

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CIVIL

CITATION : ATTORNEY GENERAL (WA) -v- GLEW
[2014] WASC 100

CORAM : MASTER SANDERSON

HEARD : 12 FEBRUARY 2014

DELIVERED : 12 FEBRUARY 2014

PUBLISHED : 25 MARCH 2014

FILE NO/S : CIV 2538 of 2013

BETWEEN : ATTORNEY GENERAL (WA)
Plaintiff

AND

WAYNE KENNETH GLEW
Defendant

Catchwords:

Vexatious litigant - Application for declaration - Turns on own facts

Legislation:

Nil

Result:

Respondent declared vexatious litigant

Category: B

Representation:

Counsel:

Plaintiff : Mr A J Sefton & Mr J L Winton
Defendant : In person

Solicitors:

Plaintiff : State Solicitor for Western Australia
Defendant : In person

Case(s) referred to in judgment(s):

Attorney General v Michael [2005] WASC 203
Glew v Shire of Greenough [2005] WADC 245
Glew v Shire of Greenough [2006] WASCA 260
The Principal Registrar of the Supreme Court v Chin [2012] WASC 7

1 **MASTER SANDERSON:** This was an application to have the defendant declared a vexatious litigant under s 4 of the *Vexatious Proceedings Restriction Act 2002* (WA). In support of the application the plaintiff relied on an affidavit of Marina Georgiou sworn 10 October 2013. The defendant was provided with the opportunity to file evidence and submissions in opposition to the application. A document dated 14 November 2013 was produced by the defendant but appears never to have been filed with the court. In any event it was in form and content objectionable. Although I read the document I have not taken it into account in reaching my decision.

2 When the matter was listed for hearing the defendant indicated he thought two days would be necessary for the hearing. Those two days were allotted. At the commencement of the hearing the defendant in typical fashion made offensive and irrelevant comments in relation to the jurisdiction of the court. When I indicated to him I did not propose to allow him to behave inappropriately he decided to take no further part in the proceedings. He left the court. Having considered the evidence put forward by the plaintiff and the comprehensive submissions in support of the application I indicated I would make the orders sought by the plaintiff and I did so. I said that I would publish reasons for my decision. These are those reasons.

3 Before dealing with the evidence I should say something about the jurisdiction of a Master in relation to an application such as this. Under O 60 r 1(2) of the *Rules of the Supreme Court 1971* (WA) a Master has jurisdiction to determine any action that the Chief Justice directs should be heard and determined by a Master. In this case the Chief Justice made a direction the application ought be heard before me. Accordingly pursuant to the *Rules of the Supreme Court* I had jurisdiction to hear the application. Although this issue was not directly raised at any stage by the defendant it is perhaps implicit in his approach that he called into question my jurisdiction to hear the matter.

4 The defendant is one of those individuals who believes the courts of this State do not have jurisdiction to administer the law because they are at odds with the Constitution of the State of Western Australia or the Commonwealth Constitution. It is not really possible to define the defendant's position any more clearly than that. It is simply nonsensical and incoherent. The argument has been rejected countless times not only in Australia but in other common law jurisdictions. But individuals such as the defendant are undaunted - they plough on regardless. The argument

does not vary much and has never been successful in any way, shape or form.

5 It is unnecessary to go through all of the actions commenced by the defendant in which this 'constitutional invalidity' argument has been raised. It is enough if I give one example. On 19 January 2005 Magistrate King heard an application by the Shire of Greenough to recover \$934.27 being rates due by the defendant and his wife Mrs Kylie June Glew to the Shire of Greenough for the 2003 - 2004 rate period. During the course of the hearing the defendant submitted there was no case to answer because the *Local Government Act 1995* (WA) was unconstitutional and therefore unlawful. The learned magistrate rejected the argument. On 16 February 2005 he entered judgment against Mr and Mrs Glew.

6 By notice of appeal dated 4 March 2005 Mr and Mrs Glew appealed Magistrate King's orders. In the notice of appeal the order sought was:

Pursuant to the State and Federal Constitutions the *Local Government Act* is unlawful and therefore the case be dismissed and costs awarded [sic].

7 On 15 December 2005 Judge Wager of the District Court handed down her decision: *Glew v Shire of Greenough* [2005] WADC 245. Judge Wager actually gave careful consideration to the defendant's argument. She rejected it in the clearest possible terms. There is no doubt her reasoning was correct and any reasonable person would have accepted that to be the case. But the defendant pressed on.

8 By notice of appeal dated 10 January 2006 the defendant sought leave to appeal the decision of Judge Wager. The defendant then widened his attack. He lodged a document with this court entitled 'Legal Notice Supreme Court of Western Australia'. That document alleges 'serious indictable offences' committed by the solicitors for the Shire of Greenough and Members of the Shire of Greenough. A further document gives notice that 'serious indictable offences' had been committed by the Director of Public Prosecutions (WA).

9 When the matter came on for hearing it was summarily dismissed by Justices Pullin and Buss: see *Glew v Shire of Greenough* [2006] WASCA 260.

10 The defendant then sought leave to appeal to the High Court. The application was dealt with by Justices Gummow and Heydon. A copy of the transcript of their Honours' decision appears as annexure MG 23 to

Ms Georgiou's affidavit. It is worth quoting what Justice Gummow had to say:

The local court of Western Australia at Geraldton gave judgment for the respondent and against the applicants for a trivial sum, being arrears of rates. That court rejected the applicants' argument that the *Local Government Act 1995* (WA) is unconstitutional, as is s 52 of the *Constitution Act 1889* (WA). The District Court of Western Australia dismissed the applicants' appeal. In turn the Court of Appeal of the Supreme Court of Western Australia dismissed a further appeal as 'entirely lacking in legal merit'. We agree, and the same expression applies to the prolix, offensive and vexatious documents filed in support of this special leave application.

11 All avenues of appeal were then exhausted. The Shire of Greenough lodged a bill of costs for taxation. This bill had to do with the costs of the appeal to the Supreme Court. The matter came on before Registrar Powell. The defendant repeated the same arguments he had made before and which had been comprehensively rejected. The bill was taxed and the defendant sought a review. The matter came on before Justice Beech who dismissed the defendant's application. He rejected the defendant's regurgitated argument.

12 Since that time there have been six other sets of proceedings involving the defendant. Without going into details they can be summarised as follows:

1. Department of Planning and Infrastructure proceedings. This involved a Magistrates Court prosecution against the defendant. It led to an appeal to a single judge of the Court of Appeal, an appeal to the Full Court of the Court of Appeal and a taxation of costs.
2. Frank Jasper proceedings. These proceedings were brought by Frank Jasper Pty Ltd against Mr Glew and Glew Technologies Pty Ltd for alleged breach of intellectual property licence agreement and damages for misleading and deceptive conduct. The defendant applied for leave to represent Glew Technologies. That was refused. There was an appeal from an interlocutory decision. There were then two trials - one in relation to liability, the other in relation to quantum. There were then two appeals against the decisions in each of the trials. The defendant was unsuccessful at first instance and on appeal.
3. The Governor of Western Australia proceedings. This application appeared to be directed at preventing the 2008 State election.

4. White proceedings. This was an action against the defendant for assaulting and obstructing a public officer. A conviction was recorded in the Geraldton Magistrates Court. This was followed by an appeal to a single judge of this court and then to the Court of Appeal. Both appeals were dismissed. The same argument was used by the defendant in each case.
5. City of Geraldton-Greenough/City of Greater Geraldton proceedings. This was an attempt by a local government to recover unpaid rates. The same arguments were once again run right up to the Court of Appeal.

13 To make an order under the *Vexatious Proceedings Restriction Act* the court must first decide whether it is satisfied the defendant has instituted or conducted vexatious proceedings or is likely to institute or conduct vexatious proceedings. If the court is so satisfied then it has a discretion whether or not to make an order under the Act. If an order is to be made then consideration must be given to the terms of the order. These principles are drawn from two cases in particular: *Attorney General v Michael* [2005] WASC 203 [13] (Le Miere J); and *The Principal Registrar of the Supreme Court v Chin* [2012] WASC 7 [132] (Murray J). The defendant is clearly a vexatious litigant. He has run a series of cases in which the same nonsensical and worthless argument has been put. It has been explained to him on any number of occasions the argument has no hope of success. But still the defendant persists. It is no light matter to deny a citizen the right to proceed in the courts of a State. But with every right comes a duty. The duty here is on the litigant to make proper and appropriate use of the courts' resources. That duty is breached when the same hopeless argument is run again and again. In deciding the proper course was to make the order sought by the plaintiff I was mindful the defendant would not as a right be able to initiate any proceedings. Section 3 of the *Vexatious Proceedings Restriction Act* is in the following terms:

3. Interpretation

In this Act, unless the contrary intention appears -

Court means the Supreme Court, a Judge, the District Court, or a District Court Judge;

institute proceedings includes -

- (a) in the case of civil proceedings, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced against a party;
- (b) in the case of proceedings before a tribunal, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced before the tribunal;
- (c) in the case of criminal proceedings, the commencement of a prosecution or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) in the case of civil or criminal proceedings, or proceedings before a tribunal, the taking of a step or the making of an application which may be necessary to commence an appeal in relation to the proceedings or to a decision or determination made in the course of the proceedings;

proceedings includes -

- (a) any cause, matter, action, suit, proceeding, trial, or inquiry of any kind within the jurisdiction of any court, including a court of summary jurisdiction, or a tribunal;
- (b) any proceedings, including interlocutory proceedings, taken in connection with or incidental to proceedings pending before a court, including a court of summary jurisdiction, or a tribunal; and
- (c) an appeal from a decision or determination, whether or not a final decision or determination, of a court, including a court of summary jurisdiction, or a tribunal;

vexatious proceedings means proceedings -

- (a) which are an abuse of the process of a court or a tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable ground; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose.

14 But in this case there is no alternative. The defendant is a vexatious litigant and should be treated accordingly. For these reasons I made an order in terms sought by the plaintiff.