

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 27/09/2023 3:15:00 PM AEST
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File Number: NSD1091/2023
File Title: COMMONWEALTH OF AUSTRALIA v STRADFORD (A PSEUDONYM) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Notice of appeal

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court

COMMONWEALTH OF AUSTRALIA

Appellant

MR STRADFORD (a pseudonym) and others named in the Schedule

Respondents

To the Respondents

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: 184 Phillip Street, Sydney

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Commonwealth of Australia, Appellant		
	Zita Rowling		
Prepared by (name of person/lawyer)	AGS Lawyer within the meaning of s 551 of the <i>Judiciary Act 1903</i>		
Law firm (if applicable)	Australian Government Solicitor		
Tel	02 6253 7426	Fax	02 6253 7383
Email	Zita.Rowling@ags.gov.au / Sean.Behringer@ags.gov.au		
Address for service (include state and postcode)	The Australian Government Solicitor, 4 National Circuit, Barton, ACT 2600		



The Appellant appeals from orders 2 and 3 of the Federal Court given on 30 August 2023 at Sydney.

Grounds of appeal

1. The primary judge erred:
 - (a) in concluding that orders of an inferior court affected by jurisdictional error were invalid ab initio for all purposes (J [177]-[184]);
 - (b) in concluding that the Federal Circuit Court did not have a power, arising from s 71 of the Constitution and its status as a Chapter III court, to punish contempts by making orders that were valid until set aside (J [188]-[192]);
 - (c) in concluding that the Second Respondent's orders were not capable of being supported by the powers in s 17 of the **Federal Circuit Court of Australia Act 1999** (Cth) or the constitutionally-conferred power the subject of ground 1(b), because the Second Respondent, at material times, was purporting to exercise a power under Pt XIII A and Pt XIII B of the **Family Law Act 1975** (Cth) (J [193], [356]-[357]);
 - (d) in concluding that the powers in Pt XIII A and Pt XIII B of the *Family Law Act* were a code, which ousted any other powers to punish contempt arising from s 17 of the *Federal Circuit Court of Australia Act* or the powers the subject of ground 1(b) (J [193]);
 - (e) in concluding that s 17 of the *Federal Circuit Court of Australia Act*, if available, did not confer a power to make orders which were valid until set aside (J [349]-[355]);
 - (f) in failing to conclude that the Second Respondent's orders were "valid" prior to being set aside, at least to the extent of supplying a defence to the First Respondent's asserted torts available to the Appellant.
2. The primary judge erred in:
 - (a) concluding that there was no common law defence available to those who commit a tort in the course of executing an apparently valid order of an inferior court (J [510]-[516]);
 - (b) in failing to conclude that the Appellant had a defence against the specific tort alleged by the First Respondent arising from the fact that the court security officers committed the tort in the course of executing an apparently valid order and warrant



of commitment of the Federal Circuit Court and pursuant to a direction from the
Second Respondent.

3. The primary judge erred in concluding that the Appellant was liable for the tort of false imprisonment.
4. The primary judge erred in:
 - (a) concluding that a judge of an “inferior court”, who has subject matter jurisdiction in a particular matter, is not immune from suit in respect of the exercise of that jurisdiction where the judge:
 - (i) commits a gross and obvious irregularity in procedure or breach or a breach of the rules of natural justice, other than a merely narrow technical breach (J [345]);
 - (ii) acts in excess of jurisdiction by making an order or imposing a sentence for which there was no proper foundation in law because a condition precedent to the making of the order or sentence has not been made out (J [346]);
 - (b) concluding that there was a distinction, material in the facts and circumstances of this case, between the immunity of judges of superior courts and the immunity of judges of inferior courts (J [316]-[322]);
 - (c) concluding that the Second Respondent was not immune from suit, in respect of the false imprisonment for which the Appellant was found jointly liable, having regard to the specific errors alleged and found (J [358]-[374]);
 - (d) failing to conclude that the Second Respondent was immune from suit in respect of the false imprisonment for which the Appellant was found jointly liable.

Orders sought

1. Appeal allowed.
2. Set aside orders 2 and 3 made on 30 August 2023 and, in their place:
 - (a) order that the First Respondent’s claim against the Appellant and the Second Respondent for personal injury, loss of earning capacity and general and aggravated damages is dismissed;
 - (b) alternatively, order that the First Respondent’s claim against the Appellant is dismissed.
3. Costs.



4. Such further or other order as the Court considers appropriate.

Appellant's address

The Appellant's address for service is:

Place: The Australian Government Solicitor
Level 5, 4 National Circuit
Barton ACT 2600

Email: Zita.Rowling@ags.gov.au / Sean.Behringer@ags.gov.au

The Appellant's address is C/- The Australian Government Solicitor, Level 5, 4 National Circuit, Barton ACT 2600.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 27 September 2023

A handwritten signature in blue ink, appearing to read 'Zita Rowling', written over a horizontal dotted line.

Signed by Zita Rowling
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Appellant

This pleading was prepared by David Thomas SC and David Hume of Counsel



Schedule

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: His Honour Judge Salvatore Paul Vasta
Third Respondent: State of Queensland

Date: 27 September 2023