



HIS HONOUR: This is an application made by Mr Royds, a solicitor of this Court but in his personal capacity, to set aside a summons issued against him for public examination pursuant to part 9(5) of the Corporations Act.

The issue of the summons was done on a discretionary basis pursuant to section 596B of the Act based on an affidavit by Ian David Jessup which details the interaction between the corporation, of which Mr Jessup was then the receiver, and the person proposed to be examined.

The affidavit was extensive because the examination was sought against a number of individuals on a discretionary basis and it was sought against particular individuals on a mandatory basis pursuant to section 596A.

The allegation against Mr Royds was, "That he has legally represented the second respondent, third respondent, Ms Virginia Ransom Walters, the sole director of the fourth respondent. My inquiries to date have led me to believe that substantial funds of the second respondent, third respondent and Ms Virginia Ransom Walters have been paid into Mr Royds' trust account."

Mr Royds complains that those parties, save for the fourth respondent, were individuals and as such were not susceptible to examination under this Act.

What was necessary for the Court to be satisfied about was that Mr Royds had taken part or been concerned in the examinable affairs of the corporation. There were two corporations listed in that application, the first being Drury Management Pty Ltd of which both the second and third respondent were directors and the fourth respondent as mentioned.

The issue then is whether the material referred to in paragraph 13 of Mr Jessup's affidavit fell within the definition of the "examinable affairs" of the corporation. That requires the consideration of the material against the definition of the affairs of the body corporate as appears in section 53 of the Corporations Act.

That definition is quite broad and it deals with promotion, formation, membership, control of the business trading transactions et cetera of any corporation.

Both the second and third respondents were persons involved in the promotion and in the membership and control of the corporation and Ms Virginia Ransom Walters was in that position in respect of the fourth respondent.

The definition is far more extensive than that and I do not need to refer to every part of it but included amongst it is the question of ownership of shares in and interests in a managed investment scheme which was the subject of the action in respect of which the public examination was first raised.

I am satisfied that it was quite proper for the summons to issue against Mr Royds and that the short details given in Mr Jessup's affidavit did fall within the definition of examinable affairs of the corporation for the purpose of section 53 of the Act.

It has been drawn to my attention, however, that the width of the public examination is not permitted in so far as it would appear to suggest a right to examine the affairs of individuals, namely Piet Cornelius Walters and Mark Samuel Evans.

The Act does not provide for that. It provides for examination of the relationship and the actions of those persons in their capacity as members or as officers of the corporations and not of them individually.

It seems, therefore, that a case has been made out for the summons to be amended by the deletion of the names of those individuals.

The public examination should proceed in relation to the examinable affairs of the company and given the width of the definition that will no doubt include substantial inquiry into the relationship and conduct of those individuals in their control and dealings with the corporations.

I propose, therefore, to amend the summons directed to Mr  
Royds by deleting where they appear the names Piet Cornelius  
Walters and Mark Samuel Evans.

I make no order for costs on the application on the basis that  
both parties have been to an equal degree successful and  
unsuccessful in responding to the application.

-----