b) and 28.01.2(c) of the *High Court
Rules 2004* (Cth) ("the Rules").

3 The plaintiff also filed three interlocutory applications, seeking a range of
orders. Those interlocutory applications must also be dismissed.

4 In the circumstances, it is appropriate for the Application and the three
interlocutory applications to be dismissed without an oral hearing, pursuant to
rr 25.09.1 and 13.03.1.

Background

5 The procedural background to this matter is lengthy and convoluted. To the
extent that it is relevant to the present Application, it is summarised below.

6 The plaintiff was employed by Woolworths Limited ("Woolworths") on a
part-time basis between 17 January 2014 and 30 November 2015, and on a full-
time basis between 30 November 2015 and 15 June 2017. On 15 June 2017, the
plaintiff's employment was terminated due to serious misconduct, and the plaintiff
was paid out four weeks of pay in lieu of notice and all accrued entitlements.

7 On 3 February 2020, the plaintiff commenced proceedings in the Federal
Circuit Court alleging that Woolworths had underpaid him throughout the duration
of his employment. The plaintiff took a number of interlocutory steps in those
proceedings that are relevant to the present Application:

- (a) The plaintiff served on Woolworths a notice to admit dated 15 September 2021. On 22 September 2021, the solicitors for Woolworths responded.
- (b) The plaintiff also served on Woolworths a second notice to admit dated 5 October 2021. The solicitors for Woolworths responded on 8 October 2021.

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

2.

- (c) On 9 December 2021, the plaintiff filed an application for summary judgment on the basis that Woolworths "had no reasonable prospects of successfully defending the proceeding". The plaintiff also filed an affidavit in support which exhibited the notices to admit, the responses from Woolworths and an "updated interest table".
- (d) On 9 April 2022, the plaintiff filed an application for, inter alia, default judgment (which was based upon the previous 9 December 2021 application for summary judgment).

Primary judgment

8 On 29 June 2022, Judge Egan dismissed the plaintiff's claim for underpayment in both employment periods and, having found that those claims were "without merit", dismissed the application for summary judgment filed on 9 December 2021 and the application for default judgment filed on 9 April 2022.²

Appeal decision

9 On 7 August 2023, the Federal Court (Meagher J) dismissed the plaintiff's application for leave to appeal from the decision of Judge Egan.³

Present Application and interlocutory applications

10 By the present Application, the plaintiff seeks (in addition to an extension of time) a writ of certiorari to quash the decisions of Judge Egan and Meagher J. The plaintiff also seeks declarations that "the proceedings below proceeded to final determination without prior determination of jurisdictional facts and statutory preconditions" and that the exercise of judicial power was therefore "incompatible with the requirements of Ch III of the *Constitution*". The plaintiff also seeks various orders regarding remittal of the proceedings and costs.

11 In support of this Application, the plaintiff contended that "dispositive orders were made while unresolved threshold matters remained on foot" which were said to include "authority to act, standing to contradict, unresolved interlocutory applications, the effect of notices to admit, and defects in the integrity of the judicial record".

12 The plaintiff also filed three interlocutory applications. On 31 March 2026, the plaintiff filed an application and supporting affidavit, seeking orders that, inter alia, the proceeding "be listed for expedited hearing and determination", that the proceeding be listed before a justice for directions and that "prior to any

2 *Penttila v Woolworths Ltd* [2022] FedCFamC2G 480 at [24], [30], [34].

3 *Penttila v Woolworths Ltd* [2023] FCA 912.

3.

substantive determination, the Court determine ... [t]he status and effect of any undetermined interlocutory applications".

13 On 11 May 2026, the plaintiff filed an application and supporting affidavit seeking orders, inter alia, that "this application be treated as urgent" and that "the controversy concerning [Woolworths] be separately determined from the remaining controversies".

14 On 24 July 2026, the plaintiff filed an application and supporting affidavit, seeking, inter alia, that before the present Application is determined, the first defendant and the second defendant each file and serve "an institutional response concerning such priority questions or categories of questions" as are contained in the schedule to the plaintiff's affidavit in support.

15 On 5 May 2026, the plaintiff also filed a document, entitled "Notice of a Constitutional Matter", purportedly pursuant to s 78B of the *Judiciary Act 1903* (Cth). The plaintiff states that "[t]hese questions arise in circumstances where the Plaintiff has sought that threshold issues be determined prior to any substantive determination ... and concern the limits imposed by Chapter III of the Australian Constitution".

Relevant principles

16 An application filed in this Court may be dismissed without being listed for a hearing if the application does not disclose an arguable basis for the relief sought or is an abuse of process of the Court.⁴ An abuse of process includes attempts to invoke the original or appellate jurisdiction of this Court "on a basis that is confused or manifestly untenable".⁵ The Application constitutes such an attempt.

17 It is well established that this Court's original jurisdiction to grant constitutional or other writs under s 75(v) of the *Constitution* is not ordinarily a substitute for remedying a judgment via the appellate process.⁶ If the judgment of Judge Egan was infected by the errors that the plaintiff asserts, the appropriate remedy should have been sought via the appeals process, and not through a constitutional or other writ in this Court.

18 By the present Application, the plaintiff, in effect, seeks to challenge the various orders and unsuccessful outcomes in the Federal Circuit Court and Federal Court proceedings.

4 *High Court Rules 2004* (Cth) rr 25.09.1 and 25.09.3(b).

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

6 *Re Meyer* [2025] HCASJ 22 at [16].

19 The plaintiff has exhausted the appellate process, and now, over two years after the Federal Court refused the plaintiff's application for leave to appeal, the plaintiff seeks to reopen in this Court issues relating to the trial. The plaintiff could only be permitted to take that course of action in "exceptional circumstances".⁷ On the face of the Application, the plaintiff has not demonstrated any "exceptional circumstances", having regard to the following:

- (a) The plaintiff's primary allegation appears to be that Judge Egan determined the matter, without first resolving "unresolved threshold issues", being the summary judgment application and the default judgment application. However, there was no requirement for either application to be determined prior to Judge Egan handing down final judgment.
- (b) The plaintiff also contended that "no proper notice disputing" the two notices to admit "was served within time". Meagher J squarely addressed that contention:⁸

"In any event, and consistently with how this issue was dealt with by the primary judge, the respondent took the Court to its responses to the notices thus demonstrating that the respondent had in fact responded to the notices. As such, nothing arises from this argument."

- (c) The plaintiff also contends that there were "defects in authority to act and standing", because an affidavit was filed bearing the signature of a solicitor at MinterEllison which was different from the signature appearing on the Notice of Address for Service filed by Woolworths, and because submissions were filed which were settled by counsel.

20 The plaintiff's submissions do not disclose any rational legal argument that could support the relief sought, much less the required exceptional circumstances, and are, on that basis, an abuse of process.⁹

Conclusion

21 The Application is an abuse of process within the meaning of r 25.09.3(b) of the *Rules*. The order summarily dismissing this Application without listing the matter for an oral hearing is made pursuant to rr 25.09.1 and 28.01.2(c). I would also dismiss the plaintiff's three interlocutory applications without an oral hearing

7 *Re Meyer* [2025] HCASJ 22 at [17]; *Metwally [No 2] v University of Wollongong* (1985) 59 ALJR 481 at 483; 60 ALR 68 at 71.

8 *Penttila v Woolworths Ltd* [2023] FCA 912 at [30].

9 See, eg, *Nasir v Federal Court of Australia & Ors* [2025] HCASJ 21 at [32].

5.

pursuant to r 13.03.1. The plaintiff must pay the third defendant's costs of this application.