

MICHAEL WESTON

v

JOHN BRUCE BANNISTER & ANOR

ORAL JUDGMENT

GAUDRON J

MICHAEL WESTON

v

JOHN BRUCE BANNISTER & ANOR

On 13 February 1998, the Court, constituted by McHugh and Gummow JJ, dismissed Mr Weston's application for special leave to appeal from an order of the Court of Appeal of the Supreme Court of Victoria. On 23 March 1998, he filed a Notice of Motion seeking, amongst other orders, an order that the order dismissing his application for special leave to appeal be vacated. Pursuant to O 58 r 4(3) of the Rules of the High Court, Hayne J directed, on 26 March 1998, that the Notice of Motion not issue without the leave of a Justice. Mr Weston now seeks leave to issue the Notice of Motion.

It is necessary to say something of the Supreme Court proceedings in respect of which Mr Weston sought special leave to appeal. They were proceedings by mortgagees for the possession of land pursuant to a registered mortgage executed in their favour by Mr Weston and for the repayment of moneys secured by that mortgage. It is not now in issue that Mr Weston executed the mortgage or that moneys were advanced pursuant to it. However, he contended in the Supreme Court proceedings, as he still does, that the

mortgage was procured by fraud on the part of his then solicitor, Mr Connor. He also claimed, as he still does, that there was a conspiracy involving his solicitor and the mortgagees.

At first instance, Southwell J found that Mr Weston's allegations of fraud and conspiracy were "wild and wholly unsubstantiated". His Honour held that the mortgagees were entitled to possession and to judgment for the moneys owing under the mortgage. Mr Weston then appealed to the Court of the Appeal, contending, amongst other things, that Southwell J "erred in law by ignoring the evidence and the [weight] of [the] evidence". It was this issue which was the focus of the application for special leave to appeal to this Court.

In support of his Notice of Motion of 23 March and his application for leave to issue that Notice of Motion, Mr Weston contends, in essence, that there was "a biased finding of fact by [the] trial judge" who should have found that the mortgage was executed in consequence of the fraud of his solicitor Mr Connor. He asserts a belief that the judges of the Court of Appeal "did not bring free and independent minds to the matter" because they knew Mr Connor's father. He asserts also that, on the hearing of the special leave application, he was misled by McHugh J and deprived of a real opportunity of putting his case. He also asserts a conflict of interest on

the part of McHugh J by reason of his having been president of the Media Law Association and Australian Bar Association in 1984.

There is nothing to support the various complaints which Mr Weston makes against those members of the judiciary who have participated in the proceedings arising out of the mortgage transaction. Of greater significance, he bore the onus of proving fraud before Southwell J and failed to do so. Thus, an appeal to this Court would enjoy no prospect of success. In these circumstances, leave should not be granted to issue the Notice of Motion of 23 March 1998.

The application for leave to issue Notice of Motion dated 23 March 1998 is refused.