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LD:SND SCC1853-J 071897

THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

REGISTRAR BRADFORD

MONDAY 12 MARCH 2007

07/011031 - JOHN PETER BAUSKIS v MICHAEL FREDERICK ADAMS

Plaintiff appeared in person
Mr C Lonergan for the Defendant

LONERGAN: I say that I don't know that it's a consent application but if I can have your registrar's leave to mention it.

REGISTRAR: Yes.

PLAINTIFF: What we want to do is get a date for the jury, please?

REGISTRAR: Mr Bauskis, is it?

PLAINTIFF: Yes.

LONERGAN: Could I just assist for the moment, registrar, if I may.

REGISTRAR: Yes.

LONERGAN: This is the first return date of the summons. The papers were served on my instructing solicitor, the crown solicitor's office, referable to Adams J back on Tuesday last, 6 March. As I say this is the first return date. As I've announced my appearance for the defendant I can say this, registrar, that at present the relief claimed against his Honour I don't think will come as any surprise to, with respect, the plaintiff or the court but there will be an application seeking to set it - that it's struck out, but presently what is exercising the mind of those instructing me is to whether the Attorney General ought intervene or alternatively ought to appear amicus curiae or that the court appoint, because it is his Honour, a contradictor to agitate the issues raised in the summons. But presently those instructions have not been received.

Now as I say it won't come as any surprise with due respect that there will ultimately be an application to set it aside or struck out. Having said that my application would be, registrar, that the matter go over to a convenient date to allow instructions to be obtained for those purposes that I've mentioned and the date that I respectfully put forward to the court is Monday, 16 April next. What I envisage may in fact occur by that date is that subject to instructions a motion will be filed seeking the matter be struck out as I've indicated and that submissions may be filed either by the Attorney General appearing either as an intervenor or as amicus curiae or that an application be made for the appointment of a contradictor. I would ask that the matter go over to that date for mention and that's the position of my client at the present time.

PLAINTIFF: This matter that he's just mentioned about trying to get the thing struck out, that's got to be heard by a jury anyway so can we set a date for a jury to do that matter or anything else?

REGISTRAR: There's got to be some other procedures before he moves to the court in relation to that, Mr Bauskis. As it is the first time that the matter has come in I believe the matter should go over to 16 April, it certainly can be dealt with on that occasion.

SPEAKER: We're asking for an allocation of date for a trial by jury.

PLAINTIFF: We're asking for an allocation of date for a trial by jury.

REGISTRAR: I understand that.

PLAINTIFF: Even to hear his matter.

REGISTRAR: I understand that. I'm standing the matter over to 16 April for mention.

PLAINTIFF: This is too important.

SPEAKER: This is too important to do that. You cannot delay justice. The Magna Carta says to no-one will we sell, to no-one will we delay or deny a right to justice.

REGISTRAR: Excuse me, who are you?

SPEAKER: I am a friend of John's.

REGISTRAR: All right. Very well.

SPEAKER: You are delaying.

REGISTRAR: Well I have stood the matter over to 16 April and you're talking in terms of the delay of justice, the defendant also has certain rights and if they have to obtain instructions they will obtain instructions. This is the first day the summons has come back.

SPEAKER: They have plenty of time for instructions before-

REGISTRAR: It is stood over to 16 April, thank you.

SPEAKER: They have actually.

SPEAKER: They've got plenty of time. Set a date for trial by jury now.

REGISTRAR: No, I will not. Notice stood over to 16 April.

SPEAKER: Then you are delaying justice.

LONERGAN: Is that for mention?

REGISTRAR: For mention.

SPEAKER: When are you delaying it to?

REGISTRAR: To 16 April for mention.

SPEAKER: Will they set a date for trial by jury on that occasion?

REGISTRAR: We will see what occurs on that occasion.

SPEAKER: No, we will demand trial by jury.

REGISTRAR: You can demand a trial by jury but come back on 16 April. Thank you.

SPEAKER: And you're delaying.

ADJOURNED TO MONDAY 16 APRIL 2007

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LD:SND SCC1870-I

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THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

REGISTRAR BRADFORD

MONDAY 16 APRIL 2007

07/011031 - JOHN PETER BAUSKIS v MICHAEL FREDERICK ADAMS

Plaintiff appeared in person
Mr C Lonergan for the Defendant

LONERGAN: Registrar, Lonergan is my name. I appear for the defendant in this matter.

REGISTRAR: Mr Bauskis?

PLAINTIFF: Yes.

REGISTRAR: Thank you. Yes?

LONERGAN: Your Honour, when the matter was last before you on-

WILSON: What's the sheriff doing here? Why is there as a menace?

REGISTRAR: Excuse me, who are you?

WILSON: I am John Wilson. Why is the sheriff here in this position?

REGISTRAR: Well sit down please. Sit down please, Mr Wilson-

WILSON: Why is he there? He is a threat.

REGISTRAR: ---and let the court conduct its business please.

WILSON: There's no court.

REGISTRAR: Yes, Mr Lonergan.

LONERGAN: Thank you, registrar. When the matter was last before you on 12 March I sought an adjournment to today for mention in order for a determination to be made as to the nature of the appearance by the defendant his Honour Adams J. Can I indicate this, that the instructions have now been received. There will be an unconditional appearance by his Honour as the defendant in these proceedings and for that purpose could I seek the registrar's

leave to hand up a notice of appearance for the defendant in this matter and I'll give a copy of it to - thanks.

That having been done, registrar, it would be our application that the matter proceed in this manner with your leave, registrar, and that is that given the nature of the relief sought in the summons it would be the defendant's application that the matter proceed by way of a notice of motion filed on behalf of the defendant to seek to have this matter struck out.

SPEAKER: To be heard by a jury.

LONERGAN: The relief sought is such that the defendant would say there is no basis whatever for the claims made and in any event judicial immunity would be argued strongly.

SPEAKER: There's no immunity. None.

LONERGAN: So registrar for that purpose I would respectfully propose the following course. That the defendant file the notice of motion on or by 27 April next, that's essentially two weeks, with any affidavit in support together with written submissions to be filed and served. Any affidavit material, registrar, would be in the nature of a supplement to the transcript and the decisions of the court. Whilst there was attached to the case management material filed by the plaintiff in this matter, and I don't say this by way of criticism, it might be necessary to complete it - there were some missing pages and the like - so that in that respect that would be the extent of the affidavit material and that would be served with the notice of motion together with written submissions for that purpose of a strikeout application on or by 27 April next.

I note the comments made on the last occasion by or on behalf of the plaintiff for an early hearing of this matter once that is done and any further affidavits they seek to file or he seeks to file. We wouldn't be adverse to that course for an early hearing date of the motion to strikeout whether it be by way of a special fixture or otherwise.

PLAINTIFF: Well first off my friend there says no basis for what. All we are asking for is an allocation of a date for a trial by jury. We're not going to start filling out all sorts of affidavits and anything else, we want this tried by a jury. Now all you've got to do is allocate a date.

REGISTRAR: It's not as simple as that in relation to trial by a jury.

PLAINTIFF: Yes, it is. Quite simple. Common law is quite simple.

REGISTRAR: Mr Bauskis, I would refer you to the civil procedure rules in relation to that and specifically pt 29.

PLAINTIFF: I can't hear you, sir.

REGISTRAR: Part 29 of the uniform civil procedure rules in relation to trials by jury.

WILSON: They don't apply.

PLAINTIFF: They don't apply.

REGISTRAR: I'd also refer you to s 85 of the Supreme Court Act.

WILSON: They don't apply.

PLAINTIFF: This is an indictment to start with from a grand jury. Now what are you trying to do?

REGISTRAR: Mr Bauskis.

PLAINTIFF: You're trying to railroad the whole thing. No. No, that's not on.

REGISTRAR: Mr Bauskis. Mr Bauskis, do you need time to file affidavit material?

PLAINTIFF: I don't need time for anything because I'm not filing anything. I don't need to file it. I want it heard by a jury. Not you, not a judge, not anybody else, but by a jury of my own peers.

WILSON: If you don't set a date with allocation of a jury I will arrest you if the sheriffs don't.

REGISTRAR: Mr Wilson, just be quiet.

WILSON: What did you say?

PLAINTIFF: Due process and the rule of law, where's that? Tell me. Where's that? Huh?

WILSON: Hand up the notice, John.

PLAINTIFF: There you are. Look there, can you please take that please and give it to him.

SPEAKER: If a man wants a jury he can't get it by one ..(not transcribable)

PLAINTIFF: Come on, hand it to the registrar.

SPEAKER: ..(not transcribable)

REGISTRAR: I don't mind. Hand it up if he wants to hand it up.

WILSON: It's a legal document.

PLAINTIFF: You're making him wait. What's wrong with you people?

REGISTRAR: There's no need to be rude to the court staff, Mr Bauskis.

SPEAKER: Due process. Rule of law. Don't you believe in that here?

REGISTRAR: Mr Lonergan, do you want your motion returnable on 27 April or just filed and served by that date?

LONERGAN: Just filed and served by that date and as I said, registrar, we would be content if the matter would be subject to the court's leave for the matter to be referred for hearing at a convenient early date after that.

PLAINTIFF: We don't want a hearing. We want a date for allocation of a date for a trial by jury. You're trying to railroad me again, are you?

REGISTRAR: Mr Lonergan, is 4 May a convenient date to come back for the court and hopefully obtain a hearing date?

LONERGAN: The 4 May is suitable to me, registrar.

REGISTRAR: Mr Bauskis?

PLAINTIFF: No, it's not suitable.

REGISTRAR: Why is it not suitable to you?

PLAINTIFF: Because I've got another court case to go to.

REGISTRAR: Have you?

PLAINTIFF: Yes.

REGISTRAR: All right then, that's all right. The 11 May or would you prefer it earlier in the week of 7 May?

WILSON: This is a public hearing. I can't hear you down the back. It's a public hearing, we've got to hear what you say.

PLAINTIFF: I can't hear anything either. I've got a hearing aid on and I still can't hear you.

REGISTRAR: Good. What's your date? What date would you like?

PLAINTIFF: The date to allocate a date for the jury? Any date.

REGISTRAR: I'm asking for the hearing of the notice of motion, Mr Bauskis.

PLAINTIFF: No, forget the hearing of the notice of motion.

REGISTRAR: You've got to come back to court anyway to allocate a date so what date would you like?

PLAINTIFF: Well why can't you allocate a date now?

REGISTRAR: That's what I'm asking you.

WILSON: To empanel a jury. A jury ..(not transcribable)

PLAINTIFF: To empanel a jury, that's what I want.

REGISTRAR: Mr Bauskis, can you—

PLAINTIFF: We just keep coming back to court again.

REGISTRAR: ---conduct your case without the benefit of Mr Wilson seeming to prompt you?

WILSON: I'm a friend.

PLAINTIFF: But look all I'm after is a date for a trial by jury. Now what my learned friend here is saying-

REGISTRAR: All right. What other dates do we have?

LONERGAN: Would the week of the 14 May, Monday commencing the 14th?

REGISTRAR: The 14 May suit you, Mr Bauskis? Are you in court that day or have any other commitments?

PLAINTIFF: No.

WILSON: We will expect a jury to empanelled on that date, 14 May.

PLAINTIFF: 14 May I'll be here.

REGISTRAR: Thank you, Mr Bauskis.

WILSON: To empanel a jury.

PLAINTIFF: To a empanel a jury. Put that on record please.

LONERGAN: Registrar, there's just one further matter if I may.

REGISTRAR: Yes.

LONERGAN: On 20 May(as said) before you a notice of motion was mentioned and that was seeking orders that Mr John Wilson be joined as a plaintiff to these proceedings. On that day, the 20 March, that motion to join Mr Wilson as a plaintiff to these proceedings was stood over to today. I would ask that that motion run with - if I can put it that way - the Bauskis summons with respect to be stood over to 14 May. I hope that's clear, registrar.

REGISTRAR: Yes.

WILSON: Only a jury can hear the motion. You know that. Nothing inferior.

REGISTRAR: Leave is given to the defendant to file and serve a notice of motion to seek to have the proceedings struck out by 27 April 2007.

WILSON: You can't rule on that.

REGISTRAR: Defendant to file and serve affidavit material in support of the motion and written submissions by 27 April 2007. The matter is listed for further directions and for hearing to be allocated on the motion on 14 May 2007. In addition I note that there is a motion filed by Mr Bauskis to have Mr Wilson joined as a plaintiff. That motion is also stood over to 14 May.

WILSON: To be heard by a jury.

LONERGAN: Thank you, registrar.

REGISTRAR: Thank you.

PLAINTIFF: Why, why do you keep putting things over all the time? Why can't we sort these things out now? Why can't you allocate me a date for a jury?

SPEAKER: He hasn't got the power to do that.

PLAINTIFF: Hey? Bloody hell. You just keep pushing things from one side to the next.

WILSON: We'll get a jury.

BAUSKIS: Justice. Bloody hell. ..(not transcribable)

WILSON: Adolf Hitler, Stalin. ..(not transcribable)

ADJOURNED TO MONDAY 14 MAY 2007

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