

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION**

HISLOP J

Monday 10 November 2008

14646/08 JOHN WILSON v STATE OF NEW SOUTH WALES

JUDGMENT

1. HIS HONOUR: The plaintiff, by summons filed in this court on 4 September 2008, has sought damages from the defendant for unlawful arrest and false imprisonment.
2. The Uniform Civil procedure Rules, 2005 (“UCPR”) provide (r 6.3(b)) that proceedings on a claim for relief in relation to a tort be commenced by statement of claim.
3. Thus, the plaintiff’s claim, being a claim for relief in relation to a tort, should have been commenced by statement of claim not by summons, albeit the proceedings are taken to be duly commenced (UCPR 6.6(1)).
4. On the return of the summons on 15 September 2008, the registrar, as was appropriate, made orders that the proceedings continue on pleadings and that the plaintiff file and serve a statement of claim on or before 26 September 2008 pleading his claim for damages. The proceedings were stood over to 29 September 2008.
5. The plaintiff did not comply with the orders of the court and when the matter came before the court on 29 September 2008 the following orders were made:
 - “1. Extend the time by which the plaintiff is to file and serve a statement of claim pleading his claim for damages to 10 October 2008.

2. In the event of default regarding order 1, defendant to file and serve any notice of motion for dismissal of the proceedings or strike out by 14 October 2008, such notice of motion to be returnable on 20 October 2008.”

The proceedings were stood over to 20 October 2008.

6. On 14 October 2008 the defendant filed a notice of motion which sought the following orders:
 - “1. The proceedings be dismissed pursuant to part 12 Rule 7 of the Uniform Civil procedure Rules (2005) and/or section 61 of the Civil Procedure Act (2005).
 2. In the alternative, the proceedings be dismissed pursuant to part 13 Rule 4 of the Uniform Procedure Rules 2005.
 3. In the alternative these proceedings be stayed for such period as the Court deems fit pursuant to section 67 of the Civil procedure Act (2005).
 4. The plaintiff pay the costs of this Motion.
 5. The plaintiff pay the defendant’s costs of the proceedings.
 6. Such further or other orders as the Court may deem fit.”
7. The motion was heard by me on 20 October 2008. At that time no statement of claim had been filed and served by the plaintiff. Council for the defendant read two affidavits of the solicitor who had the carriage of the matter on behalf of the defendant. The affidavits confirmed that the plaintiff had asserted to both the solicitor and to the registrar that the orders which were ultimately made could only be made by a jury.
8. The plaintiff represented himself at the hearing of the notice of motion. He declined to tender any evidence. In oral statements to the Court, the plaintiff made, in essence, the following assertions:

- (a) He was entitled to trial by jury unless he and the defendant consented to trial by a judge alone. He had not given his consent to trial other than by a jury. Accordingly, the court lacked jurisdiction to determine the proceedings without a jury.
 - (b) The entitlement to have a trial by jury extended to the determination of interlocutory issues.
 - (c) Thus, the orders of the registrar were illegal and void, as they were not made by a jury. Accordingly he was not bound to comply with those orders.
 - (d) A judge sitting alone had no jurisdiction to determine matters raised on a notice of motion unless both parties had dispensed with the jury. Accordingly, I lacked jurisdiction to determine the defendant's motion.
 - (e) He had been involved in court proceedings for the last 12 years during which the courts had consistently and wrongly rejected his assertion that he was entitled, as a right, to a jury determination of all issues.
9. In my opinion, the plaintiff's assertions are misconceived for the following reasons:
- (a) Section 40(1) of the Supreme Court Act 1970 provides: " All proceedings in any division and all business arising out of the proceedings in a Division shall be heard and disposed of before a Judge, who shall constitute the Court."
 - (b) The functions of the Court may be relegated to registrars. Such a delegation has been made in respect of orders that matters commenced by summons proceed on pleadings and that a

statement of claim be filed and served (see Supreme Court Act, s 40(2), Civil procedure Act, 2005, s 13, the delegation made pursuant to s 13, and the UCPR 6.6(2), 6.6(3)).

(c) The Supreme court Act 1970, s 85(1), states that proceedings in any Division of this Court are to be tried without a jury unless the court makes orders otherwise. There are, in s 85(2), certain prerequisites to the making of an order for trial by jury. The power to order trial by jury is only engaged if s 85(2) is complied with. No steps have been taken in this case to activate s 85.

(d) The Civil Procedure Act 1970, s 3, defines trial as “any hearing that is not an interlocutory hearing”.

10. Accordingly, in my opinion, there is no basis for the plaintiff to refuse to comply with the outstanding orders of the court.
11. The defendant submitted that it does not, at present, seek relief upon the basis that the plaintiff does not have a case which can be properly pleaded and argued, although that may be the case depending upon what the plaintiff's pleaded case actually is. Rather, it seeks relief by reason of the plaintiff's entrenched refusal to comply with court orders. The plaintiff has a fixation in relation to his asserted, inalienable right to trial by a jury such that he refuses to comply with orders of the court regarding pleadings because they have not been made by a jury. Compliance with those orders and directions is necessary so that the plaintiff's claim can, fairly, be heard. In all the circumstances, the proceedings should either be dismissed or, if the court believes there is more than a theoretical possibility that the plaintiff might recant and comply with the orders of the court made to date, be stayed until he does comply.

12. The plaintiff's assertion that he is entitled to have all litigious issues determined by a jury is apparently longstanding. This suggests that he is likely to continue to refuse to comply with the outstanding orders of the court. This provides a basis to dismiss the proceedings at this time. However, the alleged cause of action is said to have arisen on 20 August 2008. Accordingly, if the proceedings were dismissed that plaintiff would not be prevented from commencing further proceedings based on the same cause of action.
13. In my opinion, the appropriate course is to stay these proceedings until such time as the plaintiff files and serves a statement of claim pleading his claim for damages. If he does not take that course within a reasonable time, the defendant should be at liberty at any time thereafter to make application for the dismissal of the proceedings or other appropriate relief.
14. Accordingly, I make the following orders:
 1. The proceedings are stayed until such time as the plaintiff files and serves on the defendant a statement of claim pleading his claim for damages.
 2. If a statement of claim pleading the plaintiff's claim for damages is not filed and served on the defendant by 5 February 2009, the defendant may apply to the court at any time thereafter on 7 days notice for the dismissal of the proceedings or other appropriate relief.
 3. The plaintiff pay the defendant's costs of the notice of motion.

I CERTIFY THAT THIS AND THE FOUR
PRECEDINGS PAGES ARE A TRUE COPY OF THE
REASONS FOR JUDGMENT HEREIN OF THE
HONOURABLE JUSTICE HISLOP.

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Date 10 November, 2008