

CITATION: *Matthew Eccles v Litchfield Council [2022] NTLC005*

PARTIES: Matthew ECCLES

v

Litchfield Council

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2021-03943-LC

DELIVERED ON: 4 March 2022

DELIVERED AT: Darwin

HEARING DATE(s): 16 February 2022

DECISION OF: Acting Judge Ben O'Loughlin

REPRESENTATION:

*Counsel:*

Applicant: Self-Represented

Respondent: Mr T Moses

*Solicitors:*

Respondent: JKW

Decision category classification:	B
Decision ID number:	005
Number of paragraphs:	23

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 2021-03943-LC

BETWEEN:

Matthew ECCLES  
Applicant

AND

Litchfield Council  
Respondent

REASONS FOR DECISION

(Delivered 4 March 2022)

ACTING JUDGE O'LOUGHLIN

### **Introduction**

1. This is the applicant's seventh proceeding regarding the respondent removing vehicles and other items which the applicant had placed on the verge in front of his business.

### **Background**

2. The applicant leased 1/6 Butler Place, Holtze and used that property, and the verge and road in front of the property, to store furniture, mattresses, vehicles and other items.



3. As can be seen in the above photograph, the storage of the items was unsightly and probably dangerous. The applicant failed to comply with the respondent's requests and directions to remove the property and in January 2020 the respondent arranged for a team of workers to clear the area. The items were removed by the respondent pursuant to powers under the *Local Government Act 2008* and the *Traffic Regulations 1999*.
4. In early 2020 the applicant commenced review proceedings in NTCAT challenging the respondent's authority to remove the goods.
5. On 19 June 2020 the applicant also commenced similar proceedings in the Local Court (2020-02347-LC) seeking damages and orders restraining the respondent from disposing of two vehicles. This claim was summarily dismissed on 22 June 2020 with no written reasons, but on the basis it was an abuse of process given the existing NTCAT proceedings.
6. On 3 March 2021, and while NTCAT proceedings were still on foot, the applicant filed a further claim in the Local Court (2021-00515-LC) seeking orders restraining the respondent from taking further action until the NTCAT proceedings were determined. This was also summarily dismissed with a reference to jurisdictional grounds (but I suspect the dismissal was also in part based on abuse of process principles).
7. The applicant's 2020 NTCAT proceedings (2020-02713-CT) were in the review jurisdiction of the Tribunal and challenged the lawfulness of the actions of the respondent in removing the items.
8. On 1 July 2021 the NTCAT held the respondent's actions were valid and dismissed this review proceeding.
9. The fourth proceeding (2021-02386-CT) was a request by the applicant for NTCAT to review the above ruling. The Tribunal held that it had no jurisdiction to review a review decision, and dismissed this application on 2 September 2021.
10. The fifth and sixth proceedings dealt with two applications (2021-00605-CT and 2021-00253-CT) seeking damages under the *Small Claims Act 2016*. These were in the original jurisdiction of NTCAT and related to the same actions by the respondent (removing items from the verge, road and inside the leased property).
11. These claims were dismissed on 21 October 2021 where the Tribunal found the following:

- a) The applicant had no lawful authority to store items on the verge and on the road in front of the lease property;
  - b) The respondent had lawful authority to remove the goods under the common law and the *Local Government Act 2008*, and had lawful authority to remove the vehicles under the *Traffic Regulations 1999*; and
  - c) The respondent committed no tort against the applicant in removing the items.
12. The Applicant has applied for a review of the above decision (which is permitted in the original jurisdiction of NTCAT) and this review is still pending.

### **This Claim**

13. Notwithstanding the ongoing review, on 22 December 2021 the applicant filed this proceeding being the seventh proceeding in total (and the third in the Local Court) challenging the respondent's removal of the items.
14. In this proceeding the applicant is seeking injunctive relief compelling the respondent to:
- a) give access to the applicant's vehicles so he can catalogue and photograph them;
  - b) allow the applicant to remove some of the vehicles for safe keeping;
  - c) disclose the location of eight vehicles "unlawfully obtained" by the respondent;
  - d) give access to the applicant so he can observe the vehicles and verify that they "are currently under CCTV"; and
  - e) file and serve all evidence upon which they intend to rely as to the lawful basis for impounding 25 or more vehicles.

### **Abuse of Process**

15. This proceeding involves the same parties, events and issues as the six earlier proceedings. Although two proceedings were dismissed summarily in the Local Court, the NTCAT has carefully considered all of the applicant's claims and, with detailed reasons, concluded that the respondent acted lawfully in removing the property.
16. As some aspects of the applicant's claims are currently subject to review in the NTCAT, concepts of *res judicata* or estoppel do not prevent him from initiating further proceedings.
17. However this does not prevent a court from finding a proceeding is an abuse of process as was recently confirmed in *Jack v CEO (Housing) (No 2)* [2021] NTSC 81 where Grant CJ

at [66] stated:

*“However, even where the principles of res judicata or estoppel do not preclude a party from re-litigating issues which have been decided against it in other proceedings, a superior court has inherent jurisdiction to prevent that re-litigation as an abuse of process.”*

18. In *Williams v Spautz* 174 CLR 509 at 547 Deane J. stated an inferior court also has the power to dismiss a proceeding if it is found to be an abuse of process.
19. In this proceeding the applicant is again claiming the respondent acted unlawfully, that he is entitled to have the vehicles back, and damages. These claims have already been dismissed in the NTCAT and are currently subject to review. Any application about the ongoing storage of removed items should be dealt with in that review proceeding.
20. In *Jack v CEO (Housing)* Grant CJ referred to *AON Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 where French CJ at [33] stated:  
*“Abuse of process principles may be invoked to prevent attempts to litigate that which should have been litigated in earlier proceedings as well as attempts to re-litigate that which has already been determined.”*
21. This proceeding is an attempt to re-litigate a claim that has already been determined in the NTCAT. The fact that the NTCAT ruling is currently under review does not alter the conclusion that this claim is an abuse of process (indeed it confirms it). The proceeding should therefore be dismissed.

### **Orders**

22. The applicant’s proceeding is dismissed; and
23. The applicant is to pay the costs of the respondent at 100% of the Supreme Court scale to be taxed or agreed.

Dated this 4th day of March 2022



---

Ben O’Loughlin  
ACTING LOCAL COURT JUDGE