



The Australian Justice Tribunal

A SAMPLE OF WORK IN PROGRESS

The overwhelming majority of cases that come before our Organisation fall squarely into the Civil arena. And the reason is clearly because Civil matters are not readily addressed by Legal Aid which primarily dedicates its assistance to those needing legal support within Criminal jurisdictions Australia-wide.

The result for ourselves is a workload that constantly needs to be serviced by Case Assessors and regrettably far more than we can appoint. And the cases themselves invariably are at a stage where clients are totally, financially exhausted and out of ideas.

“Where to from here?” is a common cry from Australians who have done everything they believe possible to obtain justice. And it’s a cry we repeatedly respond to.

Here’s just one example:

COLLATERAL ABUSE OF PROCESS

Many cases we handle have been either bungled by clients’ legal representatives or too often misunderstood by the courts. The result is an appalling denial of justice and the loss of money by Australians who have mortgaged their homes and begged or borrowed from family and friends just to pay legal fees.

But the abuse of process can be overcome in most instances. It is when the abuses are racked up one after the other, like athletes passing the baton, that clients become physically ill and suicidal. They see their human rights being repeatedly violated with each change of the baton... each change of a Law Firm... each change of a Judge.

Could you survive the following Collateral Abuse of Process?

Preamble to proceedings 2011/xxxxx (Names also changed)

Noel Anthony Jones (**Jones**) was gifted \$260,000 by his aunt, Betty, on xx Xxxx 2009. Seven days earlier Betty (88 years old) had undertaken a capacity assessment which determined that she was still capable of making financial and management decisions.

From about the age of 37, Elizabeth Margaret Smith (**Smith**) had been Betty’s step-daughter until the death of Smith’s father in 1999 – a period of 12 years. She had made herself Executrix of Betty’s estate and coveted that estate for herself and hers to the exclusion of Jones as next of kin. Naturally, Smith was extremely upset to learn that \$260,000 had been gifted to Jones, even though it was only **13.75%** of the estate. Furthermore, this money was not left to the estate by her father; it was Betty's, Jones’ aunt.

Commencement of District Court proceedings

By xx Xxxxx 2011, Smith had proffered sufficient false information to the NSW Trustee & Guardian (NSWTG) regarding Jones's alleged predatory, undue influence and unconscionable conduct over his aunt as to cause the NSWTG to attempt to recover the gifted money by instituting District Court proceedings 2011/xxxxx.

Invalid transfer to Equity Division of Supreme Court

The Solicitor (**Solicitor**) acting for the NSWTG failed to prosecute the matter actively, preferring instead to have it transferred to the Equity Division of the Supreme Court of New South Wales. This transfer was effected on xx Xxxxx 2012 by the Judge who had been handed a falsified NAB statement ostensibly proving that \$200,000 of the said gift had been applied against the mortgage over Jones' home.

Impermissible subpoena

But this bank document was not only falsely produced by the NAB (a matter later proved) but was fished, using an impermissible subpoena. A fact that was not brought to the Judge's attention because of the absence of the self-represented Defendant (Jones). However, it is doubted that an untrained, self-represented litigant could have argued so convincingly, anyway.

The Solicitor for the NSWTG would continue to exploit this advantage.

Commissioner of Railways v Small (1938) 38 SR NSW 564 at 575

The Chief Justice of New South Wales, Sir Frederick Jordan, had this to say about such inadmissible findings, being the subject of a subpoena:

"A party is no more entitled to use a subpoena than he is a summons for interrogatories for the purpose of fishing, ie endeavouring not to obtain evidence to support his case but to discover whether he has a case at all."

And during the course of arguing the transfer of District Court proceedings 2011/xxxxx to the Supreme Court on xx Xxxxx 2012, the Plaintiff's solicitor (later becoming Solicitor for Smith) admitted:

"After process of subpoena it was discovered that the defendant had used those moneys to discharge the mortgage over his home..."

And even if the NAB document procured by subpoena had not been proven to be fabricated the above Authority would still hold.

Seal of Supreme Court forged twice

The Summons (Case number 2012/00xxxxxx) used to effect the transfer of proceedings from the District Court to the Equity Division of the Supreme Court on xx Xxxxx 2012 contained an Amended Statement of Claim which then needed to be Court Sealed, dated and filed at the Registry.

Step 1 – The Solicitor for the NSWTG entered the Registry of the Supreme Court on the

following day, xx Xxxxxx 2012, ostensibly to file the Amended Statement of Claim. He then wrote a false Case number onto the document by using the Case number of the previous day's proceedings, Summons 2012/00xxxxxx. This ensured that the document filed would be archived (Case number now discontinued) and could not be linked to the correct Case number 2011/xxxxxx which the Solicitor would ensure was not recorded at the Supreme Court Registry.

Step 2 – He then approached a Registry staff member to have the Supreme Court Seal and Date affixed to the said document, then photocopied the document and left the original with the Registry. As stated above, it would be archived as a discontinued case.

Step 3 – The Solicitor took the first page of the now copied document and by using white-out he erased the defunct Case number, replacing it with a handwritten 'true' Case number 2011/xxxxxx.

He had now produced a forged Supreme Court Seal to create false bona fides for his Amended Statement of Claim. Only the filing of this document could possibly have mitigated, in part, the act of forgery; but he needed to continue flying under the radar.

Step 4 – The moment Betty died (and she did two months later on xx Xxxxx 2012) the Solicitor for the NSW TG wilfully failed to advise the Court that the NSW TG had discontinued their role as Tutor for the plaintiff in these proceedings and withdrawn his retainer. He simply continued to enter Court as if nothing had happened and boldly advanced the proceedings with no client or retainer.

Step 5 – On xx Xxxxx 2013, this same Solicitor then prepared a Notice of Motion under UCPR r 6.30 to have Smith (Betty's former step-daughter) substituted for "Betty Xxxxx by her tutor the NSW Trustee & Guardian" as plaintiff, which was incorrect given that the NSW TG had discontinued their involvement in proceedings and archived all material relating to it on xx Xxxxx 2013, two and a half months earlier.

But even worse, Jones's right to object to the substitution under UCPR r 6.31 was denied him, again because of his absence (this time overseas on work) and also because of his poor understanding of procedure. He did not understand that substitution was taking place two months outside the three months unchallengeable limit granted to effect substitution under r 6.31.

Also, by leaving the description of the plaintiff unchanged then this substitution meant a free ride for Smith as she was swept along on the back of the NSW TG's existing Court momentum (unbeknown to them) and their credibility as a government agency.

The Solicitor also ensured that the same defunct/archived Summons Case number was used on the first page, and then repeated the forging of the Supreme Court Seal as he had done with the Amended Statement of Claim seven months earlier. But this time he decided not to use white-out, instead choosing to put a couple of lines through the false Case number, before inserting the true Case number 2011/xxxxxx by hand.

Once again, the filed original was archived by the Registry and the corrected forged copy not filed, thus continuing to ensure that the NSW TG were still totally unaware of the fate of their former District Court proceedings.

Step 6 – When entering Court, the Solicitor needed to overcome the hurdle of there not being an Amended Statement of Claim on record at the Registry, or a Notice of Motion, so he ensured that he had a spare copy of each, to hand up to the Judge. When challenged, he could pass off their absence as a procedural glitch at the Registry. And it worked.

Substitute Plaintiff unfit to enter Equity

On xx Xxxxxx 2013, The Judge commenced the hearing of a fraudulently filed Notice of Motion by querying the absence of an Amended Statement of Claim. He had been unable to obtain it. Our now infamous Solicitor (two counts of forgery and multiple counts of deception) obliged by handing up a copy of his. And a copy of the Notice of Motion was also furnished, because that was not on file either. On this day the Solicitor had fraudulently commanded the attention of the Equity Division of the Supreme Court of New South Wales.

Particulars

Note that the proceedings then underway had commenced with:

- (a) no Supreme Court originating process (in this instance, the Amended Statement of Claim) having been filed at the Supreme Court Registry;
- (b) the Amended Statement of Claim being relied on bearing a forged Supreme Court Seal and Date;
- (c) no Notice of Appearance or Defence filed (It would be another two months before filing a Defence);
- (d) the Notice of Motion being an abuse of process;
- (e) the Notice of Motion being relied on bearing a forged Supreme Court Seal and Date;
- (f) the Notice of Motion not being filed (and like the Amended Statement of Claim it never was); and
- (g) an Executrix (Smith) **with a vested interest** adverse to the known and recorded wishes of the deceased (outside the recorded wishes in her manipulated Will), also with:
 - (i) an axe to grind, having an intense dislike for Jones as expressed by her efforts to stop the gift;
 - (ii) a 13-year history (after her father's death) of manipulative undue influence over her former step-mother (the deceased) manifesting in five (5) amendments to her Will resulting in the removal of Jones and his brother as beneficiaries; paying for extensive improvements to her home at Hornsby; the secretive transfer of Betty's holiday apartment at Maroochydore, Queensland to her and her husband; and multiple gifts of cash;

- (iii) numerous counts of fraud including falsifying the inventory of Betty's estate at Probate, in part, to disguise her financial dealings with the deceased;
- (iv) and then successfully attempting, with **unclean hands**, to enter Equity in the Supreme Court of New South Wales.

Guilty of Unconscionable Conduct

At the trial in mid-2014, Jones was self-represented and eventually failed to defend himself adequately. The result was devastating as the Barrister for the plaintiff (Smith) took every possible advantage and painted a picture of some predator who preyed on a vulnerable Aunt suffering from dementia.

Nothing could have been further from the truth, but Smith had paid well for a form of justice that only money can buy.

In short, a second set of Orders was made by the same presiding Judge in early 2015 which involved Smith's right to recover \$260,000 from Jones and return it to the estate of her deceased step-mother (Betty); an estate over which Smith was conveniently Executrix. And these funds plus costs could be recovered from Jones' interest in his home which was then owned by his wife and himself as joint tenants. This would mean the forced sale of their home as the Judge saw it in his Orders.

Failed to join Wife as Second Defendant

But there was a stumbling block which the Judge's Orders had failed to overcome.

Jones' wife (we'll call her "Kathy" for the moment) had never been a Defendant at any stage throughout the proceedings against her husband; and it was also her home that Smith needed to sell in order to recover the \$260,000 for the estate.

However, Smith's Solicitor made a cunning attempt via Notice of Motion to join Kathy as a Second Defendant for the sole purpose of being able to justify the sale of their home, but without any hint of granting her the right to a full hearing.

And this is where The Australian Justice Tribunal was asked to intervene

The Notice of Motion had to be blocked and a summons filed which argued for the setting aside of the Orders which allowed the sale of the home.

By early 2016 Kathy stood before a Judge of the Supreme Court of New South Wales and righteously described her entitlement to have those Orders set aside; an entitlement "as of right" that the Judge upheld.

But in a surprise move the Judge had also joined her as a Second Defendant thus turning back the clock to give her the right to be heard for the first time at a fresh trial. And this meant being served with a fresh Statement of Claim from Smith's Solicitor, but at least she was being granted justice; we thought.

Key Court Order ignored by Bench

Fully expecting to be served with a Statement of Claim, Kathy appeared before another Judge

who flagrantly denied her the right to be heard in accordance with the previous Judge's Order; instead ordering the sale of her home now that she was a Second Defendant.

The Judge was either slow on the uptake (and they're not!) or he had just been tagged to enter the ring and force the sale of her home. But either way, this Judge's order was an extreme abuse of process which blatantly opened the door for Smith's Solicitor to walk through and appoint a Trustee for the sale of their home.

An immediate Appeal was mounted which failed to convince an Appellate Court that this latest Judge's order had to be set aside and Kathy's right be reinstated. Or had the granting of those rights simply been a ruse? Had the real aim been to join Kathy as Second Defendant solely to give the next Judge the opportunity to circumvent the necessity for a trial and get matters resolved once and for all?

At this stage, four Supreme Court Judges had been embroiled in the infamy of Smith's Solicitor and no Judge (Appellate or otherwise) had been prepared to cast doubt on the professionalism of the Judge who had gotten it wrong during the first trial. It appeared that ranks had been closed and the Supreme Court Bench was proving to be immovable.

Last minute Judicial Review

This is where we will leave it and pray that the alternative to a High Court appeal will be a Judicial Review. All details of Parties to proceedings and the results of the upcoming Judicial Review will be released on this site as and when appropriate.