

Application for leave to appeal

No.
Federal Court of Australia
District Registry: New South Wales
Division: General

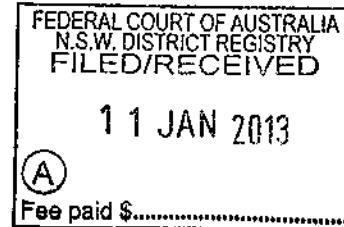
No.
NSD - - 2 2 / 2013

James Hunter Ashby

Applicant

Peter Slipper

Respondent



To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or 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: 9.30am on 6 February 2013

Place: Law Courts Building, Level 17 Queen's Square Sydney, NSW 2000

Date: 11 JAN 2013



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

Filed on behalf of James Hunter Ashby, Applicant

Prepared by Janet McDonald, counsel

Law firm Harris Freidman

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Address for service Level 10, 25 Bligh Street, Sydney NSW 2000
(include state and postcode)

The applicant applies for leave to appeal from the judgment of the Federal Court (Rares J) given on 12 December 2012 at Sydney (*Ashby v Commonwealth of Australia (No 4)* [2012] FCA 1411).

Leave to appeal is required by section 24(1A) of the *Federal Court of Australia Act 1976*.

Grounds of application

1. The primary judge erred in finding that the applicant's predominant purpose for bringing the proceedings was to pursue a political attack against the respondent and not to vindicate any legal claim he may have for which the right to bring proceedings exists and accordingly that the proceedings were an abuse of process.
2. The primary judge erred in finding that Mr Harmer intended to cause harm to the respondent by including scandalous and irrelevant allegations in the originating application and accordingly that the proceedings were an abuse of process.
3. The primary judge consequently erred in dismissing the proceedings pursuant to r 26.01 of the *Federal Court Rules 2011* in reliance upon the findings identified in paragraphs 1 and 2 above.
4. Substantial injustice would be caused if leave is refused as the judgment:
 - a. has denied the applicant a hearing on the merits; and
 - b. has resulted in an order that the applicant pay the respondent's costs of the proceedings, despite the limitation on the awarding of costs imposed by section 570(1) of the *Fair Work Act 2009*.
5. The appeal involves an important questions as to:
 - a. how evidence on an application for the summary dismissal of proceedings on the basis of process is to be evaluated and assessed;
 - b. the role of pleadings in such an application;
 - c. the professional obligations of solicitors when filing originating applications or pleadings in the Court.
6. As noted in the summary of the reasons of the primary judge, the case below was of "*public interest*"; moreover, the matter generally is of importance due to the serious nature of the allegations made in the primary proceedings by both the applicant and the respondent and the seriousness of the findings made by the primary judge with regard to the applicant and third parties.



Other applications

1. An order that the application for leave to appeal be heard by a Full Court of this Court.
2. An order that subject to any contrary direction of the Full Court, the application for leave to appeal to be heard concurrently with or, alternatively, immediately before the appeal described in the draft notice of appeal filed with this application.
3. A direction that the parties comply with Part 36 of the *Federal Court Rules 2011* and Practice Notices APP1 and APP2 of 2011 as though leave to appeal had been granted.

Accompanying documents

This application must be accompanied by the following:

1. the judgment or order from which leave to appeal is brought;
2. the reasons, if published, for the judgment or order;
3. an affidavit stating the facts that support the application;
4. a draft notice of appeal that complies with rules 36.01(1) and (2); and
5. if the Applicant wants to have the application considered without oral argument – a statement to that effect.

Applicant's address

The Applicant's address for service is:

Place: Level 10, 25 Bligh Street, Sydney NSW 2000

Email: fmclay@hflawyers.com.au

The Applicant's address is c/o Harris Freidman, 10/25 Bligh St Sydney.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 10 January 2013



Signed by Scott Maurice Freidman
Lawyer for the Applicant
By his Partner, Jonathan Harris

