

FEDERAL COURT OF AUSTRALIA

Manton International Pty Ltd (In Liquidation) v Deputy Commissioner of Taxation [2006] FCAFC 76

Corporations Act 2001 (Cth) s 471A
Federal Court Rules O 20 r 2, O 52 r 18

Dymocks Franchise Systems (NSW) Pty Ltd v Todd [2004] UKPC 39 cited
Knight v FP Special Assets (1992) 174 CLR 178 cited
Gore v Justice Corporation [2002] 119 FCR 429 cited
Arundel Chiropractic Centre Pty Ltd v Deputy Commissioner of Taxation (2001) 179 ALR
406 cited

**MANTON INTERNATIONAL PTY LTD (ACN 003 810 437) (IN LIQUIDATION) V
DEPUTY COMMISSIONER OF TAXATION**

NSD 2142 OF 2005

**TAMBERLIN, WEINBERG AND ALLSOP JJ
SYDNEY
16 MAY 2006**

GENERAL DISTRIBUTION

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

NSD 2142 OF 2005

ON APPEAL FROM A JUDGE OF THE FEDERAL COURT OF AUSTRALIA

**BETWEEN: MANTON INTERNATIONAL PTY LTD
 (ACN 003 810 437)
 APPELLANT**

**AND: DEPUTY COMMISSIONER OF TAXATION
 RESPONDENT**

JUDGES: TAMBERLIN, WEINBERG AND ALLSOP JJ

DATE OF ORDER: 16 MAY 2006

WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

1. The Motion of the respondent is granted.
2. The Appeal is dismissed.
3. Mr Gabriel Magyari is to pay the costs of the respondent on a solicitor/client basis.
4. Leave is granted to the respondent to pursue those costs as agreed or taxed forthwith.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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REASONS FOR JUDGMENT

1 This is the hearing of an Appeal and a Notice of Motion in that Appeal filed on 7
March 2006, relating to a decision of Gyles J given on 4 November 2005 ordering the
winding up of Manton International Pty Ltd (“Manton”) and appointing Mr Steven Sherman
as liquidator of that corporation.

2 On 7 March 2006, a Notice of Motion was filed by the respondent seeking dismissal
of the Appeal under O 52 r 18 of the *Federal Court Rules* on the basis that the Appeal is
incompetent or, alternatively, under O 20 r 2 on the basis that the Appeal discloses no
reasonable cause of action, is frivolous or vexatious and is an abuse of process of the Court.

3 Mr Gabriel Magyari, on behalf of Manton, has been given ample notice that the
Appeal and the Motion would be heard at 10:15 am on Tuesday 16 May 2006. He stated on
11 May 2006 that Manton would like an adjournment because its counsel is not available on
16 May 2006. He was notified on 12 May 2006 that the hearing of the Appeal and the
Motion would proceed on 16 May 2006.

4 By facsimile received on the afternoon of Monday 15 May 2006, Mr Magyari sought
leave to appear by telephone on the ground that he was overseas and no plane ticket to

Sydney was available. A Papua New Guinea telephone number was given in the facsimile. The Court decided to grant leave to appear by telephone at 10:15 am (Sydney time) to enable Mr Magyari to make submissions. No satisfactory explanation has been given that would warrant the grant of any adjournment. On 16 May 2006, Mr Magyari made submissions via a telephone link, but these submissions were irrelevant and unhelpful to the resolution of this Appeal.

5 On its face, the Notice of Appeal filed by Mr Magyari on 8 November 2005 does not disclose any arguable ground of appeal which would warrant any interference with the order of Gyles J. The grounds specified in the Notice of Appeal are as follows:

1. *That the Learned Trial Judge fell into error in rejecting Part 1 Article 1 International Covenant on Civil and Political Rights 1966 in its application to the Federal State ISSA.*
2. *That the Learned Trial Judge fell into error in rejecting the exercise of its rights of self-government in its most general application the term right refers to withdrawal by an individual or group from an entity of which it or they had previously been part (Commonwealth of Australia).*
3. *Administrative Appeals Tribunal, Taxation Appeals Division, number QT 2005/215 Deputy President Don Muller, 15 September 2005, Brisbane "being satisfied that the Tribunal has no jurisdiction."*
4. *The Learned Trial Judge fell into error in rejecting the public information provided by Lawyer, Simone Brittan (for ASIC): "the claim that the Commonwealth of Australia has jurisdiction has no legal basis and will not be entertained."*
5. *That the Learned Trial Judge fell into error in rejecting the advice of David Bennett, Deputy Solicitor Commonwealth of Australia, 27 October 2005, on behalf of the Commonwealth Attorney General the Honourable Phillip Ruddock MP: "he will not be intervening or applying to remove to the High Court of Australia."*
6. *The Independent Sovereign State of Australia ISSA jurisdictional authority is unchallenged and confirmed but rejected by the Learned Trial Judge.*

These grounds are, on their face, lacking in substance.

6 Under s 471A of the *Corporations Act 2001* (Cth), in circumstances where a company is being wound up, a person cannot exercise any functions or powers as an officer of the

corporation except with the liquidator's written approval. In the present case, there is no evidence of any approval in respect of the Appeal. Accordingly, the Appeal is incompetent and should be dismissed, and no grounds have been made out which would warrant the Court giving approval.

7 The Court considers that this Appeal is an abuse of process and comes within O 20 r 2(a), (b) and (c). The Court is greatly concerned at the waste of time and money resulting from the prosecution of this Appeal. The position taken by Manton in these proceedings has led to the incurring of substantial wasted time and expense, both at first instance and in relation to the Appeal, which is unnecessary and imposes a substantial burden on the administration of justice. The Court is also concerned in respect of the time required to be spent by officers and judges of the Court in the preparation and examination of the documentation, and the making of arrangements for the matter to be brought on for a hearing before three members of the Court.

8 Litigants before this Court and their representatives should be made clearly aware of their liability to pay indemnity costs in such cases. It should be noted that representatives may be ordered to pay such costs personally in circumstances where the Appeal is manifestly devoid of any merit or substance. In such cases, there is a waste of time, the incurring of great expense, and considerable inconvenience to the Court and the parties as a consequence of the persistent pursuit of hopeless appeals. The Court will not tolerate its jurisdiction being abused as it has been in this matter.

9 The Court considers that this is a clear case in which to order the payment of indemnity costs by Mr Magyari, who is the proponent of the appellant's case and by whom this Appeal has been commenced and prosecuted. The Court file evidences the substantial extent to which Mr Magyari has been involved in the prosecution of this hopeless Appeal.

10 There is ample authority that the Court has power to order that costs be paid by a non-party in circumstances where the non-party is a real party in important and critical respects and the Court should do so in appropriate cases: *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] UKPC 39 at [25]-[29]; *Knight v FP Special Assets* (1992) 174 CLR 178 at 192-193; *Gore v Justice Corporation* [2002] 119 FCR 429 at [22]-[45]. Consistent with the principles outlined in *Arundel Chiropractic Centre Pty Ltd v Deputy Commissioner of*

Taxation (2001) 179 ALR 406, Mr Magyari can be properly characterised as a real party gaining access to justice for his own peculiar purposes.

11 Accordingly, the order of the Court is that the Motion of the respondent be granted and the Appeal be dismissed as incompetent. Mr Magyari is to pay the costs of the respondent on a solicitor/client basis as taxed or agreed. Leave is granted to the respondent to pursue those costs as agreed or taxed forthwith.

I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Tamberlin, Weinberg and Allsop.

Associate:

Dated: 24 May 2006

Appearance for the Appellant: Mr Gabriel Magyari

Solicitor for the Respondent: Australian Government Solicitor

Date of Hearing: 16 May 2006

Date of Judgment: 16 May 2006