



[2006] HCA Trans 383

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Melbourne

No M134 of 2005

B e t w e e n -

BRIAN WILLIAM SHAW, ADAM
JAMES SHAW AND BENJAMIN JON
SHAW

Applicants

and

G FRAGAPANE NOMINEES PTY LTD

Respondent

Application for special leave to appeal

Publication of reasons and pronouncement
of orders

KIRBY J
CALLINAN J

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 3 AUGUST 2006, AT 9.16 AM

Copyright in the High Court of Australia

KIRBY J:

Background

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On 1 August 2005, the applicants applied by summons for a stay of certain costs orders that had been determined against them in the Supreme Court of Victoria. Such orders related to proceedings in which they were involved that had transpired between November 2000 and November 2004. By March 2005, the orders remained unsatisfied. It was in those circumstances that the respondent took steps to have the costs taxed, resulting in the summons that came before Mandie J, in the Supreme Court of Victoria on 1 August 2005.

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One of the orders made by Mandie J on that day was an order that an affidavit, relied on by one of the applicants, be removed from the court file. Such order was justified by his Honour on the basis that the affidavit was full of argumentation and contrary to the Rules of the Court. Mandie J ordered that any further affidavit upon which the applicants wished to rely be filed and served on or before 22 August 2005 and that the applicants pay the respondent's costs of the hearing on 1 August 2005.

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The applicants' summons seeking the stay of the costs order subsequently came on for hearing on 23 August 2005 before another judge of the Supreme Court (Whelan J). On that occasion, the summons seeking the stay was dismissed with costs. Whelan J noted that no further affidavit had been filed in support of the applicants' summons and that there was no material to sustain the orders claimed. However, it is the decision of Mandie J, rather than of Whelan J, that was the subject of the relevant proceedings before the Court of Appeal of Victoria.

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On 9 September 2005, that Court (constituted by Maxwell P and Nettle JA) declined to disturb the foregoing orders made by Mandie J. The Court of Appeal rejected various arguments advanced for the applicant against those orders, including arguments that Mandie J did not have jurisdiction to make the order, and that "serious indictable issues discovered and included into the affidavit filed ... were unlawfully ignored by Mandie J and as such breached ss 34 and 44 of the *Crimes Act* 1914 of the Commonwealth". Other grounds of complaint related to the suggestion that a question of law must be determined by the Court of Appeal, not a single judge, and that the issues referred to in the affidavit could only be properly dealt with in the original jurisdiction of this Court.

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A clue as to the nature of the matter which the applicants wished to advance is given by the indication in the Court of Appeal's reasons that the affidavit removed from the file by the order of Mandie J concerned whether

“we have the laws of Freemasonry in the political arena or in the judiciary”.
The Court of Appeal concluded that there was no reason to doubt the
correctness of the conclusion reached by Mandie J or his Honour’s orders.

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Disposition

The orders made by the Court of Appeal plainly represented a
conclusion that was open to the Court of Appeal, as was the decision of the
Court of Appeal to award costs against the applicants on an indemnity basis.

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The applicants’ draft notice of appeal to this Court is prolix. It
appears to be premised on the notion that the judges involved in the
applicants’ litigation acted illegally by virtue of some Masonic oath or
obligation. There was no foundation for such an assertion or complaint. In
this Court, the applicants have not advanced any questions of law or
principle that would warrant a grant of special leave to appeal. Apart from
everything else, this Court would very rarely involve itself in respect of
interlocutory decisions involving the practice and procedure of a trial or
intermediate court. On their face, the decision and orders of the Court of
Appeal of Victoria were correct. There are no prospects of success of any
appeal to this Court.

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Order

Pursuant to r 41.10.5 of the High Court Rules, we direct the Registrar
to draw up, sign and seal an order dismissing the application for special
leave. I publish that disposition signed by Callinan J and myself.

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AT 9.19 AM THE MATTER WAS CONCLUDED