[2015] QCA 116

COURT OF APPEAL

GOTTERSON JA
MORRISON JA
PHILIPPIDES JA

CA No 11 of 2015
DC No 75 of 2014

THE QUEEN

v

WHITTAKER, Mark Alan **Applicant**

BRISBANE

THURSDAY, 25 JUNE 2015

JUDGMENT

GOTTERSON JA: On the 3rd of April 2014, in the Magistrates Court at Cairns, the applicant, Mark Alan Whittaker, was convicted on complaint and summons on eight offences against s 8C(1)(a) of the *Taxation Administration Act* 1953. Each offence was particularised as the applicant having failed to furnish an approved form, namely, an income tax return setting forth a complete statement of all income derived by him from all sources in Australia and elsewhere during a specified tax year when and as required by the Commissioner of Taxation to do so pursuant to s 162 of the *Income Tax Assessment Act* 1936. The offences relate to different tax years.

The applicant appealed to the District Court pursuant to s 222 of the *Justices Act* 1886 against the convictions. His appeal was heard in November 2014 and dismissed on the 17th of December 2014 when detailed reasons for judgment were published. On the 12th of January

2015, the applicant filed an application for leave to appeal to this Court pursuant to s 118(3), of the *District Court of Queensland Act* 1968 against the dismissal. The application document was prepared by the applicant who, until today, has acted for himself. It lists three reasons why leave should be granted. These reasons have a direct interrelationship with the 22 errors on the part of the judge below, which are listed in the document as the grounds of appeal.

As to the reasons, the first is that the decision is attended by sufficient doubt to warrant it being reconsidered; this reason is also referable to the viability of the grounds of appeal to which I shall return. The second reason is that the decision involves important questions of law said to be critical to the proper administration of the taxation, superannuation and other Commonwealth laws in some four respects. These questions or issues may be dealt with briefly.

The first concerns application of the word "person" in s 162. Relevantly, the word is defined to include an individual. The applicant is, indisputably, an individual. The second, third and fourth issues are misconceptions. They centre upon the unsupportable proposition that the lawful making of a request by the Commissioner under s 162 is, in some way, constrained by the tax file number system. It is clear from the terms of s 162 that the making of such a request is not dependent upon an individual having a tax file number or the inclusion of such a number in the request. Moreover, the applicant's misconceptions extend to the bizarre assertion that a s 162 request, which includes a tax file number for an individual, evidences a contravention by the Commissioner of s 8WB(1) of the *Taxation Administration Act* 1953 as would invalidate the request. None of these issues is viable. In short, the applicant has failed to identify any issue of statutory interpretation resolved in a way by his Honour which is seriously open to question.

The third reason stated is that an important question involving the Commonwealth Constitution or its interpretation is involved. The constitutional question said to be involved is whether, if s 8WB does apply to the Commissioner, the income tax scheme is one to forcibly acquire property from any person on unjust terms contrary to s 51(xxxi) of the Constitution. This question was not raised below. Section 8WB is a provision against the unauthorised recording, use, or divulgence of a person's tax file number. It does not, by its terms, purport to effectuate

an acquisition of property from any person whether it applies to the Commissioner or not. The proposition that it does so is quite inarguable. There are, therefore, no constitutional issues or issues of statutory interpretation seriously raised by the applicant's proposed appeal in his appeal documents. Thus, in accordance with decisions of this Court for an order for a grant of leave to be made, here, the applicant need demonstrate an error of law by the judge below, which has given rise to a resultant significant injustice to him.

I now turn to the proposed grounds of appeal. Many of them are interrelated and overlap. It is convenient to deal with them in groups. Ground A, which was abandoned by Mr Van Der Walt, concerns his Honour's finding that there was no error in a disclosure ruling made by the Magistrate on the 6th of November 2013 dismissing an ambit discovery application brought by the applicant. The judge set out the terms of the disclosure sought, although they were expressed in a convoluted way, those terms comprehended any document held by the Commissioner relating to the applicant. The discovery sought was evidently far too wide. It was not refined by the applicant. The dismissal by the Magistrate of the application was plainly correct.

Grounds 2(b), (h), (i) and (l) to (o) ventilate the issue of whether the applicant was under a legal obligation to comply with each notice. It is true, as the Commissioner sets out in written submissions, that there has been a history of amendments to s 8C(1)(a). It is unnecessary to detail or consider them. Whether the operative form of the section at the time of the alleged offending included the expression "in approved form" or not, the words "information or document", a constant feature of the section, were plainly wide enough to include an income tax return in the approved form as was requested.

Grounds 2(d) to (g), (j) and (k) concerned the misconceived tax file number arguments advanced by the applicant. It is clear, as I have said, that the legal efficacy of a s 162 requirement is not dependent upon a person having a tax file number or its having been stated in the request; that consigns to irrelevance the applicant's additional and palpably erroneous claim that he might revoke their deployment of his tax file number under the tax file number system. Grounds 2(p) to (s) are based upon a mischaracterisation of the Magistrate's conclusion of guilt as involving an

exercise of discretion. Clearly, that is wrong. It was for the Magistrate to decide whether the elements of the offences had been proved to the requisite standard; that did not involve the exercise of discretion.

Lastly, I mention ground 2(c), which was also abandoned by Mr Van Der Walt. It contends that the judge did not address the Magistrate's alleged failure to consider properly the Prosecution evidence in terms of s 69 of the *Evidence Act* 1995 (Cth). This point was not argued before his Honour on appeal, thus, there could be no error on his part with respect to it. In any event, the applicant's written submissions reveal a misapprehension on his part with respect to the meaning and application of the business records exception to the hearsay rule contained in that section.

Mr Van Der Walt, of counsel, who appeared for the applicant this morning, has filed a further outline of submissions. This document adverts to yet other grounds. They may be dealt with shortly. It is submitted that, in order to prove the s 162 offence, it is necessary to tender a sample of an approved form. That cannot be so. Exhibit 16 sufficiently proved that a form of the kind referred to in each complaint has been approved. Another submission is that the complaint was defective because it did not allege approval of:

> "…the requisite form in accordance with the statutory requirement set out in section 388-50 of the Taxation Administration Act."

Reliance was placed upon the observations of Justice Adams at [16] in *Knaggs v Commonwealth Director of Public Prosecutions* [2003] NSWSC 3. These observations concern what is sufficient to comply with the requirements for an information under s 57 of the *Justices Act* 1902 (NSW). They have no direct relevance to this case. Certainly, they are not authority for the applicant's proposition that the legal validity of each complaint was dependent upon the inclusion of qualifying words in the terms suggested.

Next, notwithstanding the applicant's express statement to the Magistrate that delegation was not challenged, it was said that proof was deficient for want of evidence that the Deputy-Commissioner of Taxation's signatory of the s 162 requests was a delegate of the Commissioner

of Taxation. This was because the position set out in the general delegation, exhibit 11, where they related to the Office of the Deputy Commissioner of Taxation, have an additional description, such as [indistinct] but the signatory is described only as "Deputy Commissioner of Taxation". However, the evidence of Mr Simpson sufficiently identified the signatory Deputy Commissioner as Deputy Commissioner of Taxation, Tax Practitioner and Lodgement Strategy, a position set out in exhibit 1. The point, even if available to be argued here, is unavailing.

In summary, the applicant has not succeeded in demonstrating error in his Honour's careful and comprehensive consideration of the appeal. None of the applicant's proposed grounds of appeal to this Court is viable. It follows that his application for leave to appeal must be dismissed. I would so order.

MORRISON JA: I agree.

PHILIPPIDES JA: I also agree.

GOTTERSON JA: The order of the Court is that the application for leave to appeal be to this court is refused.