



HIGH COURT OF AUSTRALIA

13 June 2018

BORIS ROZENBLIT v MICHAEL VAINER & ANOR
[2018] HCA 23

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria concerning an order for a stay of proceedings.

Mr Rozenblit brought proceedings in the Supreme Court of Victoria in which he alleged that the first respondent had fraudulently, and without his knowledge or consent, transferred shares owned by him to the second respondent. By three separate summonses, Mr Rozenblit sought leave to amend his statement of claim. Leave was twice refused and the primary judge ordered that Mr Rozenblit pay the costs of the respondent and that those costs be taxed immediately. Mr Rozenblit was unable to meet the costs orders due to his limited means. Mr Rozenblit lives with his wife in government housing. Neither he nor his wife has any appreciable assets. Their sole income is social security payments from Centrelink and a small pension from Russia.

On the third occasion that Mr Rozenblit sought leave to amend his statement of claim, the respondents sought to have the proceeding stayed under r 63.03(3)(a) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic). Rule 63.03(3)(a) empowers the Court to stay a proceeding where the Court has made an interlocutory order for costs to be taxed immediately, and those costs have been fixed, but remain unpaid by the plaintiff. The primary judge granted Mr Rozenblit's third application for leave to amend on condition that the proceedings be stayed until he had paid the interlocutory costs orders. The primary judge accepted that Mr Rozenblit was so impecunious that the stay would effectively terminate the proceeding and prevent him from litigating his claims.

Mr Rozenblit appealed to a single judge of the Supreme Court of Victoria and later to the Court of Appeal of the Supreme Court of Victoria. Each appeal was dismissed.

By grant of special leave, Mr Rozenblit appealed to the High Court. The Court unanimously allowed the appeal, holding that the primary judge's discretion miscarried. The serious consequences of making an order under r 63.03(3) against an impecunious plaintiff mean that a stay should be granted where it is the only practical way to ensure justice between the parties. The Court held that the primary judge could not be satisfied that the stay was the only practical way to ensure justice between the parties. At the time of the third application, Mr Rozenblit had a genuine claim, properly pleaded. He had not engaged in conduct sufficiently serious in its nature and effect to warrant the proceedings being brought to an end. Therefore, the Court allowed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*