

**FEDERAL COURT OF AUSTRALIA**

**Skyring v Sweeney [1999] FCA 61**

**ALAN GEORGE SKYRING V PAUL DESMOND SWEENEY**

**QG 162 of 1998**

**SPENDER J**

**4 FEBRUARY 1999**

**BRISBANE**

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY**

**QG 162 OF 1998**

**BETWEEN: ALAN GEORGE SKYRING  
APPLICANT**

**AND: PAUL DESMOND SWEENEY  
RESPONDENT**

**JUDGE(S): SPENDER J**

**DATE OF ORDER: 4 FEBRUARY 1999**

**WHERE MADE: BRISBANE**

**THE COURT ORDERS THAT:**

1. In relation to the notice of motion brought by the first and second respondents on 8 December 1998:
  - (a) the notice of appeal against the first respondent (the Australia and New Zealand Banking Group Limited) be struck out;
  - (b) the appellant provide security for the costs to be incurred by the respondent in the appeal QG 162 of 1998 between Alan George Skyring as appellant and Paul Desmond Sweeney as second respondent, such security to be in a form satisfactory to the Registrar;
  - (c) the appeal be stayed pending the provision by the applicant of the abovementioned security for costs.
2. In relation to the notice of motion brought by the appellant on 18 January 1999, the orders sought therein are refused.
3. In relation to the notice of motion brought by the appellant on 2 February 1999, the orders sought therein are refused.

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

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY**

**QG 162 OF 1998**

**BETWEEN: ALAN GEORGE SKYRING  
APPLICANT**

**AND: PAUL DESMOND SWEENEY  
RESPONDENT**

**JUDGE(S): SPENDER J**

**DATE: 4 FEBRUARY 1999**

**PLACE: BRISBANE**

**REASONS FOR JUDGMENT**

1 I am presently concerned with two aspects of a number of notices of motion. The first is whether the appeal in QG162 of 1998, where the parties are Alan George Skyring as appellant and Paul Desmond Sweeney as respondent, Mr Sweeney being Mr Skyring's Trustee in Bankruptcy, should be heard at the same time as an appeal which is listed for hearing where the parties are Mr Skyring and the Australian Electoral Commission. The latter is an application for leave to appeal from an interlocutory order made by Dowsett J.

2 It seems to me that I should not grant that application, not only because of the present inconvenience in relation to bringing that before an appeal court in the time frame that is available, but particularly because there is, in relation to the appeal in QG 162 of 1998, an application for security for costs, an application the kind of which has not been made in the application for leave to appeal from the judgment of Dowsett J involving the Australian Electoral Commission.

3 Notwithstanding Mr Skyring's forceful submissions that the provisions of *Magna Carta*, amongst others, prohibit the imposition of orders for security for costs as that involves in a sense the selling of justice, and notwithstanding Mr Skyring's argument - almost a mantra really - that it is impossible to comply with an order for security for costs, it being asserted by him that paper money is not legal tender in Australia, in this case, in my opinion, on the proper application of s 56 of the *Federal Court of Australia Act 1976*, I ought to order the

provision of security for costs.

4 Section 56(1) provides:

*“The Court or a Judge may order an applicant in a proceeding in the Court or an appellant in an appeal to the Court to give security for the payment of costs that may be awarded against him.”*

5 The Full Court (Shepherd, Morling, and Neaves JJ) in *Bell Wholesale Co Ltd v Gates Export Corporation* (1984) 2 FCR 1 said at 3:

*“Section 56(1) is in general terms. Counsel for the appellant conceded that this was so, but argued that s 59 gave to the judges of the court power to limit, by making appropriate rules, the ambit of the discretion which would otherwise have been available under s 56. He contended that the promulgation of O 28 r 3 therefore effectively prevented the making of orders for security for costs in circumstances other than those referred to in r 3 itself.*

*We were clearly of opinion that this proposition was unsound. No doubt s 59 is the source of the power to make rules of court in relation to matters of practice and procedure. But those rules cannot operate so as to limit the wide power conferred by s 56 itself. The discretion to make orders under s 56 must be exercised judicially, but that is the only relevant limitation. Moreover, it is plain from the terms of O 28 itself that r 3 is not intended to be an exhaustive statement of the cases in which an order for security for costs can be made. Rule 6 is quite inconsistent with such a proposition.”*

6 In this particular case, O 28 r 3 sets out the usual criteria for granting such an order. The court's discretion is not limited to those criteria, as the observations of the Full Court in *Bell Wholesale* make plain. In this particular case, Mr Skyring is an undischarged bankrupt. There are a number of costs orders which have been made against him. Impecuniosity is a factor which can be taken into account as justifying the grant of security. Impecuniosity ought not to be a bar to a person prosecuting at first instance a claim, but the position on appeal seems to me to be fundamentally different. In effect, in the absence of an order for security for costs in the circumstances of this case, Mr Skyring, in effect, is given a free hit, and that seems to me to be intrinsically unfair.

7 I express no view as to the prospects of success of the proposed appeal, since it is an appeal from a judgment of my own, but I do note that the point which Mr Skyring wishes to agitate on the appeal is the same point which he has pursued with commitment, if not wisdom, on many occasions in the past. He no doubt hopes that he will strike it lucky sooner or later.

8           On the material contained in the affidavit of Gregory Wayne Rodgers filed in support of the motion for security for costs, it seems to me right that I should order that Mr Skyring provide security to the extent of \$4000.00 in the appeal QG 162 of 1998 between Alan George Skyring as appellant and Paul Desmond Sweeney as second respondent, such security to be in a form satisfactory to the Registrar. I further order that the appeal QG 162 of 1998 be stayed pending the provision by Mr Skyring of that security.

9           On the notice of motion for security for costs, it seems to me that I ought to follow the ordinary rule and order that the respondent on the motion pay the costs of and incidental to that motion.

10          In the light of the reasons in respect of the motion for security for costs, I decline to grant the relief sought by Mr Skyring in his affidavit filed 2 February 1999.

I certify that the preceding ten (10) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Spender.

Associate:

Dated:           4 February 1999

The applicant appeared in person.

Solicitor for the Respondent:       Gadens Lawyers

Solicitor for the Australian  
Electoral Commission:           Australian Government Solicitor

Date of Hearing:                   4 February 1999

Date of Judgment:                 4 February 1999