06/13; [2013] VSC 23

SUPREME COURT OF VICTORIA

VELISSARIS v THE MAGISTRATES' COURT of VICTORIA & ANOR

Macaulay J

1, 8 February 2013

PRACTICE AND PROCEDURE – APPEAL FROM ASSOCIATE JUDGE – HEARING *DE NOVO* OF SUMMARY DISMISSAL APPLICATION OF JUDICIAL REVIEW OF DECISION OF THE MAGISTRATES' COURT – AFTER A HEARING THE MAGISTRATE MADE AN ORDER IN THE PLAINTIFF'S FAVOUR BUT FOR A LESSER AMOUNT THAN THAT CLAIMED – THE PLAINTIFF INSTITUTED A JUDICIAL REVIEW OF THE MAGISTRATE'S RULING – PRIOR TO THAT MATTER BEING HEARD THE DEFENDANT APPLIED FOR SUMMARY JUDGMENT WHICH WAS GRANTED AND THE JUDICIAL REVIEW PROCEEDING WAS DISMISSED – WHETHER MAGISTRATE WAS IN ERROR IN MAKING THE ORDER – WHETHER THE JUDICIAL REVIEW PROCEEDING SHOULD BE SUMMARILY DISMISSED.

HELD: Appeal from the order of the Associate Justice dismissed.

1. In respect of the claim for cost of repairs, the Magistrate found the plaintiff's evidence contained substantial contradictions and that those contradictions, together with her assessment of the plaintiff during the course of the hearing, gave rise to considerable reservations as to the reliability of his evidence. She found that the repairer ultimately conceded that he could not dispute that the work was done for $2,216.50. The magistrate was not satisfied that the evidence established that the cost of repairs exceeded that sum.

2. In relation to the cost of replacement car rental, the Magistrate found that the claim made by the plaintiff at the hearing for that cost was inconsistent with his prior claim as set out by MLC Lawyers on 16 September 2011. In the absence of any documentary evidence to support payment for car rental, and in the face of those inconsistencies and her assessment of Mr Velissaris' reliability as a witness, she was not satisfied that the cost as claimed had been incurred.

3. On the question of the legal expenses paid to MLC Lawyers, she noted that Mr Velissaris himself said he had not paid the lawyers' account. The account was not produced in evidence. Her Honour was not satisfied the cost had been incurred. Likewise, a claim by Mr Velissaris that he had paid a member of counsel the sum of $750 for advice was held not to be substantiated. In any event, the magistrate held that legal costs incurred prior to instructions to issue proceedings did not form part of compensable loss.

4. On the question of the claimed loss of earnings, although the magistrate noted that copies of letters purportedly confirming employment of Mr Velissaris were tendered without objection, she further noted that no other witness was called and no further documentation was produced on the subject. She observed that a loss of earnings was only compensable if it resulted directly from the plaintiff's loss of use of his vehicle and concluded that the available evidence did not establish to the requisite standard that the plaintiff had suffered any loss of income as a result of the loss of use of his car.

5. Far from there being no evidence upon which the Magistrate could have made the findings that she did, there was an evidentiary basis for each of her findings. Given the requirements which Mr Velissaris had to satisfy in order to demonstrate jurisdictional error it was plain that his claims upon the ground of there being no evidentiary basis for the findings, or that the magistrate erred in law in making the findings she did, could properly be described as 'hopeless' or, at the very least, having no real prospect of success.

6. Accordingly, the associate judge was correct to summarily dismiss Mr Velissaris' judicial review proceeding.

MACAULAY J:

1. Following a motor vehicle collision on 11 August 2011 Mr Velissaris, the plaintiff, sued Mr Champion, the second named defendant, in the Magistrates' Court of Victoria claiming damages for the cost of repairs to his motor vehicle, and certain consequential losses. After Mr Champion had admitted liability and, through his insurance company, paid certain amounts to Mr Velissaris, Mr

Velissaris persisted with his claim for a higher sum than had been paid to him. When a magistrate dismissed his claim for that higher sum, and ordered that he pay costs, Mr Velissaris instituted a judicial review proceeding in this Court under Order 56 of the *Supreme Court (General Civil Procedure) Rules* 2005 (the Rules). By that proceeding he sought orders in the nature of *certiorari* and mandamus, together with a stay of execution of the magistrate's orders.

2. An associate judge acceded to Mr Champion's application (by summons) for summary judgment and dismissed the judicial review proceeding. Mr Velissaris has appealed, bringing the matter before me. Being a re-hearing *de novo* of the application before the associate judge, the question is whether Mr Velissaris' judicial review proceeding should be summarily dismissed.

3. As usual, the Magistrates' Court of Victoria, the first named defendant, has taken no part in the proceeding and will abide the result relying upon the principles in *R v Australian Broadcasting Tribunal; Ex parte Hardiman* [1980] HCA 13; (1980) 144 CLR 13; 29 ALR 289; (1980) 54 ALJR 314.

Nature of application

4. The order of Associate Justice Lansdowne which is under appeal was an order made in response to Mr Champion's summons filed 30 November 2012 seeking that summary judgment be entered against the plaintiff pursuant to rule 23.03 of the Rules. That rule provides:

> On application by a defendant who has filed an appearance, the Court at any time may give judgment for that defendant against the plaintiff if the defendant has a good defence on the merits.

5. Mr Champion's application (which followed the filing of an appearance) was supported by an affidavit of Jaqueline Paterson, a solicitor employed by the firm he had instructed, sworn 30 November 2012. In that affidavit, Ms Paterson set out the chronology of events leading to the Magistrates' Court hearing and exhibited documents that were tendered in evidence in the proceeding. She also exhibited a copy of the magistrate's written reasons for decision dated 3 September 2012. An earlier affidavit by Mr Velissaris exhibited other documents including the transcript of the proceeding before the magistrate.

6. When giving summary judgment for Mr Champion, Associate Justice Lansdowne gave short written reasons set out in 'Other Matters' in the order of 6 December 2012. Her Honour explained that she dismissed the plaintiff's proceeding both pursuant to r23.03 of the *Rules* and s63 of the *Civil Procedure Act* 2010.

7. Section 63 of the *Civil Procedure Act* provides:

> (1) Subject to section 64, a court may give summary judgment in any civil proceeding if satisfied that a claim, a defence or a counterclaim or part of a claim, defence or counterclaim, as the case requires, has no real prospect of success.
>
> (2) A court may give summary judgment in any civil proceeding under subsection (1)—
> (a) on the application of a plaintiff in a civil proceeding;
> (b) on the application of a defendant in a civil proceeding;
> (c) on the court's own motion, if satisfied that it is desirable to summarily dispose of the civil proceeding.

8. Section 65 of the Act explains that the power under the *Civil Procedure Act* is in addition to the powers a court has under the rules of court (for example, under rules 23.01 and 23.03). Because the court is empowered to make an order under s63(2)(c) 'of its own motion', the associate judge was authorised[1] to make an order under that rule notwithstanding that Mr Champion did not specifically invoke s 63 of the Act in his summons.

9. Relief under rule 23.03 is available only if the defendant shows that the plaintiff's claim is 'absolutely hopeless': once it appears there is a real question to be determined, whether of fact or law, and that the rights of the parties depends on it, it is not competent for the court to dismiss. [2]

10. The test under s63 of the *Civil Procedure Act* is less stringent – certainty of failure (ie

hopelessness) need not be demonstrated.[3] With respect, I agree with and adopt the succinct summary of principles as set out by J Forrest J in *Matthews v SPI Electricity Pty Ltd (Ruling No 2)*:[4]

> 1. If a court determines that a particular cause of action is hopeless or bound to fail, then it should be dismissed;
>
> 2. A court may also dismiss a claim where it determines that it has no real prospect of success in the sense that such prospects are fanciful rather than realistic;
>
> 3. The less complex the issue in a case then the easier it is for a court to take the view that such a proceeding is capable of being determined on summary judgment; and
>
> 4. Whatever the test to be applied, the power to order summary dismissal of a claim must be exercised with care. This is particularly so where a case may involve issues of contested fact, or where its consequences may affect a large number of persons.

11. Because Mr Velissaris' judicial review proceeding seeks *certiorari* and mandamus, the grounds of that proceeding focus on whether the magistrate acted within jurisdiction and accorded Mr Velissaris procedural fairness. As I will explain, I consider that Mr Velissaris' proceeding, upon those grounds, is hopeless, bound to fail and has no real prospect of success in the sense explained above.

Nature of Mr Velissaris' proceeding

12. As indicated, Mr Velissaris sought judicial review of the magistrate's decision. I will come back to the grounds of his review shortly but it is worth recalling the nature of such a proceeding. In *Craig v South Australia*,[5] the Court said:

> Where available, *certiorari* is a process by which a superior court, in the exercise of original jurisdiction, supervises the acts of an inferior court or other Tribunal. It is not an appellate procedure enabling either a general review of the order or decision of the inferior court or tribunal or a substitution of the order or decision which the superior court thinks should have been made. Where the writ runs, it merely enables the quashing of the impugned order or decision upon one or more of a number of distinct established grounds, most importantly, jurisdictional error, failure to observe some applicable requirement of procedural fairness, fraud and "error of law on the face of the record".[6]

13. In saying more about the ground of jurisdictional error, the court said this:

> An inferior court falls into jurisdictional error if it mistakenly asserts or denies the existence of jurisdiction or if it misapprehends or disregards the nature or limits of its functions or powers in a case where it correctly recognises that jurisdiction does exist. Such jurisdictional error can infect either a positive act or a refusal or failure to act. Since *certiorari* goes only to quash a decision or order, an inferior court will fall into jurisdictional error for the purposes of the writ where it makes an order or decision (including an order or decision to the effect that it lacks, or refuses to exercise, jurisdiction) which is based upon a mistaken assumption or denial of jurisdiction or a misconception or disregard of the nature or limits of jurisdiction.[7]

14. The court went on to give further examples of jurisdictional error,[8] including:

- Where the court entertains or makes a decision of a kind wholly or partly outside the theoretical limits of its functions or powers.
- While acting within the general area of its jurisdiction, doing something which it lacks authority to do (for example, acting before some essential condition to the existence of its jurisdiction has occurred).
- Disregarding or taking account of some matter which, for jurisdiction, it requires to take into account or ignore as a precondition of its authority.
- Misconstruing the statute or instrument conferring its authority and therefore misconceiving the nature of the function which it is performing.

15. Having given these examples of what does constitute jurisdictional error, the court then stated, in relation to courts of law, what ordinarily does not constitute such error:

> The identification of relevant issues, the formulation of relevant questions and the determination of what is and what is not relevant evidence are all routine steps in the discharge of that ordinary jurisdiction. Demonstrable mistake in the identification of such issues or the formulation of such questions will commonly involve error of law which may, if an appeal is available and is pursued, be corrected by an appellate court and, depending upon the circumstances, found an order setting aside the order or decision of the inferior court. Such a mistake on the part of an inferior court entrusted with authority to identify, formulate and determine such issues and questions will not, however, ordinarily constitute jurisdictional error. Similarly, a failure by an inferior court to take into account some matter which it was, as a matter of law, required to take into account in determining a question within jurisdiction or reliance upon by such a court upon some irrelevant matter upon which it was, as a matter of law, not entitled to rely in determining such a question will not ordinarily involve jurisdictional error.[9]

16. Against this backdrop of principle it is necessary to note the relief sought and grounds for that relief as set out in Mr Velissaris' originating motion. Other than costs, he seeks three things:

> (a) an order in the nature of *certiorari* dismissing (that is setting aside) the orders of Magistrate Wakeling made on 3 September 2012 and that the matter be re-heard according to law;
>
> (b) an order in the nature of mandamus compelling the Magistrates' Court to hear and determine Mr Velissaris' application in accordance with law; and
>
> (c) a stay of the orders made by Magistrate Wakeling on 3 September 2012.

17. Mr Velissaris formulated nine grounds for the relief he sought. I will not set them out *verbatim* but, rather, endeavour to summarise each of them:

> (a) the magistrate committed an error of law because there was no evidentiary or legal basis to make the orders she made, because Mr Champion was not at the hearing to give evidence and had not even filed a defence;
> (b) the magistrate committed an error of law by dismissing his claim on the basis of an alleged abuse of process where there was no evidence or legal basis to support her finding but, rather, it was Mr Champion who had abused the process;
> (c) the magistrate erred in law by not having regard to a default order that had been made on 17 November 2011 for a sum of $3,041.50 plus $157.60 costs which order had been obtained upon the failure of the defendant to file a defence;
> (d) that the magistrate erred in law by accepting that Mr Champion's payment of $1,911.80 to the plaintiff was sufficient to settle the plaintiff's claim in full;
> (e) the magistrate erred in law by not taking account of the fact that the plaintiff had the court's leave to amend his complaint to claim substantially more than had been paid to him, and that such leave had been granted a long time after the default order had been made, thereby clearly showing a bias against the plaintiff by accepting that the payment of $1,911.80, after the default order, was sufficient to satisfy the amended claim.
> (f) the magistrate erred in finding that the true value of the plaintiff's claim was $2,216.50;
> (g) the magistrate failed to disqualify herself from hearing the case (as requested), did not permit the plaintiff to give his full evidence, and ordered him to cease examination of his witness Mr El Sheikh;
> (h) the magistrate failed to fully and fairly consider all of the evidence and in particular failed to consider his claim for loss of earnings and the legal costs he had paid to a firm of solicitors; and
> (i) the magistrate failed to accord him natural justice under the law and 'under the *Human Rights Act*'.

18. It can be seen immediately that a number of the so called grounds for relief constitute a complaint that the magistrate made findings of fact adverse to Mr Velissaris with which Mr Velissaris takes issue. To the extent that such grounds simply take issue with the magistrate's findings of fact, in the face of conflicting evidence, such complaint cannot amount to jurisdictional error or otherwise found a claim for an order in the nature of *certiorari*. But because of the broad complaint, set out in the first ground, that the magistrate made an order where there was 'no evidentiary or legal basis' to make such an order, it will be necessary to explain, in short compass, the critical findings of fact and consider whether there was any evidentiary foundation for such findings.

Evidence and findings

19. What follows is a short chronology of facts largely distilled from the documents tendered in evidence before the magistrate.

20. On 11 August 2011, a vehicle driven by Mr Champion collided with a vehicle owned by Mr Velissaris. The next day, 12 August 2011, Mr Velissaris obtained a quotation for the repair of his vehicle from Sheikh Body Works, quotation 4317, for the sum of $1,911.80.

21. On 15 August 2011, another quotation (numbered 4351) was created by Sheikh Body Works for the sum of $2,216.50.

22. On 19 August 2011, Mr El Sheikh, the proprietor of Sheikh Body Works, wrote out a receipt for the sum of $1911.80, paid in cash, on a separate document headed 'invoice'.[10]

23. On 30 August 2011, Mr Velissaris wrote to Honda Insurance, believed to be the insurer for Mr Champion, enclosing quotation 4317 for the sum of $1,911.80 demanding payment 'of at least the sum of $2,000'.

24. On 16 September 2011, MLC Lawyers, solicitors engaged by Mr Velissaris, wrote to GIO Insurance, Mr Champion's insurer, noting that GIO had admitted liability. They demanded $1,911.80 for motor vehicle repair charges '(as per invoice submitted'), $495 for rental hire charges (three days at $165 per day), $2,000 for 'time spent to seek repairs to vehicle x 3 days', a total of $4,068.

25. By letter dated 20 October 2011 to Mr Velissaris, GIO noted it had requested him to provide GIO with an opportunity to assess the vehicle and documents for his hire car claim and that Mr Velissaris had not yet provided that opportunity or that information. The letter enclosed a cheque for $1,911.80 for the cost of repairs.

26. On 21 October 2011 Mr Velissaris issued a proceeding at the Heidelberg Magistrates' Court against Mr Champion claiming the sum of '$4,000 plus $157.60 filing fees, plus interest', seemingly based upon the claim set out in the letter from MLC Lawyers ($4,068), although it referred to damage to the vehicle in the sum of $2,216.50 as per the 'revised' quotation from Sheikh Body Works dated 15 August 2011.

27. When Mr Champion failed to file a defence to that claim, Mr Velissaris obtained default judgment from the Heidelberg Magistrates' Court on 17 November 2011 in the sum of $3,041.50 and costs of $157.60.

28. On 18 November 2011 Mr Velissaris banked the cheque received from GIO in the sum of $1,911.80.

29. On 14 December 2011 Mr Champion applied for a re-hearing of the complaint. Before the re-hearing application was heard, on 15 March 2012 Ligeti Partners, now acting on behalf of Mr Champion, wrote to Mr Velissaris enclosing a cheque for $480.60 being the difference between the first quotation of $1,911.80 and the revised quotation of $2,216.50, together with the filing fees for the complaint and the default judgment. On 19 March 2012 an application for re-hearing was granted and on 21 March 2012 Mr Champion filed a defence to the claim.

30. On 30 April 2012, the date fixed for the re-hearing of the complaint, Mr Velissaris sought an adjournment of the proceeding and leave to amend his claim. On that date Magistrate M. Smith granted his application, gave directions for the service of an amended complaint and defence, and also ordered Mr Velissaris to pay Mr Champion's costs of the adjournment fixed at $832.

31. An amended statement of claim and defence were each filed and the matter came on for hearing before Magistrate Wakeling on 17 August 2012.

32. The hearing on 17 August 2012 was transcribed. I have read the full transcript of the proceeding (115 pages). Mr Velissaris represented himself and counsel represented Mr Champion. The issue before the magistrate solely concerned the quantum of damages because liability had not only been admitted in correspondence a long time earlier, but was also admitted in the defence filed by Mr Champion. No contributory negligence was alleged. By his amended complaint Mr Velissaris was by then claiming the sum of $9,500 being repair costs of $3,019.50, car rental 'of four days of $400', legal costs paid to MLC Lawyers of $1,650, plus time to attend court at $150 per hour, further legal costs and further loss of earnings.

33. Mr Velissaris gave evidence first and tendered a number of documents. Those documents included a third quotation from Sheikh Body Works, dated 31 August 2011 and numbered 4558, in the sum of $3,090.50. There was an accompanying 'tax invoice/statement' purporting to record the receipt of that sum of money. Also tendered were letters[11] addressed 'to whom it may concern' from One Stop Finance (dated 2 December 2009) and CBS Pty Ltd (dated 3 October 2011) attesting to Mr Velissaris having been employed by those companies (as a finance broker and a real estate agent respectively). They also set out his usual weekly earnings or salary.

34. Mr Velissaris was cross-examined by counsel for Mr Champion. Cross-examination centred upon the authenticity and veracity of the various quotations for repair, the chronology of Mr Velissaris' various claims for damage, some apparent double counting inherent in the third quotation, apparent inconsistencies in Mr Velissaris' various claims for car rental and calculation of loss of earnings, and his explanation for the lack of any documentation substantiating his car rental claims.

35. Mr Velissaris then called Mr El Sheikh, as his witness. He was examined by Mr Velissaris as to the cost of the repairs to the vehicle, the preparation of the various quotations, and the amounts that had been paid. Mr El Sheikh was then cross-examined by counsel for Mr Champion. Cross-examination centred upon the chronology of the preparation of the various quotations, the apparent double counting that was inherent in the third quotation, and the actual amount of money that had been received from Mr Velissaris. Mr Velissaris then re-examined Mr El Sheikh.

36. During cross-examination of both Mr Velissaris and Mr El Sheikh, documents were tendered on behalf of Mr Champion. Other than the tender of those documents no other evidence was called on behalf of Mr Champion. Mr Champion neither gave evidence himself nor was present at the hearing.

37. The magistrate reserved her decision. She gave her decision by written reasons delivered on 3 September 2012. Her Honour concluded that the only damages to which the plaintiff was entitled was the sum of $2,216.50 being the fair cost of repair of his vehicle. That sum having already been tendered by the defendant and accepted by the plaintiff prior to the hearing – indeed, before Mr Champion's re-hearing application was granted – her Honour dismissed Mr Velissaris' complaint and ordered him to pay Mr Champion's costs of the proceeding.

38. In her reasons the magistrate referred to each of the various components of Mr Velissaris' amended claim, namely the:

- cost of repairs of the vehicle;
- cost of replacement car rental;
- legal expenses paid to MLC Lawyers;
- loss of earnings claim, and
- cost of Mr Velissaris' time spent in pursuing the claim.

39. In respect of the claim for cost of repairs, the magistrate found the plaintiff's evidence contained substantial contradictions and that those contradictions, together with her assessment of the plaintiff during the course of the hearing, gave rise to considerable reservations as to the reliability of his evidence. She found that the repairer, Mr El Sheikh, ultimately conceded that he could not dispute that the work was done for $2,216.50. The magistrate was not satisfied that the evidence established that the cost of repairs exceeded that sum.

40. In relation to the cost of replacement car rental, her Honour found that the claim he was making at the hearing for that cost was inconsistent with his prior claim as set out by MLC Lawyers on 16 September 2011. In the absence of any documentary evidence to support payment for car rental, and in the face of those inconsistencies and her assessment of Mr Velissaris' reliability as a witness, she was not satisfied that the cost as claimed had been incurred.

41. On the question of the legal expenses paid to MLC Lawyers, she noted that Mr Velissaris himself said he had not paid the lawyers' account. The account was not produced in evidence. Her Honour was not satisfied the cost had been incurred. Likewise, a claim by Mr Velissaris that he had paid a member of counsel the sum of $750 for advice was held not to be substantiated. In any event, the magistrate held that legal costs incurred prior to instructions to issue proceedings did not form part of compensable loss.

42. On the question of the claimed loss of earnings, although the magistrate noted that copies of letters purportedly confirming employment of Mr Velissaris were tendered without objection, she further noted that no other witness was called and no further documentation was produced on the subject. She observed that a loss of earnings was only compensable if it resulted directly from the plaintiff's loss of use of his vehicle and concluded that the available evidence did not establish to the requisite standard that the plaintiff had suffered any loss of income as a result of the loss of use of his car.

43. Finally, in relation to the claim for lost time in pursuing the litigation, the magistrate observed that the claim was not particularised or supported by any evidence nor had the plaintiff established any legal basis for the claims entitlement.

No evidentiary basis for findings of fact?

44. The above summary demonstrates that, far from there being no evidence upon which the magistrate could have made the findings that she did, there was an evidentiary basis for each of her findings. Given the requirements which Mr Velissaris must satisfy in order to demonstrate jurisdictional error it is plain that his claims upon the ground of there being no evidentiary basis for the findings, or that the magistrate erred in law in making the findings she did, can properly be described as 'hopeless' or, at the very least, having no real prospect of success.

Remaining grounds

45. Insofar as Mr Velissaris claims that it was an abuse of process to make orders when Mr Champion did not appear to give evidence himself, Mr Velissaris' claim is misconceived and doomed to fail. The grounds which rely upon there being no defence filed are also misconceived, and wrong in fact, and are doomed to fail. Likewise, the grounds of complaint which hearken back to the order of another magistrate setting aside the default judgment and allowing a re-hearing are doomed to fail because the only order reviewed is that of Magistrate Wakeling on 3 September 2012.

46. The only grounds of review which merit some further discussion are those which allege bias, a failure on the part of the magistrate to disqualify herself and the allegation that the magistrate prevented Mr Velissaris from giving the evidence he wished to give or adducing evidence from Mr El Sheikh.

47. To the extent that the allegations of bias are founded upon the magistrate making the orders she made in the light of the previous default judgment, that ground is misconceived. What the magistrate did was to make findings of fact on evidence whereas the previous judgment had been obtained by default, without any evidence being heard. A finding contrary to the default judgment plainly does not, of itself, provide any logical foundation for alleging bias.

48. Contrary to what is implied from one of Mr Velissaris' grounds of review, from a reading of the transcript it is apparent that he did not request the magistrate to disqualify herself from hearing the case. Although he claimed in argument before me that the transcript was in error in not recording his alleged request, I am not prepared to act upon his assertions but will act upon the evidence before me. Mr Velissaris himself produced the transcript and that is the evidence upon which I rely.

49. The final allegation is that the magistrate prevented Mr Velissaris from giving or adducing the evidence he wished to give or lead. In argument before me Mr Velissaris focused in particular upon the magistrate having stopped him from asking certain questions of Mr El Sheikh in re-examination. I have carefully read the transcript of the proceeding. It is plain beyond doubt that what Mr Velissaris persisted in doing was to attempt to cross-examine Mr El Sheikh, in re-examination, so as to put words in Mr El Sheikh's mouth to address concessions Mr El Sheikh had made in cross-examination.

50. On more than one occasion Mr Velissaris attempted to suggest to the witness what his evidence should be on issues that went to the centre of controversy between the parties namely, why and when the quotations were prepared, and what sum of money was in fact received given there were two conflicting receipts signed by Mr El Sheikh. On several occasions her Honour tried, to no avail, to explain to Mr Velissaris the restraints upon him in asking questions of his

own witness. In the end, when it was plain that Mr Velissaris would not desist in suggesting the answers to his own witness, her Honour told Mr Velissaris he was not to ask any more questions.

51. There is absolutely nothing in the contention that by doing so the magistrate was either demonstrating bias toward Mr Velissaris or denying him a fair hearing of his case. The magistrate was doing no more and no less than properly controlling the court proceedings in accordance with law. Assuming Mr Velissaris' reference to the 'Human Rights Act' is a reference to the *Charter of Human Rights And Responsibiltiies Act* 2006, there is nothing arising from the decision or conduct of the proceedings which suggests that the application of that Act would assist Mr Velissaris' prospects of success in the proceeding.

52. In conclusion, in my view the associate judge was correct to summarily dismiss Mr Velissaris' judicial review proceeding. Accordingly, I dismiss his appeal from Associate Justice Lansdowne's order of 6 December 2012.

Other matters

53. I should note that in the proceeding before me Mr Velissaris complained that he had not received the affidavit of Jacquelyn Elise Paterson sworn 30 November 2012 or the exhibits thereto. It is to be recalled that that affidavit was sworn and filed ahead of the hearing before Associate Justice Lansdowne on 6 December 2012, and in support of Mr Champion's application for summary dismissal. The affidavit is on the Court file stamped with a filing date of 30 November 2012.

54. An affidavit of service of that affidavit, and the exhibits, was sworn by Catherine White, an employee of Ligeti Partners, on 7 December 2012 deposing that the documents were served by prepaid post to Mr Velissaris' address for service. In addition I was handed a copy of a facsimile transmission receipt dated 30 November 2012 (5.15 pm) recording the sending of the summons and affidavit (noting the exhibits would follow by mail) to Mr Velissaris at a particular facsimile number. Mr Velissaris then showed me a reply fax (from the same facsimile number) written and signed by him, complaining that he did not get all of the documents but that only two pages had come through. There is nothing recorded in the associate judge's order or remarks to the effect that, at the hearing on 6 December 2012, Mr Velissaris complained that he did not have either the affidavit or the exhibits filed on behalf of Mr Champion.

55. On the evidence I was satisfied that the affidavit and exhibits had been duly served upon Mr Velissaris prior to the hearing on 6 December 2012. Nevertheless, out of an abundance of caution, I stood the matter down to enable a further copy of the affidavit and exhibits to be provided to Mr Velissaris before the matter proceeded. That took place. In view of the fact that the affidavit of Ms Paterson and the exhibits did no more than recite the chronology of events outlined above, and produce documents that were tendered in the Magistrates' Court proceeding, I was satisfied that the matter could and should proceed. It was not entirely clear whether Mr Velissaris was ultimately objecting to me proceeding to hear the matter and applying for an adjournment, but if he did make that application I refuse it for the reasons I have stated.

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[1] Indeed, perhaps even required: see s 8(1)(c) of the Act.
[2] *Camberfield Pty Ltd v Klapanis* [2004] VSCA 104 [12].
[3] *Wheelahan v City of Casey & Ors (No 3)* [2011] VSC 15; *Matthews v SPI Electricity Pty Ltd (Ruling No 2)* [2011] VSC 168; *Ottendin Investments v Portbury Developments* [2004] VSC 222.
[4] [2011] VSC 168.
[5] [1995] HCA 58; (1995) 184 CLR 163; (1995) 131 ALR 595; (1995) 69 ALJR 873; 39 ALD 193; 82 A Crim R 359.
[6] Ibid 175-176 (citations omitted).
[7] Ibid 177.
[8] Ibid 177.
[9] Ibid 179-180.
[10] No copy of the relevant exhibit was tendered in the appeal proceeding, although I was shown a copy of it from the bar table. Cross examination on the document (Exhibit 3 in the Magistrates' Court proceeding) appears at pp53 and 95 of the transcript (Magistrates' Court of Victoria at Melbourne, B12943176, Magistrate Wakeling, 17 August 2012).
[11] Copies of which were tendered in the appeal proceeding as Exhibit A.

APPEARANCES: The plaintiff Velissaris appeared in person. For the second defendant Champion: Mr I McEachern, counsel. Ligeti Partners, solicitors.