

AUSTRALIA / JUDGMENT

Storry v Parkyn [2024] FCAFC 67

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Federal Court of Australia

Storry v Parkyn [2024] FCAFC 67

Appeal from: Storry v Parkyn [2023] FCA 1141

File numbers: QUD 422 of 2023

QUD 49 of 2024

Judgment of: LEE, FEUTRILL AND JACKMAN JJ

Date of judgment: 28 May 2024

Catchwords: APPEAL AND NEW TRIAL – where primary judge dismissed an application for judicial review of a Registrar's decision to refuse to accept documents for filing – where Registrar formed the view the documents on their face were frivolous or vexatious – where appellant sought to set aside judgment refusing application for leave to appeal on the basis of alleged fraud – distinct jurisdiction in equity to set aside perfected common law judgments – where proposed originating application had no reasonable prospects of success – appeal dismissed

ADMINISTRATIVE LAW – application for judicial review of a Registrar's decision to refuse to accept documents for filing – where matter in the original jurisdiction of the Court referred to the Full Court pursuant to s 20(1A) of the Federal Court of Australia Act 1976 (Cth) – nature of appellate jurisdiction – where Registrar formed the view the documents were an abuse of process and otherwise frivolous or vexatious – where decision of Registrar unattended by legal error – application dismissed

Legislation: Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5

Bankruptcy Act 1966 (Cth) ss 58, 116

Family Law Act 1975 (Cth)

Federal Court of Australia Act 1976 (Cth) Pt VAAA, Div 2, ss 20(1A), 24, 33, 35A(5), 37AO, 37AO(2)(b), 37AO(3), 37AO(4)

Federal Court Rules 2011 (Cth) rr 2.26, 39.05

Judicature Act 1873 (UK)

Cases cited: Clone Pty Ltd v Players Pty Ltd (in liquidation) [2018] HCA 12; (2018) 264 CLR 165

Decor Corporation Pty Ltd v Dart Industries Inc (1991) 33 FCR 397

Fuller v Toms [2015] FCAFC 91; (2015) 234 FCR 535

Hazel-Atlas Glass Co v Hartford Empire Co 322 US 238 (1944)

Jones v Skyring (1992) 66 ALJR 810

Monroe Schneider Assocs (Inc) v No 1 Raberem Pty Ltd (No 2) (1992) 37 FCR 234

Nyoni v Murphy [2018] FCAFC 75; (2018) 261 FCR 146
Official Trustee in Bankruptcy v Gargan (No 2) [2009] FCA 398
Re Barrell Enterprises [1973] 1 WLR 19
Spalla v St George Motor Finance Ltd (No 5) [2004] FCA 1262
Storry and Office of Fair Trading (Victoria) [2021] AATA 5329
Storry v Australian Financial Security Authority [2024] QCA 55
Storry v Business Licensing Authority (No 2) [2023] FCA 102
Storry v Business Licensing Authority (No 3) [2023] FCA 245
Storry v Business Licensing Authority [2022] FCA 1321
Storry v Business Licensing Authority [2023] FCA 964
Storry v Business Licensing Authority, Office of Fair Trading (Victoria) [2023] HCASL 184
Storry v Chief Executive of the Office of Fair Trading, Department of Justice and Attorney-General [2021] QCA 30
Storry v Chief Executive, Department of Justice and Attorney General [2024] QCA 22
Storry v Chief Executive, Department of Justice and Attorney-General [2022] QCATA 43
Storry v Commissioner of Police [2017] QDC 282
Storry v Commissioner of Police [2018] QCA 291
Storry v Commissioner of Police [2021] QCA 230
Storry v Commissioner of Police [2024] QCA 66
Storry v Department of Justice and Attorney-General - Office of Fair Trading [2021] QCAT 435
Storry v Department of Justice and Attorney-General - Office of Fair Trading [2020] QCAT 94
Storry v Office of Fair Trading [2021] QCA 255
Storry v Office of Fair Trading [2021] QCATA 127
Storry v Parkyn [2023] FCA 1141
Storry v Parkyn [2023] HCASL 185
Storry v Weir (No 2) [2022] FCA 1360
Storry v Weir [2022] FCA 1484
Storry v Weir [2022] FCA 362
Storry v Weir [2022] FCA 794
Storry v Weir [2023] HCASL 183
Storry v Weir [2023] QCA 4
Weir v Storry [2022] FedCFamC2G 183
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Registry: Queensland
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Counsel for the appellant: The appellant appeared in person
Counsel for the respondent in QUD 422 of 2023: The respondent filed a submitting notice
Counsel for the respondent in QUD 49 of 2024: The respondent filed a submitting notice
ORDERS
QUD 422 of 2023
BETWEEN: VENETIA LOUISE STORRY
Appellant

AND: NIC PARKYN

Respondent

QUD 49 of 2024

BETWEEN: VENETIA LOUISE STORRY

Applicant

AND: REGISTRAR THOMAS STEWART

Respondent

order made by: LEE, FEUTRILL AND JACKMAN JJ

DATE OF ORDER: 28 May 2024

THE COURT ORDERS THAT:

In QUD 422 of 2023:

1. Subject to Orders 2 and 3 below, the appeal be dismissed.
2. On or by 28 June 2024, the appellant:
 - (a) file any material upon which she intends to rely to oppose an order (proposed order) being made in the following terms:

Pursuant to s 37AO(2)(b) of the Federal Court of Australia Act 1976 (Cth) (FCA Act), Ms Venetia Louise Storry be prohibited from instituting proceedings in this Court without making an application for leave to institute proceedings in accordance with s 37AR of the FCA Act.
 - (b) notify the Registry in writing as to whether she wishes to have an oral hearing in relation to whether the proposed order ought to be made by the Full Court and, in the absence of such notification, the issue as to whether the proposed order ought to be made be dealt with on the papers by the Full Court.
3. Any oral hearing in relation to the making of a vexatious proceedings order under Pt VAAA, Div 2 of the Federal Court of Australia Act 1976 (Cth) is to be listed for hearing by the Full Court on a date to be fixed following 28 June 2024.

In QUD 49 of 2024:

4. The originating application for judicial review dated 31 January 2024 be dismissed.
- Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

REASONS FOR JUDGMENT

THE COURT:

A INTRODUCTION AND BACKGROUND

1 Before the Full Court are two matters:

- (1) Venetia Louise Storry v Nic Parkyn (QUD 422 of 2023) (appeal proceeding); and
- (2) Venetia Louise Storry v Registrar Thomas Stewart (QUD 49 of 2024) (original jurisdiction proceeding).

2 The first is an appeal from the decision of a Judge of the Court by which the primary judge dismissed an application by the appellant, Ms Storry, for judicial review of a Registrar's decision to refuse documents for filing pursuant to r 2.26 of the Federal Court Rules 2011 (Cth) (FCR): *Storry v Parkyn* [2023] FCA 1141 (J).

3 The second is a proceeding in the original jurisdiction of the Court which has been referred to the Full Court for hearing pursuant to a direction made by the Chief Justice under s 20(1A) of the Federal Court of Australia Act 1976 (Cth) (FCA Act). The direction was made on the basis that the original jurisdiction proceeding is of sufficient importance to justify the giving of the direction in the light of the otherwise disproportionate burden on the resources of the Court if it were to proceed separately to the appeal proceeding.

4 It is convenient to deal with the proceedings separately and in turn.

B THE APPEAL PROCEEDING

5 As will become evident, this proceeding is the latest iteration of a long litigious saga. It is unnecessary for the purposes of this judgment to dwell on that background, which has been summarised in a number of judgments of the Court: see J (at [7]–[12] per Rangiah J); Storry v Business Licensing Authority [2023] FCA 964 (at [1]–[3] per Sarah C Derrington J); Storry v Business Licensing Authority (No 2) [2023] FCA 102 (at [1]–[21] per Thomas J); Storry v Weir [2022] FCA 1484 (at [1]–[8] per Logan J); Storry v Weir [2022] FCA 794 (at [9]–[24] per Thomas J).

6 It suffices to note that in September 2021, Ms Storry unsuccessfully applied to the Administrative Appeals Tribunal (Tribunal) for review of the decision of the Business Licensing Authority (BLA) to refuse her application for an estate agent's licence on the basis that she had provided a materially false or misleading statement. In October 2021, Ms Storry sought relief in this Court in relation to the Tribunal's decision, which was summarily dismissed: Storry v Business Licensing Authority (No 2) (at [11]–[14], [68] per Thomas J). Ms Storry in turn filed a notice of appeal against that judgment.

7 In Storry v Business Licensing Authority [2023] FCA 964, in dealing with that notice of appeal, Sarah C Derrington J treated Ms Storry as having sought leave to appeal, given that the summary disposal of her application was interlocutory. Her Honour refused leave to appeal on the basis that the judgment was not attended with sufficient doubt and refusal of leave would not cause Ms Storry substantial injustice (at [32]).

B.1 The Registrar's Decision

8 It was against this background that in August 2023, Ms Storry sought to file two documents in the Registry.

9 The first document was an originating application lodged on 17 August by which Ms Storry sought the following orders (which were termed "interlocutory orders"):

1. Set aside the orders made on the 15th of August 2023
2. The application for leave to appeal filed on the 6 June 2023 be refused.
3. The Applicant pay the Respondent's costs to be assessed if not agreed.
4. The interlocutory application filed on 14 August 2023 be dismissed.

10 After setting out the orders sought, Ms Storry referred in the originating application (at 2) to FCR 39.05, which deals with varying or setting aside a judgment or order after it has been entered. Ms Storry then set out what appear to be submissions, including excerpts from various authorities, in support of the proposition that the distinct equitable jurisdiction to set aside perfected common law judgments does not depend upon or require fresh evidence. The second document was an affidavit, apparently in support of the application, sworn 17 August 2023.

11 On the same day, the documents came before a National Duty Registrar. The Registrar formed the view that he was satisfied, having considered the content of the documents, that on their face they were frivolous or vexatious. It was said that in circumstances where the Court made orders refusing Ms Storry's application for leave to appeal (see above (at [7])), it would constitute an abuse of process if a further originating process and affidavit were accepted for filing. Accordingly, pursuant to FCR 2.26, the Registrar refused to accept the documents for filing.

12 This was the administrative decision which came before Rangiah J exercising the judicial power of the Court.

B.2 The Decision of the Primary Judge

13 The application before the primary judge, among other things, was that the decision of the Registrar be set aside.

14 Although Ms Storry had initially sought review of the Registrar's decision pursuant to s 35A(5) of the FCA Act, his Honour, with respect correctly, pointed to authority that a decision of a Registrar under FCR 2.26 is not reviewable under that section: see *Nyoni v Murphy* [2018] FCAFC 75; (2018) 261 FCR 146 (at 171 [37] per Barker, Banks-Smith and Colvin JJ). His Honour, however, noted that a decision under FCR 2.26 is amenable to review under s 5 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) (*Nyoni* (at 172 [41])) and, accordingly, regarded Ms Storry as having sought judicial review of the Registrar's decision under that section (at J [5]).

15 As it emerged during the course of oral submissions, Ms Storry's attack upon the primary judge's reasons was that his Honour misapprehended the nature of her claim. As will already be evident, what Ms Storry was seeking was an order setting aside the orders made by Sarah C Derrington J on 15 August 2023 (see above (at [9])) and, in doing so, alleged that that judgment had been obtained by "fraud" in two respects. The first was that false evidence had been placed before the Queensland Civil and Administrative Tribunal (QCAT) and, later, the Supreme Court of Queensland. The second was that the BLA had determined that Ms Storry had provided a false statement when it knew that the statement was in fact true (at J [12])).

16 His Honour noted (at J [13]) that the power of the Court to set aside its own perfected judgment for fraud requires actual fraud, and that the fraud be proved by fresh evidence not available to the moving party before the judgment was delivered: *Clone Pty Ltd v Players Pty Ltd* (in liquidation) [2018] HCA 12; (2018) 264 CLR 165 (at 175 [2], 196 [65] per Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ); see also *Monroe Schneider Assocs (Inc) v No 1 Raberem Pty Ltd* (No 2) (1992) 37 FCR 234 (at 241 per Spender, Gummow and Lee JJ); *Spalla v St George Motor Finance*

Ltd (No 5) [2004] FCA 1262 (at [60]–[61] per French J).

17 Ms Storry contends that his Honour erred and confused the nature of a requirement existing in relation to the statutory concept of an appeal against a judgment, with the distinct jurisdiction in equity (which survived the procedural fusion of law and equity occasioned by the Judicature Act 1873 (UK) reforms) to allow a judgment at law obtained by fraud to be set aside in equity. As the High Court explained in *Clone v Players* (at 193–194 [56]):

The power of a court of equity to rescind its own decrees for fraud was unaffected by the provisions of the Supreme Court of Judicature Act. Indeed, the power expanded to apply also to perfected common law judgments (109), the execution of which could no longer be restrained by a common injunction (110). As an exception to finality, the power survived the statutory regime which defined the powers of appellate courts because it was, and remained, a "narrowly defined" (111) exception and was therefore tolerable. ...

(Citations omitted)

18 The narrow and historically distinct power in Chancery to set aside a judgment obtained at law did not operate to void the decree obtained by fraud. Rather, Chancery acted in personam against the party having the benefit of the judgment so as to prevent that party taking any advantage from it in circumstances where enforcement of the judgment would be contrary to conscience: *Monroe Schneider* (at 239); *Hazel-Atlas Glass Co v Hartford Empire Co* 322 US 238 (1944) (at 245 per Black J). It has been said that this power derives from equity's jurisdiction to unravel the consequences of fraud: *Re Barrell Enterprises* [1973] 1 WLR 19 (at 24 per Russell LJ).

B.3 Consideration

19 Whatever be the merits of Ms Storry's argument in this regard, it is beside the point.

20 It is evident that the proceeding before Sarah C Derrington J was an application for leave to appeal against the judgment of a Judge of the Court. There is no basis for suggesting that her Honour was misled as to the application of the well-known principles governing the criteria for granting leave to appeal set out in *Decor Corporation Pty Ltd v Dart Industries Inc* (1991) 33 FCR 397 (at 398 per Sheppard, Burchett and Heerey JJ).

21 Ms Storry did not appear to grasp before the primary judge the distinction between contending that the judgment of Sarah C Derrington J was obtained by fraud with the separate notion that earlier proceedings in the Tribunal and QCAT were affected by evidence Ms Storry regards as fraudulent. In this respect, Ms Storry's attack upon the primary judge's reasons must fail. His Honour was correct to conclude that Ms Storry, in substance, was attempting to reopen the application for leave to appeal to raise allegations that were known to her and capable of being agitated before Sarah C Derrington J and in the earlier proceedings to the extent they were relevant. That finding was at the heart of the primary judge's reasoning (at J [14]) and was not the subject of any direct challenge by Ms Storry in her submissions in this proceeding.

22 Accordingly, the primary judge held (at J [15]) that the proposed originating application had no reasonable prospects of success, and the Registrar was correct to conclude that the documents on their face were frivolous or vexatious which, if accepted for filing, would constitute an abuse of process. We agree with the conclusion of the primary judge. Ms Storry had failed to demonstrate any legal error by the Registrar in making that assessment and in refusing to accept the documents for filing.

B.4 Conclusion

23 For these reasons, the appeal must be dismissed.

C THE ORIGINAL JURISDICTION PROCEEDING

C.1 The Application

24 In the original jurisdiction proceeding, by an originating application for judicial review dated 31 January 2024 (judicial review application), Ms Storry seeks two orders:

1. An order that the decision of Registrar Stewart be set aside.
2. The decision of Justice Logan be listed to be set aside pursuant to s 25(2B)(ab) [of the FCA Act].

25 The genesis of the judicial review application was an interlocutory application lodged in the Registry in December 2023 (interlocutory application) in the proceeding *Venetia Louise Storry v Jonathan David Weir* (QUD 423 of 2022) (Weir proceeding). In January 2024, National Registrar Stewart, pursuant to FCR 2.26, rejected the interlocutory application for filing on the basis that the application was an abuse of process and was otherwise vexatious or frivolous.

26 After some initial confusion, it became evident that the interlocutory application rejected by the Registrar was headed "Urgent Interlocutory application". Despite its length, it is appropriate to set out the orders sought in that application (errors in original):

Interlocutory orders sought

1. Pursuant to s25 (2B) (ab) " a single judge (sitting in chambers or in open Court) or a Full Court may... make an interlocutory order pending or after the determination of an appeal to the Court... " the appeal of *Storry v Weir* QUD 423/22, [2022] FCA 794; pursuant to rule 39.05(b) of the Federal Court Rules be reinstated as His Honour errs that rescinding a decision obtained by fraud is the same jurisdiction as an appeal. However, according to *Clone v Players* (2018), setting aside a decision for fraud is originating in jurisdiction, not appellant.
2. *Storry v Parkyn* [2023] FCA1141, an originating application under r39.05 (b) was filed. Nowhere in that judgement is there any decision that r39.05 (b) is an appellant jurisdiction.

3. The HCA disposition on the 7th of December 2023 states that "an appeal to this Court would enjoy no prospects of success". This reasoning is in keeping with the fact that r39.05 (b) is not an application that can be brought before the High Court, as the jurisdiction on appeal from an originating application does not lie with the High Court but with the Federal Court of Australia.

Clone v Players HCA (2018)

44. The distinction between each of the equitable bills is today broadly reflected in the distinction between (i) the power of an appellate court to set aside a lower court judgment and order a new trial, and (ii) the power of a court, by an original action, to set aside a judgment (often its own) based upon fraud. The distinction, and separate requirements in each action, is justified as a matter of principle and history. It is fundamental to these appeals. Each circumstance, and its historical antecedents, is considered separately below.

The equitable and statutory powers to review a decision and order a new trial

45. The first method mentioned above for reversing or altering an enrolled decree in Chancery prior to the Supreme Court of Judicature Act 1873 (36 & 37 Viet c 66) was a bill of review. A bill of review could be brought in the Court of Chancery in two different categories of case¹. One category was concerned with substantial errors of law. The other category was based upon new matter discovered since the decree. In both cases there was a 20-year time limit, which probably arose from the circumstance that a bill of review was considered as being in the nature of a writ of error, which writ had that time limit.

4. The matter be heard with QUD479/2023 as a matter of urgency.

...

27 It became apparent during oral submissions at the hearing of the judicial review application that the only order sought by Ms Storry in the interlocutory application rejected by the Registrar was that the matter (that is, the Weir proceeding) be heard together with another proceeding, being Venetia Louise Storry v David Clout (QUD 479 of 2023) (sequestration proceeding). In the latter proceeding, Ms Storry seeks to challenge the making of a sequestration order against her and orders for the removal of her trustee in bankruptcy.

28 As can be seen, on its face, the interlocutory application is confused and confusing. It did, however, emerge during the course of oral submissions that in the event that the Weir proceeding was heard together with the sequestration proceeding, what Ms Storry would seek would be an order setting aside an order made by Logan J on 30 November 2022 by which his Honour dismissed an application to reopen or set aside a judgment given on 15 November 2022 by Thomas J: *Storry v Weir* (No 2) [2022] FCA 1360.

29 This necessitates some explanation.

30 In *Storry v Weir* (No 2), Thomas J dismissed an application brought by Ms Storry to set aside a final judgment handed down by his Honour by which he dismissed an appeal brought by Ms Storry against a sequestration order made by the Federal Circuit and Family Court of Australia: see *Storry v Weir* [2022] FCA 794; *Weir v Storry* [2022] FedCFamC2G 183. In *Storry v Weir* [2022] FCA 1484, before Logan J, Ms Storry sought to challenge the dismissal of her application to set aside the judgment given on her appeal (that is, *Storry v Weir* (No 2)) on the basis that the Court was exercising original, rather than appellate, jurisdiction. In short, Logan J found (at [19]) that the jurisdiction Ms Storry had invoked was the appellate jurisdiction of the Court and hence, pursuant to s 24 of the FCA Act, Ms Storry had no right of appeal against the order made by Thomas J on 15 November 2022. His Honour noted (at [27]) that Ms Storry's only avenues of challenging that order lie by special leave to the High Court, pursuant to s 33 of the FCA Act, or, exceptionally, by way of a constitutional writ.

31 As it happens, although Logan J's *ex tempore* reasons were published on 9 December 2022, his Honour's orders and reasons were "included" in an application for special leave to the High Court filed sometime prior to that date. That application, among other things, sought to challenge the dismissal of the appeal against the sequestration order and an earlier judgment of Collier J refusing interim relief (*Storry v Weir* [2022] FCA 362).

32 The application for special leave was refused by the High Court on 7 December 2023 on the basis that the appeal would enjoy no prospects of success: *Storry v Weir* [2023] HCASL 183. Two further applications heard on the same day seeking the removal of the Weir proceeding and the proceeding *Venetia Storry v Business Licensing Authority & Anor* (QUD 77 of 2023) to the High Court were also refused: *Storry v Business Licensing Authority, Office of Fair Trading* (Victoria) [2023] HCASL 184; *Storry v Parkyn* [2023] HCASL 185.

C.2 Consideration

33 In our view, the decision of the Registrar is unattended by material error. Doing his best to understand the nature of the confusing interlocutory application proposed to be filed, the Registrar "assumed" that the order sought to be set aside was the order of Logan J made on 30 November 2022, which dismissed the application for leave to appeal that constituted the Weir proceeding.

34 Even if one was to conclude this assumption was not well founded, and that the only order then being sought was for one proceeding in the Court to be heard concurrently with the other, any such error would be immaterial as the documents were on their face confusing and misconceived. Accordingly, it was open for the Registrar, pursuant to FCR 2.26, to reject the interlocutory application for filing on the basis that it was an abuse of process and was otherwise vexatious or frivolous.

35 It follows that Prayer 1 sought in the judicial review application must be refused, and the application otherwise be dismissed.

D VEXATIOUS PROCEEDINGS ORDERS

36 Ms Storry is an indefatigable litigant.

37 In the past seven years, Ms Storry has been involved in at least the following litigation: *Storry v Commissioner of Police* [2024] QCA 66; *Storry v Australian Financial Security Authority* [2024] QCA 55; *Storry v Chief Executive, Department of Justice and Attorney General* [2024] QCA 22; *Storry v Parkyn* [2023] FCA 1141; *Storry v Business Licensing Authority* [2023] FCA 964; *Storry v Business Licensing Authority (No 3)* [2023] FCA 245; *Storry v Business Licensing Authority (No 2)* [2023] FCA 102; *Storry v Weir* [2023] QCA 4; *Storry v Weir* [2022] FCA 1484; *Storry v Weir (No 2)* [2022] FCA 1360; *Storry v Business Licensing Authority* [2022] FCA 1321; *Storry v Weir* [2022] FCA 794; *Storry v Chief Executive, Department of Justice and Attorney-General* [2022] QCATA 43; *Storry v Weir* [2022] FCA 362; *Weir v Storry* [2022] FedCFamC2G 183; *Storry v Department of Justice and Attorney-General - Office of Fair Trading* [2021] QCAT 435; *Storry v Office of Fair Trading* [2021] QCA 255; *Storry v Commissioner of Police* [2021] QCA 230; *Storry v Office of Fair Trading* [2021] QCATA 127; *Storry and Office of Fair Trading (Victoria)* [2021] AATA 5329; *Storry v Chief Executive of the Office of Fair Trading, Department of Justice and Attorney-General* [2021] QCA 30; *Storry v Department of Justice and Attorney-General - Office of Fair Trading* [2020] QCAT 94; *Storry v Commissioner of Police* [2018] QCA 291; *Storry v Commissioner of Police* [2017] QDC 282.

38 Section 37AO of the FCA Act empowers the Court to make a vexatious proceedings order against a person, including an order that the person not commence proceedings in the Court: s 37AO(2)(b). The Court may make a vexatious proceedings order on its own initiative: s 37AO(3), but must not make such an order without hearing the person or giving the person an opportunity of being heard: s 37AO(4).

39 It is well established that vexatious proceedings orders are an extreme measure and should not be made lightly. The nature of the relief is not to bar vexatious litigants from instituting proceedings entirely or to impose condign punishment for past litigious misdeeds, but to place the prospective litigation under the control of the Court by imposing a requirement for leave. In part, the purpose of such an order is to protect the Court's processes against unwarranted usurpations of its limited resources, which must be carefully managed and protected from the expense, burden and inconvenience of baseless and repetitious suits: see *Jones v Skyring* (1992) 66 ALJR 810 (at 814 per Toohey J); *Official Trustee in Bankruptcy v Gargan (No 2)* [2009] FCA 398 (at [3] per Perram J). As the Full Court explained in *Fuller v Toms* [2015] FCAFC 91; (2015) 234 FCR 535 (at 545 [31] per Besanko, Logan and McKerracher JJ):

Section 37AO of the Federal Court Act empowers a court to balance the right of one individual of access to justice with other rights namely, a correlative right on the part of the present respondents to finality and the separate right of other individuals also to access this Court. It is for this Court, the present manifestation of a recognition by the Australian Parliament, the origins of which may be traced to an earlier recognition by the United Kingdom Parliament, via the Vexatious Actions Act 1896 (UK) (59 & 60 Vict. C. 51), of a need for a power to effect just such a

balance.

40 These proceedings and Ms Storry's other litigious endeavours have consumed considerable time and resources of the Court. The members of this Court have all come to the preliminary view that it may be that the Court could be satisfied that Ms Storry has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals and, if this was established, that a vexatious proceedings order could follow.

41 In these circumstances, on its own motion, the Full Court proposes to put in place a process to provide procedural fairness to Ms Storry and give her the opportunity to provide material concerning the question as to whether the Full Court ought not make a vexatious proceedings order in relation to her.

42 Accordingly, we will make orders that Ms Storry file any material upon which she intends to rely in opposition to any order being made in the following (or substantially similar) terms:

Pursuant to s 37AO(2)(b) of the Federal Court of Australia Act 1976 (Cth) (FCA Act), Ms Venetia Louise Storry be prohibited from instituting proceedings in this Court making an application for leave to institute proceedings in accordance with s 37AR of the FCA Act.

43 Any such material should be filed in the appeal proceeding by the date specified. At the same time, Ms Storry should also indicate whether she wishes to be heard orally as to whether the order ought to be made. Following the receipt of any material, the matter will either be dealt with by the Full Court on the papers or, in the event an oral hearing is requested, the matter will be listed for an oral hearing, at which time the Full Court will be in a position, with the benefit of any material filed by the appellant, to determine whether an order ought be made under Pt VAAA, Div 2 of the FCA Act in relation to Ms Storry.

E A FINAL MATTER

44 This proceeding has been heard without the benefit of a contradictor. As noted above, a sequestration order was made in relation to Ms Storry on 18 March 2022: *Weir v Storry* [2022] FedCFamC2G 183.

45 Obviously enough, upon that order, all her property vested in her trustee in bankruptcy pursuant to s 58 of the Bankruptcy Act 1966 (Cth) (Bankruptcy Act). This included any legal or equitable choses in action, and any other property, other than that exempt under s 116 of the Bankruptcy Act or through the operation of other legislation, such as the Family Law Act 1975 (Cth).

46 We mention this because we note we have not determined the question of whether or not it was competent for Ms Storry to maintain these or other proceedings, and, of course, this question may arise in relation to any other current proceedings in the Court, irrespective of the making of any vexatious proceedings order (and in relation to the question of leave to commence any later proceeding, if any such order is ultimately made).

F CONCLUSION AND ORDERS

47 Accordingly, the Court will make the following orders:

In QUD 422 of 2023:

1. Subject to Orders 2 and 3 below, the appeal be dismissed.
2. On or by 28 June 2024, the appellant:
 - (a) file any material upon which she intends to rely to oppose an order (proposed order) being made in the following terms:

Pursuant to s 37AO(2)(b) of the Federal Court of Australia Act 1976 (Cth) (FCA Act), Ms Venetia Louise Storry be prohibited from instituting proceedings in this Court without making an application for leave to institute proceedings in accordance with s 37AR of the FCA Act.

- (b) notify the Registry in writing as to whether she wishes to have an oral hearing in relation to whether the proposed order ought to be made by the Full Court and, in the absence of such notification, the issue as to whether the proposed order ought to be made be dealt with on the papers by the Full Court.
3. Any oral hearing in relation to the making of a vexatious proceedings order under Pt VAAA, Div 2 of the Federal Court of Australia Act 1976 (Cth) is to be listed for hearing by the Full Court on a date to be fixed following 28 June 2024.

In QUD 49 of 2024:

4. The originating application for judicial review dated 31 January 2024 be dismissed.

I certify that the preceding forty-seven (47) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Lee, Feutrill and Jackman.

Associate:

Dated: 28 May 2024

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Prepared on 28 October 2026 · Esheria