

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE COURT OF APPEAL (WA)

CITATION : GLEW TECHNOLOGIES PTY LTD -v-
DEPARTMENT OF PLANNING AND
INFRASTRUCTURE [2007] WASCA 289

CORAM : PULLIN JA
MILLER JA
BEECH AJA

HEARD : 19 DECEMBER 2007

DELIVERED : 19 DECEMBER 2007

FILE NO/S : CACR 142 of 2007

BETWEEN : GLEW TECHNOLOGIES PTY LTD
Appellant

AND

DEPARTMENT OF PLANNING AND
INFRASTRUCTURE
Respondent

ON APPEAL FROM:

Jurisdiction : SUPREME COURT OF WESTERN AUSTRALIA

Coram : McKECHNIE J

File No : SJA 1057 of 2007

Catchwords:

Application for leave to appeal - Conviction under s 24(2d) of the *Road Traffic Act 1974* (WA) - Turns on own facts

Legislation:

Criminal Appeals Act 2004 (WA), s 7(1), s 16(2), s 9(1), s 9(2), s 9(4), s 18
Supreme Court Rules, O 64 r 4(2)(b), O 4 r 3(2), O 2 r 1

Result:

Leave to appeal refused

Category: B

Representation:

Counsel:

Appellant : In person
Respondent : Ms F B Seaward

Solicitors:

Appellant : In person
Respondent : State Solicitor for Western Australia

Case(s) referred to in judgment(s):

East Metropolitan Regional Council v Four Seasons Construction [2000] WASC
178; (2000) 22 WAR 372
Forge v Securities and Investments Commission [2006] HCA 44
Glew v Shire of Greenough [2006] WASCA 260
HPM Pty Ltd v Fear Pty Ltd [2002] WASCA 249
Rusbridger v Attorney-General [2004] 1 AC 357
The Pilbara Infrastructure Pty Ltd v BGC Contracting Pty Ltd [2007] WASCA
257

1 **PULLIN JA:** The appellant was convicted by a Magistrate on 28 June 2007 of the offence of failing to apply for the transfer of a vehicle licence, contrary to s 24(2d) of the *Road Traffic Act 1974* (WA). He was fined \$100, ordered to pay costs of \$66 and ordered to pay the transfer fee and stamp duty.

2 The appellant appealed to the Supreme Court under s 7(1) of the *Criminal Appeals Act 2004* (WA). The appeal was dealt with on the papers by McKechnie J. The grounds of appeal to McKechnie J read:

1. That the sitting Magistrate paid no Judicial attention to the fact an indictable offence of Treason was revealed at the Hearing
2. That the Magistrate was not in a Court of Competent Jurisdiction to hear and determine matters relating to Glew Technologies Pty Ltd registered in accordance with the Commonwealth Corporations Act 2001 (CTH)
3. That the Magistrates Court at Geraldton Western Australia is not a court in accordance with Chapter III of the Commonwealth of Australia Constitution Act 1900 since the enactment of the overt Act '**Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA**'
4. That the sitting Magistrate acknowledged the offence of Treason and that he himself would be committing an indictable offence if he ruled in favour of the appellant

3 McKechnie J's reasons for dismissing the appeal read as follows:

Most of the argument before the magistrate centred on legal arguments put forward by Mr Glew. The magistrate noted 'at least two of those arguments have been put in slightly different guises before and have been considered by the Court of Appeal'. That is correct: *Glew v The Shire of Greenough* [2006] WASCA 260. Re-agitating the same point; though slightly differently expressed is mischievous and vexatious. The magistrate also dealt with an argument, reflected in the proposed grounds of appeal that in some way an offence of treason had occurred pursuant to the *Treason Felony Act 1948* a statute of the United Kingdom.

The *Treason Act* of the UK does not create offences in Western Australia: *Criminal Code Act Compilation Act 1913* (WA) Appendix B s 4. In any event, the *Treason Act* has fallen into desuetude: *Rushbridger v Attorney General* [2004] 1 AC 357.

4 Most of the argument before the magistrate centred on legal arguments put forward by Mr Glew. The magistrate noted 'at least two of those arguments had been put in slightly different guises before and had

been considered by the Court of Appeal'. That is correct. See *Glew v Shire of Greenough* [2006] WASCA 260.

5 The magistrate also dealt with an argument, reflected in the proposed grounds of appeal, that in some way an offence of treason had occurred pursuant to the *Treason Felony Act 1948* (UK). McKechnie J noted that the *Treason Act* (UK) does not create offences in Western Australia (*Criminal Code Compilation Act 1913* (WA) appendix B, s 4) and that, in any event, the *Treason Act* has fallen into desuetude (*Rusbridger v Attorney-General* [2004] 1 AC 357).

6 His Honour then set out the four grounds of appeal and continued:

For the reasons set out, grounds 1 - 3 disclose no reasonably arguable grounds. Neither does ground 4 which takes a remark by the magistrate in the course of argument out of context. That is established by the magistrate's reasons which hold to the contrary.

7 The appellant now appeals pursuant to s 16(2) of the *Criminal Appeals Act 2004*. The grounds of appeal read :

1. Justice McKechnie erred in law and fact when he failed to realise that *Glew V Shire of Greenough 2006 WASCA 260* was not re-agitating the same point. Justice Wheeler ruled the State Government did not remove the Crown they changed the name which is contrary Halsbery's Laws of England Volume 2 at 483, which is felony treason.
2. Justice McKechnie erred in law and fact when he failed to realise that the Department of Planning and Infrastructure trades under ABN 40996710314 which means they are a company formed under State Legislation which requires them under section 51 sub-section 20 of the Federal Constitution to comply with Federal Law, the Federal Incorporations Act 2001.
3. Justice McKechnie erred in law and fact when he failed to realise the Department of Planning and Infrastructure committed a fraud on the court when they prosecuted a Federal company in a State court in Criminal Jurisdiction when it should have been Civil Jurisdiction.
4. Justice McKechnie erred in law and fact when he failed to realise the Magistrate paid no Judicial attention to fact that an indictable offence of treason was revealed at the hearing by the changing of the name of the Crown contrary to the Laws of Halsbery's Laws of England Volume 2, and that was evident in his remark made in the transcript when the case was being argued.
5. Justice McKechnie erred in law and fact when he failed to recognise that the Magistrate sat in Federal Jurisdiction without the authority of the Crown contrary to Chapter 3 of the commonwealth of Australia Constitution Act of 1900 and contrary to a ruling of the

High Court Forge Vs Australian Securities and Investment Commission handed down on the 5th September HCA 44 (2006). High Court of Australia rulings must be obeyed by all Courts section 25 of the 1903 Judiciary Act.

6. Justice McKechnie erred in law and fact when he sat in a Court called a Star Chamber Court which was abolished in 1641 contrary to the Act Abolishing Arbitrary Courts 1641: 'An Act for the regulating the privy council and for taking away the court commonly called the Star Chamber, forasmuch as all matters examinable or determinable in the court commonly called the Star Chamber may have their proper remedy and redress and their due punishment and correction by the common law of the land and in the ordinary course of justice elsewhere; and forasmuch as the reasons and the motives inducing the erection and continuance of that court do now cease, and the proceedings, censures, and decrees of that court have by experience been found to be an intolerable burden to the subjects and the means to introduce an arbitrary power and Government; and forasmuch as the council table hath of late times assumed unto itself a power to intermeddle in Civil causes and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject contrary to the law of the land and the rights and the privileges of the subject, by which great and manifold mischief and inconveniences have arisen and happened, and much uncertainty by means of such proceedings have been conceived concerning men's rights and estates: for settling whereof and preventing the like in time to come, be it ordained and enacted by the authority of this present parliament that the said court commonly called the Star Chamber, and all jurisdiction, power, and authority belonging unto or exercised in the same court, or by any the judges, officers, or ministers thereof, be from the first day of August in the year of our Lord God 1641 clearly and absolutely dissolved, taken away, and determined.....' The above law is law in this country under the Act of Settlement and remains in force under section 108 of the Federal Constitution.
7. Justice McKechnie erred in law and fact when he assumed that the treason revealed to Magistrate Flynn was under the Treason Felony Act 1948, the treason spoken of was under section 80 of the Federal Criminal Code 1995 and referred to Common Law Treason (breach [sic] of allegiance) and Misprison of Treason (concealing treason).
8. Justice McKechnie erred in law and fact when he assumed that he could sit in the Supreme Court of Western Australia without the Authority of The Crown.
9. Justice McKechnie erred in law and fact when he failed to recognise that the Department of Planning and Infrastructure maliciously prosecuted Glew Technologies Pty Ltd. using one section of the Road Traffic Act to force Glew Technologies Pty Ltd to obey another section of the Road Traffic Act contrary to

section 76 of the Federal Constitution reference found on page 791 of the Australian Constitution.

8 Leave is required for each ground of appeal (see s 9(1) of the *Criminal Appeals Act* which is applied by s 18 of that Act). By s 9(2), this court is directed not to grant leave on a ground unless it is satisfied that the ground has reasonable prospects of success.

9 Various arguments have been advanced by Mr Glew this morning, but I intend to deal with the grounds of appeal before the court. Grounds 1, 4 and 7 which asserted some unspecified act of treason are frivolous and vexatious. No error is revealed in McKechnie J's reasons which deal with the treason point. Further, no argument based on the treason point has any reasonable prospect of success. The reasons advanced by the respondent in its submissions in relation to these grounds, which are accepted by the court, support this conclusion.

10 Ground 2 is based on the fallacy that trading under an ABN has the consequences asserted in the ground. Generally, for the reasons given by the respondent in its submissions, that ground has no reasonable prospect of success.

11 Grounds 3 and 9 are meaningless and are therefore frivolous and vexatious, once again for the reasons given by the respondent in the written submissions.

12 Ground 5 refers to *Forge v Securities and Investments Commission* [2006] HCA 44, but nothing in that decision provides a basis to conclude that the magistrate's decision should be overturned, or that it was in any way contrary to ch III of the *Commonwealth Constitution*.

13 Ground 6 asserts that McKechnie J 'sat in a court called the Star Chamber Court which was abolished in 1641'. This assertion is frivolous and vexatious. If, by this ground, the appellant means to assert that in dealing with the appeal on the papers, McKechnie J disposed of the appeal in an impermissible fashion, then the assertion may be dealt with and dismissed by referring to O 64 r 4(2)(b) of the *Supreme Court Rules* which authorises the court to decide the application on the basis of the documents and without requiring the parties to attend a hearing (see also *Criminal Appeals Act 2004*, s 9(4)).

14 Insofar as it is comprehensible, ground 8 seeks to reagitate what was dealt with in *Glew v Shire of Greenough* [2006] WASCA 260.

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BEECH AJA

- 15 None of the grounds have any reasonable prospects of success. As a result, leave to appeal must be refused. If leave had been granted, it would have been necessary to deal with an irregularity in the proceedings. The appeal was commenced and carried on by Mr Glew on behalf of the appellant, a corporation, contrary to O 4 r 3(2) of the *Supreme Court Rules*. Order 4 r 3(2) prohibits a body corporate from beginning or carrying on any proceedings otherwise than by a solicitor. Non-compliance with O 4 r 3(2) meant that the proceedings were irregular (see O 2 r 1 and *The Pilbara Infrastructure Pty Ltd v BGC Contracting Pty Ltd* [2007] WASCA 257 [47] and [49] and *HPM Pty Ltd v Fear Pty Ltd* [2002] WASCA 249 [24] - [26]).
- 16 Even if it were possible for the court to circumvent the requirements of O 4 r 3(2) by granting leave to Mr Glew to carry on the appeal (as to which, see *East Metropolitan Regional Council v Four Seasons Construction* [2000] WASC 178; (2000) 22 WAR 372, the correctness of which was not addressed in these proceedings), that could only be done if there were some material before the court to support such an order. As none of the grounds of appeal have a reasonable prospect of success, and leave to appeal having been refused, it is not necessary to consider this aspect any further.
- 17 **MILLER JA:** I agree with Pullin JA.
- 18 **BEECH AJA:** I agree with Pullin JA.