

SUPREME COURT OF QUEENSLAND

CITATION: *Hart v Commonwealth Director of Public Prosecutions*
[2011] QCA 176

PARTIES: **STEVEN IRVINE HART**
(appellant)
v
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
(respondent)

STEVEN IRVINE HART
(plaintiff)
v
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
(defendant)

FILE NO/S: Appeal No 13541 of 2010
Appeal No 2504 of 2011
DC No 1416 of 2003

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal
Removal or Remission

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 26 July 2011

DELIVERED AT: Brisbane

HEARING DATES: 26 July 2011 and 27 July 2011

JUDGES: Margaret McMurdo P, Muir and White JJA
Separate reasons for judgment of each member of the Court, each concurring to the order made

ORDER: **Application to amend notice of appeal by adding ground 1A refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – AMENDMENT – where the appellant sought leave to amend the notice of appeal to add a ground that the primary judge erred in finding that the District Court had jurisdiction to hear and determine the proceeding where the proceeding was in excess of the monetary limit of the District Court – where the appellant's legal representatives did not object to the District Court's jurisdiction at the hearing – where there would be

significant prejudice to the respondent by allowing the amendment – whether it was in the interests of justice to allow the amendment – whether leave should be given to amend the notice of appeal

COUNSEL: G C Dempsey, with A J Greinke, for the appellant in Appeal No 13541 of 2010 and the plaintiff in Appeal No 2504 of 2011
 P J Flangan SC, with G Del Villar, for the respondent in Appeal No 13541 of 2010
 R Orr QC, with G Del Villar, for the defendant in Appeal No 2504 of 2011

SOLICITORS: Buchanan Law for the appellant in Appeal No 13541 of 2010 and the plaintiff in Appeal No 2504 of 2011
 Commonwealth Director of Public Prosecutions for the respondent in Appeal No 13541 of 2010
 Australian Government Solicitor for the defendant in Appeal No 2504 of 2011

THE PRESIDENT: The appellant seeks leave to amend his notice of appeal by adding a proposed ground 1A in these terms: "The primary judge erred in finding at [15] and [16] that the District Court had jurisdiction to hear and determine the proceeding as such proceeding was in excess of the monetary limit of the District Court under s 68 of the *District Court of Queensland Act 1967* (Qld)."

The respondent objects to that amendment of which it received notice only yesterday. The new ground concerns a matter raised by the trial judge at the hearing. The appellant's legal representatives at the hearing specifically did not object to the District Court's jurisdiction. It should also be noted that this appeal has been listed for hearing today for some time and that this Court has previously given leave to the appellant to amend its grounds of appeal in significant respects in accordance with the amended notice of appeal filed in this Court on 5 April 2011. The respondent did not object to those amendments as it had time to prepare its case in answer to them.

It should also be noted that, were the amendment to be granted, at least this part of the appeal hearing would have to be adjourned for notices to be served under s 78B *Judiciary Act 1903* (Cth) and to enable the respondent to make at least written submissions in

respect of it. The granting of leave to amend may also require the matter to be re-listed at some future date for oral argument.

As the appellant did not object to the jurisdiction of the District Court at the hearing, this lengthy and complicated matter proceeded in that Court. Had objection been taken at the commencement of the hearing, the appellant could have had the matter determined in the Supreme Court. There is, therefore, significant prejudice to the respondent in allowing this amendment to the grounds of appeal at this very late stage. Weighing up the competing considerations, and also the fact that there is at least a strong argument that the District Court did have jurisdiction to hear the matter as set out in the primary judge's reasons at [15] and [16], the interests of justice, and particularly the community's interest in the finality of litigation, require that the application to amend the notice of appeal by adding ground 1A must be refused. That is the order I would propose.

MUIR JA: I agree. Trials are not to be regarded as provisional only. Parties are obliged to bring forward all of their arguments in support of their respective contentions. Failure to do so can, as it does in this case, result in irretrievable prejudice to the other party.

WHITE JA: I agree with the order proposed and the reasons of my colleagues.

THE PRESIDENT: The amendment is refused.