

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CHAMBERS

**CITATION** : CRIBB -v- BELL [2012] WASC 346

**CORAM** : BEECH J

**HEARD** : 18 SEPTEMBER 2012

**DELIVERED** : 21 SEPTEMBER 2012

**FILE NO/S** : COR 48 of 2012

**BETWEEN** : NEIL RAYMOND CRIBB AS LIQUIDATOR OF  
COSTANOZA PTY LTD (IN LIQ)  
Plaintiff

AND

CARL WILLIAM BELL  
Defendant

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*Catchwords:*

Corporations - Liquidator's examination - Application to set aside examination summons on constitutional grounds - Grounds devoid of merit - Turns on own facts

*Legislation:*

Nil

*Result:*

Application to set aside summons dismissed

*Category:* B

**Representation:**

*Counsel:*

Plaintiff : Mr K L Christensen  
Defendant : In person

*Solicitors:*

Plaintiff : Gadens Lawyers  
Defendant : In person

**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

Saraceni v Jones [2012] WASCA 59

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

**BEECH J:****Background**

1           The plaintiff (the Liquidator) is the liquidator of Costanoza Pty Ltd (in liq). Pursuant to the orders of Master Sanderson of 5 April 2012 the Liquidator has issued a summons for the examination of Mr Carl William Bell under s 596B of the *Corporations Act 2001* (Cth).

2           The examination summons was returnable on 8 June 2012. On that day, Mr Bell appeared before a registrar of the court. He refused to take an oath or affirmation, or to answer questions (ts 6 - 8). The examination was adjourned sine die.

3           The Liquidator then made an application for the issue of an arrest warrant for Mr Bell. That application was adjourned for reasons not necessary to detail.

4           The examination summons was relisted for 23 August 2012 before the registrar. Mr Bell challenged the authority of the registrar and refused to take the oath or affirmation (ts 21 - 24).

5           Later on 23 August 2012, I adjourned the Liquidator's application for an arrest warrant, and the hearing of the examination summons, to 10 September 2012 before me.

6           Mr Bell did not appear on 10 September 2012. He contacted the Liquidator's solicitor and my associate, in the lead up to 10 September, advising that:

- (a) he had received notice of the examination on 10 September 2012 only a few days earlier;
- (b) he was in the country and would not be able to attend on 10 September;
- (c) he wishes to obtain further information before attending the examination; and
- (d) he wanted the hearing adjourned.

7           Consequently, the examination and the Liquidator's application for an arrest warrant were adjourned to 18 September 2012.

**Mr Bell's application**

8 On 18 September 2012, Mr Bell appeared. He handed up a document entitled 'Notification of Constitutional issue to be raised in the Supreme Court of Western Australia on 18<sup>th</sup> of September 2012 in accordance with section 78B of the Judiciary Act Commonwealth'.

9 That document stated that the constitutional issues are:

- 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.

10 I informed Mr Bell that I would treat the document as an application to set aside the examination summons on the grounds stated in the notification of constitutional issue document. When asked, Mr Bell declined to make any submissions in support of the document he handed up. Mr Bell said, in effect, that it would be inappropriate for him to make further submissions to me, given that I was not a duly constituted court (ts 35).

**The disposition of Mr Bell's application**

11 Mr Bell submits that what should now occur is that the matter await the response of Attorneys-General who he had served with the notification of constitutional issue document under s 78B of the *Judiciary Act 1903* (Cth) (ts 37).

12 I reject that submission. Section 78B(1) of the *Judiciary Act 1903* (Cth) provides as follows:

- (1) Where a cause pending in a federal court including the High Court or in a court of a State or Territory involves a matter arising under the Constitution or involving its interpretation, it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause, specifying the nature of the matter has been given to the Attorneys-General of the Commonwealth and of the States, and a reasonable time has elapsed since the giving of

the notice for consideration by the Attorneys-General, of the question of intervention in the proceedings or removal of the cause to the High Court.

13 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 unarguable or vexatious, 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].

14 In my opinion, the 'constitutional issues' sought to be raised by Mr Bell are entirely devoid of legal merit and do not give rise to any constitutional issue.

15 The matters asserted by Mr Bell, in his notification of constitutional issue document, involve contentions which have been repeatedly held to be completely devoid of legal merit. In *Hedley v Spivey* [2012] WASCA 116 [7], McLure P (Buss & Mazza JJA agreeing) listed numerous decisions in which these grounds and variants of them have been held to be without merit.

16 It is not necessary to do more than to refer to those decisions to explain my conclusion that the issues raised and contentions made by Mr Bell are without any merit whatsoever. Insofar as the first issue is intended to raise a matter not raised in the cases referred to by McLure P:

- (a) there is no doubt about the constitutionality of the investing of certain jurisdiction in registrars. See, in the context of federal courts, *Harris v Caladine* [1991] HCA 9; (1991) 172 CLR 84; and
- (b) the examination power in relation to the examinable affairs of a corporation in liquidation is within the judicial power of the Commonwealth: *Saraceni v Jones* [2012] WASCA 59, [3], [224], [255].

17 For these reasons, I dismiss Mr Bell's application to set aside the examination summons.