FEDERAL COURT OF AUSTRALIA

Skyring v Ramsey [2000] FCA 774

PRACTICE AND PROCEDURE – application by Registrar of the Court seeking order that the appellant be declared a vexatious litigant – *Federal Court Rules* O 21 r 1(c) – appellant had commenced numerous proceedings in the Court arguing that Australian currency is invalid – whether primary judge correctly determined that appellant had habitually and persistently and without any reasonable ground instituted a vexatious proceeding in the Court.

Reserve Bank Act 1959 (Cth)
Currency Act 1965 (Cth)
Federal Court Rules O 21 r 1

Re Skyring's Application (No.2) (1985) 59 ALJR 561 at 561-562 referred to
In the Matter of an Application by Alan George Skyring (High Court of Australia, unreported, 9 July 1985) followed
Re Attorney General (Cth); Ex parte Skyring (1996) 70 ALJR 321 at 322 referred to
Henderson v Henderson (1843) 3 Hare 100 at 115; 67 ER 313 at 319 referred to
Port of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589 at 598 applied

ALAN GEORGE SKYRING v GRAHAM RAMSEY AS DISTRICT REGISTRAR OF THE FEDERAL COURT

Q 208 of 1999

RYAN, O'CONNOR and WEINBERG JJ
9 JUNE 2000
MELBOURNE (VIA VIDEOLINK TO BRISBANE)

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **Q208 of 1999**

BETWEEN:	**ALAN GEORGE SKYRING** **APPELLANT**
AND:	**GRAHAM RAMSEY AS DISTRICT REGISTRAR OF THE FEDERAL COURT** **RESPONDENT**

JUDGES:	**RYAN, O'CONNOR and WEINBERG JJ**
DATE OF ORDER:	**9 JUNE 2000**
WHERE MADE:	**MELBOURNE**

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The respondent file and serve within 14 days of this day written submissions in support of its application for costs of this appeal.
3. The appellant file and serve within 28 days of this day any written submissions in response to the submissions referred to at par 2 of this order.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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IN THE FEDERAL COURT OF AUSTRALIA

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BETWEEN:	**ALAN GEORGE SKYRING** **APPELLANT**
AND:	**GRAHAM RAMSEY AS DISTRICT REGISTRAR OF THE FEDERAL COURT** **RESPONDENT**
JUDGE:	**RYAN, O'CONNOR and WEINBERG JJ**
DATE:	**9 JUNE 2000**
PLACE:	**MELBOURNE**

REASONS FOR JUDGMENT

1 This is an appeal from orders of a single judge of the Court (Sackville J) made on 6 July 1999 in respect of an application made under O 21 r 1 of the *Federal Court Rules* ("the Rules"). His Honour's finding in respect of that application was that the appellant has "habitually and persistently" and without any reasonable ground instituted vexatious proceedings in the Court. The consequence of that finding is that the appellant is disqualified from instituting or continuing legal proceedings in this Court without first obtaining leave.

2 The basis for the appeal in this case, as described by the appellant in extensive written and oral submissions, is that the numerous proceedings which were found by Sackville J to be vexatious had, in fact, been instituted in order to bring to final determination what his Honour described as the "currency issues".

3 In coming to his decision, his Honour observed at paras 61-63:

> *"In every one of the proceedings instituted by the respondent in this Court he has asserted, in one form or another, that the paper currency or coinage in use in Australia is invalid or that the legislation authorising the issue of paper currency or coinage is invalid. It may be that the first such proceeding, the appeal to the Full Court in April 1984, cannot be said to have been a*

> *vexatious proceeding or instituted without any reasonable ground. At that stage, neither the Full Court nor the High Court had ruled on the applicant's contention.*
>
> *Thereafter, however, any reasonable observer would have concluded that the respondent's contentions as to the invalidity of the currency could have no reasonable basis. Certainly, once Deane J had ruled against the respondent's contentions in 1985, and his decision had been affirmed on appeal, the respondent's contentions were doomed to failure in this Court and, for that matter, in any other Australian court. They were, to use the words of Roden J in* Attorney-General v Wentworth, *utterly hopeless. They remained so thereafter.*
>
> *The simple fact is that the respondent has refused, or been unable, to accept the fact that the currency issues have been authoritatively decided against him. He has obstinately attempted to raise the same arguments in this Court on many occasions, over a long period. In any sense of the expression, he has "habitually and persistently" and without any reasonable ground instituted vexatious proceedings in this Court."*

4 In the course of oral argument, it was put in different ways by members of this Full Court to the appellant (who represented himself) that the considerable volume of litigation in which he had engaged in order to pursue his strongly-held opinion on the currency issues resulted from his inability to accept that the central issue in the litigation had been finally determined. One example of a reply made by the appellant to that proposition is (at transcript p 20):

> "*This - the only reason that it comes up is that others cite against me that it's been finally determined. I don't raise it myself. Others cite that, and I have no option but to respond to it. And how I respond is as I've done here* [and] *now. It has not been determined and I [say] - "Show me where the rights of the parties has been determined", and no one can. So, you know, it's out of this world which I find quite difficult coping with.*
>
> *It's, you see – here, I guess it's a conflict of background. My engineering won't allow me to accept this sort of thing because if I did that in engineering I'd be out of business, yet it seems to be an accepted norm in the legal fraternity. And that I just can't cope with. It's as simple as that."*

5 It is clear that the appellant has not accepted that the currency issues he continues to raise have been authoritatively determined against him. That he does not *agree* with the conclusions which led to that determination is clear. However, that lack of agreement does not oblige the Court to continue to entertain proceedings which are hopeless.

6 Sackville J relied primarily, and we consider, correctly, on the determination of Deane

J in *Re Skyring's Application (No.2)* (1985) 59 ALJR 561 in coming to the conclusion that the currency issues had, contrary to the appellant's assertion, been finally determined. The relevant section of Deane J's decision is set out as follows at 561-562:

> *"I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender. Nor, in my view, would there be any substance in an argument that the provisions of s 36(1) of the* Reserve Bank Act 1959 *are invalidated or overruled by the provisions of the* Currency Act 1965*."*

7 As noted by Sackville J the appeal from Deane J's judgment was subsequently dismissed by the High Court (*In the Matter of an Application by Alan George Skyring*, unreported, 9 July 1985). In the course of its reasons for making that order, the High Court said at page 2: "*we are not persuaded that the judgment of Deane J contains any error*".

8 In the course of argument, it was sought by the appellant to establish in two ways that there has been no final determination. It was first argued that, for there to be a final determination, there must have been a "definition of rights as between the parties". Even if we could accept that, without qualification, as a correct characterisation of the relevant law, it is clear that any rights sought to have been established by the appellant have not been recognised by the High Court, and in that sense, there has been a "definition" of the "rights" at issue, notwithstanding the brevity of published reasons.

9 Secondly, the appellant sought to establish that s 36(2) of the *Reserve Bank Act 1959* (Cth) supports an argument similar to that which has previously been rejected by the High Court in relation to s 36(1), but sufficiently distinct to provide a further avenue for litigation of the currency issues. The appellant contended that he had, in raising s 36(2), "*backed off one* [step] *from* [the argument that paper notes are not legal tender at all]" (transcript at p 14).

10 The determination of Sackville J was concerned in part with the question of whether the proceedings instituted by the appellant were vexatious in that they sought to raise exactly that issue, of whether paper notes are legal tender, which had previously been determined against him. To be satisfied that no appellable error has occurred, it is not necessary for this Court to be persuaded that s 36(2) would not found a separate and distinct cause of action. We should say, however, that we are indeed so persuaded. In

this respect we note, in passing, that in *Re Attorney General (Cth); Ex parte Skyring* (1996) 70 ALJR 321 Kirby J at 322 did not allow the current appellant leave to institute proceedings (leave being required in that case) which appeared to have been based, in part, upon an argument similar to that raised in respect of s 36(2).

11 In any case, as was put to the appellant during the course of the hearing, his proposed reliance upon s 36(2) would offend the extended principle expressed by Sir James Wigram VC in *Henderson v Henderson* (1843) 3 Hare 100 at 115; 67 ER 313 at 319:

> *"where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of* res judicata *applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."*

12 The existence of this principle was affirmed by the High Court in *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 at 598. That principle, we consider precludes a litigant from raising in coquate proceedings arguments which could have been, but were not, raised in litigation which has been finally heard and determined.

13 Even if we were persuaded, which we are not, of the merits of the appellant's arguments on the currency issues, to continue to entertain them would be tantamount to our refusing to accept as binding on us a determination of the High Court. In light of the clear determination of the currency issues by the High Court, and notwithstanding that the appellant does not accept that determination as either final or correct, the continued prosecution of proceedings designed to require this Court to revisit an issue central to that final determination can correctly be characterised as vexatious.

14 Similarly, in respect of the appeal against the order for costs made by Sackville J, the appellant's reliance on the Magna Carta is misconceived and the appeal is without merit.

15 In these circumstances, Sackville J's extensive discussion of the relevant law is

wholly unexceptionable. In the result, the appeal is dismissed. The parties will be given an opportunity to provide written submissions limited to the question of the costs of this appeal.

I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Ryan, O'Connor and Weinberg.

Associate:

Dated: 9 June 2000

Counsel for the Appellant:	The appellant appeared in person
Counsel for the Respondent:	Mr J A Logan
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	24 November 1999
Date of Judgment:	9 June 2000