

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : THE COURT OF APPEAL (WA)

**CITATION** : BELL -v- CRIBB [2012] WASCA 234

**CORAM** : NEWNES JA

**HEARD** : 13 NOVEMBER 2012

**DELIVERED** : 13 NOVEMBER 2012

**PUBLISHED** : 15 NOVEMBER 2012

**FILE NO/S** : CACV 129 of 2012

**BETWEEN** : CARL WILLIAM BELL  
First Appellant

ALLCERT HOLDINGS PTY LTD  
(ACN 153 481 371) as trustee for W J TRUST trading  
as TWIN STAR RESOURCES (ABN 13 103 439 847)  
Second Appellant

AND

NEIL RAYMOND CRIBB AS LIQUIDATOR OF  
COSTANOZA PTY LTD (IN LIQ) (ACN 13 103  
439 847)  
First Respondent

COSTANOZA PTY LTD (IN LIQ)  
Second Respondent

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**ON APPEAL FROM:**

**Jurisdiction** : SUPREME COURT OF WESTERN AUSTRALIA  
**Coram** : BEECH J  
**Citation** : CRIBB -v- BELL [2012] WASC 346  
**File No** : COR 48 of 2012

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*Catchwords:*

Practice and procedure - Application for stay pending hearing of appeal - Appeal has no reasonable prospects of success

*Legislation:*

Nil

*Result:*

Application dismissed

*Category:* B

**Representation:**

*Counsel:*

First Appellant : In person  
Second Appellant : No appearance  
First Respondent : No appearance  
Second Respondent : No appearance

*Solicitors:*

First Appellant : In person  
Second Appellant : No appearance  
First Respondent : No appearance  
Second Respondent : No appearance

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

Harris v Caladine [1991] HCA 9; (1991) 172 CLR 84

Hedley v Spivey [2012] WASCA 116

O'Connell v The State of Western Australia [2012] WASCA 96

Shaw v Jim McGinty in his capacity as Attorney General [2006] WASCA 231

1       **NEWNES JA:** On 13 November 2012, I dismissed an application by the  
appellant for a stay of an examination under the *Corporations Law* (Cth)  
pending the hearing of the appeal. I said I would provide reasons for my  
decision. These are the reasons.

### **Background**

2       Pursuant to orders made by Master Sanderson on 5 April 2012, the  
first respondent issued a summons for the examination of the appellant  
under s 596B of the *Corporations Act 2001* (Cth). On the return of the  
examination summons before a registrar, the appellant refused to take an  
oath or affirmation or to answer questions. The summons was relisted on  
a later date, when the appellant took the same approach. The first  
respondent then applied for an arrest warrant.

3       The summons and the application for an arrest warrant came before  
Beech J on 18 September 2012. On that date, the appellant handed to  
his Honour a document entitled 'Notification of Constitutional issue to be  
raised in the Supreme Court of Western Australia on 18th of September  
2012 in accordance with section 78B of the Judiciary Act  
Commonwealth'.

4       The document stated that the constitutional issues were:

- (1)     The ability of a registrar to sit as a Court and make judgments.
- (2)     The registrar is an employee of a Company and not an officer of  
the crown.
- (3)     The judge sitting in the Supreme Court is not an officer of the  
crown. He is also an employee of a Company.
- (4)     The Supreme Court of Western Australia sits under state acts (not  
laws) and statutes not Chapter III of the COMMONWEALTH  
CONSTITUTION ACT 1901, in direct contempt of the High Court  
of Australia, *Lane v Morrison*, *Forge v ASIC* and the Kable  
decision.

5       The primary judge informed the appellant that he would treat the  
document as an application to set aside the examination summons on the  
grounds stated in it. The appellant declined to make any submissions in  
support of the document, saying, in effect, that it would be inappropriate  
for him to make further submissions given that the primary judge was not  
a duly constituted court. The appellant said that the matter should await  
the response of the Attorneys-General whom he had served with the  
document under s 78B of the *Judiciary Act 1903* (Cth).

6 The primary judge declined to take that course, pointing out that the document sought to advance contentions which have been repeatedly held to be completely devoid of legal merit, referring to *Hedley v Spivey* [2012] WASCA 116 [7], McLure P (Buss & Mazza JJA agreeing) in which a number of those decisions are referred to. His Honour further noted that to the extent the first 'issue' is not dealt with in those cases, there is no doubt about the constitutionality of the investing of the relevant jurisdiction in registrars, referring in the federal context to the decision of the High Court in *Harris v Caladine* [1991] HCA 9; (1991) 172 CLR 84.

7 His Honour concluded that as the matters sought to be raised by the appellant were entirely devoid of legal merit, they did not give rise to any constitutional issues. He dismissed the appellant's application to set aside the examination summons. The appellant has appealed against that decision.

### **The appeal**

8 The details of the appeal as stated in the appeal notice are as follows:

1. [The primary judge] erred in law by failing to exercise the suspension required pursuant to Section 78B of the Judiciary Act 1903 (Cth); and
2. [The primary judge] erred in law by dismissing the Appellant's claim for the application of Section 78B of the Judiciary Act 1903 (Cth) on a summary basis, and such dismissal was against the weight of the evidence of the Notices provided to the Court as being served upon the Attorney-General pursuant to that section.

### **The disposition of the stay application**

9 The application for a stay of the examination has been listed on short notice because the examination is set down for 15 November 2012. The appellant has filed three affidavits in support of the stay. There is nothing contained in the affidavits which is relevant for present purposes.

10 It is unnecessary to canvass the various factors which ordinarily fall for consideration on an application of this nature. The fundamental question is whether it is in the interests of justice to grant a stay. It cannot be in the interests of justice to do so if the appellant's appeal has no prospect of success. That is the position in this case.

11 As the primary judge pointed out, it is well-established that a contention that is trivial, unarguable, frivolous or vexatious does not

involve a matter arising under the Constitution or involving its interpretation. If the alleged constitutional issue is of that nature, there is in truth no constitutional issue at all: *Shaw v Jim McGinty in his capacity as Attorney General* [2006] WASCA 231 [42]; *O'Connell v The State of Western Australia* [2012] WASCA 96 [90].

12 And as his Honour further pointed out, the 'constitutional issues' asserted by the appellant in the document involve contentions which have repeatedly been held to be completely devoid of legal merit. The many decisions to that effect are conveniently collected in *Hedley v Spivey*. To the extent the first 'issue' is not dealt with in those decisions, it is nonetheless clear that it is entirely without merit.

13 The decision of the primary judge is, with respect, indubitably correct. The appeal has no prospect of success and no purpose would be served by granting a stay. The application for a stay must be dismissed.