



Summary of Judgment

PAUL REDMOND MULLETT v CHRISTINE NIXON & ORS

[2022] VSCA 174

23 August 2022

In 2013, Paul Mullett, the former Secretary of the Police Association, commenced proceedings against the former Chief Commissioner of Police, Christine Nixon, a Deputy Commissioner of Victoria Police, Kieran Walshe, and a superintendent of Victoria Police, Wayne Taylor. In his proceeding, Mr Mullett claimed damages from the named defendants for misfeasance in public office and malicious prosecution. Mr Mullett's claims related to Ms Nixon's actions in suspending him from the police force in 2007 and 2008, and criminal charges which were laid against him by Mr Taylor after being authorised by Mr Walshe. Mr Mullett's proceeding was dismissed following a trial in 2016.

In 2021, Mr Mullett filed an application seeking an extension of time for filing an application for leave to appeal against the dismissal of his proceeding; and an application for leave to rely upon fresh evidence, being documents obtained by him during 2020 (including documents obtained during the course of the Royal Commission into the Management of Police Informants, which published its final report on 30 November 2020). In his applications, Mr Mullett contended that there had been a failure by the named defendants in his proceeding to make proper discovery, and disclose and produce the evidence he had found since trial. Additionally, he contended that these and other failures constituted deliberate or reckless misconduct by the named defendants and two additional respondents, the State of Victoria and the Chief Commissioner of Police. Mr Mullett sought orders in his applications that the trial judgment against him be set aside and that he be granted a new trial.

The Court of Appeal (Ferguson CJ, Beach and McLeish JJA) today concluded that Mr Mullett's applications for leave to adduce fresh evidence and leave to appeal must be refused. In those circumstances, the Court of Appeal held that it would be futile to grant Mr Mullett the extension of time he sought within which to seek leave to appeal, and accordingly that application was refused.

Mr Mullett's applications were refused because the court was not satisfied that there was any breach of discovery or disclosure obligations by any of the named defendants or either of the additional respondents, or that there had been any misconduct as

alleged by Mr Mullett. Additionally, the court concluded that there was nothing in the new evidence that Mr Mullett sought to rely upon which might give rise to the possibility that, if the evidence had been produced at trial, Mr Mullett may have succeeded in any of his claims against the named defendants.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the full reasons for judgment.