IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Sydney No S190 of 1996

B e t w e e n -

JOHN WILSON

Applicant

and

ST GEORGE BANK LIMITED

Respondent

Application for special leave to appeal

DAWSON J
TOOHEY J
KIRBY J

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON FRIDAY, 11 APRIL 1997, AT 2.24 PM

MR D.M.J. BENNETT: If the Court pleases, I appear for the respondent with my learned friend, **MR S. Y. RUEBEN** . (instructed by Stewart & Co)

DAWSON J: Mr Wilson, is it? You are the applicant, are you, in person?

MR J. WILSON: Yes, I am.

DAWSON J: Come forward to the Bar table. Yes, Mr Wilson. You realise, of course, there are time limits on oral argument in this Court and you have 20 minutes to put your argument and the light will shine shortly before it expires. Then a red light when your time expires. That applies to everyone.

MR WILSON: In fact, I have prepared a short address which I have timed at 7 minutes.

DAWSON J: That will fit in the time nicely.

MR WILSON: Shall I do that now?

DAWSON J: Yes.

MR WILSON: I would firstly like to draw your attention to the notice of motion I filed on 1 April 1997. I am reporting the crime of fraud being committed by the banks in the form of variable interest rate loans. The proof that this is a crime is contained in my summary of argument and the affidavit accompanying the notice of motion. I am also drawing your attention to an illegal Act of Parliament called the *Australia Act* 1986 which attempts to deny me my right to appeal to the Privy Council. I have documented the proof that this Act is illegal in my submissions.

To summarise what I ask: that the *Constitution Act* 1900 be enforced, that the Bill of Rights 1688 be enforced, and that common law be enforced. I want the High Court of Australia to grant special leave to appeal and I move that the orders and the certificate in my notice of motion be granted.

In Part III of the respondent's summary of argument they say, "There is no lack of certainty". The interest rate for the final two years of the loan contract is uncertain, as explained in my statement of claim. They also say, "There is a clear mechanism for determining the variable interest rate when the time arrives". The loan contract was created in 1995 and the mechanism for determining the interest rate after five years was not certain then and it is not certain now. The contract was void for uncertainty then and it is void for uncertainty now. This I have explained in my summary of argument.

They also refer to the maxim certum est quod certum reddi potest. This is not applicable here because the maxim means "if something is capable of being made certain then it must be considered to be certain". When the loan contract was taken out the interest rate for the final two years was not capable of being made certain and even now it is not capable of being made certain.

The case of *Tonelli v Komirra Pty Ltd* - I have that in item 2 of the material - should be disregarded because there Judge Smith said, at page 741:

And it was pointed out that, according to the evidence, the rate which each bank would have charged any customer upon any loan, whatever the amount or purpose, would have been fixed by negotiation with the particular borrower; so that it was not possible to identify any rate as being that currently charged by banks for any particular size or class of loan.

And, also at page 741:

> In my view.....is that that provision.....refers to the only uniform rate that did exist -

In other words:

> the uniform maximum bank overdraft interest rate prescribed and published from time to time by the Reserve Bank with the approval of the Commonwealth Treasurer -

would have been fixed into the loan contract and therefore the interest rate is not variable.

> When I said to Judge of Appeal Clarke, in item 3, that "I repeat that the rate would have been fixed by negotiation with the particular borrower and that means it is stated quite categorically what that will be", Judge of Appeal Clarke said, "You are making submissions. If I repeat your submissions and I disagree with every word of them, they are not part of my judgment, except I am reflecting my view that your submissions will not be accepted."

> When I said to Judge of Appeal Clarke, also in item 3, "referring back to the legal maxim certum est quod certum reddi potest, it, the interest rate, is uncertain if it can be referring to something that is not certain". Judge of Appeal Clarke said, "Maxims are useful, but they are tools."

> The rates for the last two years of my loan contract do not exist. They are not yet known. They are uncertain. They did not exist when the loan was taken out and the contract made.

> The *Tonelli v Komirra* judgment supports my case, not the respondent's. I could not find any case dealing with variable interest rate loans contracts.

> The respondent's paragraph 3.3 is wrong, ie my complaint is as to the uncertainty of both choices after five years and it is clearly explained in my statement of claim, ie there is no certainty either way. The respondent has no defence and, if it were possible, the High Court

of Australia should make a summary judgment in my favour today. To have a summary judgment was, in fact, the direction of the Supreme Court on 2 August 1996. I have that in item 4. But the respondent disobeyed that direction and filed a summary dismissal and, from that point on, I have received a series of wrongful judgments, those wrongful judgments being Master Greenwood on 17 September 1996; Mr Acting Justice Hamilton on 30 September 1996 and Judge of Appeal Clarke with Acting Judge of Appeal Abadee on 28 October 1996.

It is time for the judiciary to put its house in order

In my differential case management document, filed 18 July 1996, was a letter to the St George Bank dated 6 March 1996 which included a copy of a leaflet I was distributing at the time entitled "Variable interest rates are bad because:". It explains "they are ILLEGAL" and how "they CONTRAVENE the principles of economics". That is in item 5.

Again I ask that special leave to appeal be granted; the injunctions be imposed; and the certificate be made out.

Finally, in my summary of argument I have said that I would like to ask each Judge here today two questions, and I draw your Honours' attention to item 6. Here those questions are laid out and, with your Honours' permissions, I would like to ask those questions now.

DAWSON J: Thank you. That is what you wish to say, is it, Mr Wilson?

MR WILSON: Can I ask the questions?

DAWSON J: It depends what the questions are.

MR WILSON: Do you have the copy of this?

DAWSON J: Which is that? Yes, we do.

MR WILSON: I believe we have Judge Dawson, Toohey and Kirby today.

DAWSON J: Yes.

MR WILSON: Your Honours, Judge Dawson, the first question is, "Does variable mean uncertain"?

DAWSON J: No, we cannot answer those questions, I am sorry.

MR WILSON: That is what I am asking. Can I ask the questions?

DAWSON J: No. You can ask different questions, but

MR WILSON: Because that is the basis of my case, uncertainty.

DAWSON J: I think we appreciate what the case is.

MR WILSON: That is all I have to say.

DAWSON J: Thank you, Mr Wilson. We need not trouble you, Mr Bennett.

Any appeal in this matter would not enjoy sufficient prospect of success to warrant the granting of special leave to appeal. Special leave is accordingly refused.

The applicant also seeks injunctions against the respondent precluding it from entering into loan contracts with variable interest rates and requiring it to fix interest rates in existing variable rate loan contracts. He seeks injunctions until an appeal can be heard. In accordance with the refusal of special leave to appeal the application for injunctions must be dismissed.

The applicant also seeks a certificate "to be presented to the Privy Council Office, London" to the effect that a right to appeal to Her Majesty in Council continues, notwithstanding section 11 of the *Australia Acts* 1986. Section 11 terminates appeals from any decision of an Australian court to Her Majesty in Council.

The nature of the application made by the applicant for a certificate is far from clear. Plainly he does not seek a certificate under section 74 of the Constitution that a question concerning the limits inter se of State and Commonwealth powers is one which ought to be determined by Her Majesty in Council. Rather he seems to be seeking a declaration in the form of a certificate that it is still possible to appeal from a decision of an Australian court to Her Majesty in Council. That being so, it may be inappropriate to grant the relief which the applicant seeks upon a notice of motion.

Be that as it may, the substance of the applicant's contention is that section 11 of the *Australia Acts* is invalid. None of the arguments which the applicant advances to support that contention can be sustained. The main argument appears to be that section 74 of the Constitution guarantees the continuation of appeals to Her Majesty in Council. But section 74 applies only to appeals from the High Court to the Privy Council by special leave and, inter se questions apart, provides that the Parliament may make laws limiting the matters in which such appeals may lie. In *Attorney-General (Cth) v T & G Mutual Life Society Ltd* (1978) 144 CLR 161 it was held that the power given by section 74 extends to a law abolishing appeals by special leave. Section 11 of the *Australia Acts* is such a law, although it extends beyond those appeals to which section 74 makes reference. The applicant's argument based on section 74 therefore has no substance and none of the other arguments put by him would support the case he seeks to make. Even if it were competent, the application for a certificate must be dismissed.

MR BENNETT: I would ask for costs.

MR WILSON: I would like to protest that.

DAWSON J: You cannot do that here, Mr Wilson.

MR WILSON: I think that is totally out of order. I can do it here.

DAWSON J: Would you resume your seat, please.

MR WILSON: No. I am absolutely livid about the way I have been treated in the courts.

DAWSON J: Mr Wilson, will you resume your seat.

MR WILSON: Can I come back in a minute?

DAWSON J: Resume your seat.

MR WILSON: Can I come back in a minute?

DAWSON J: Would you please resume your seat.

MR WILSON: I am not happy.

DAWSON J: You make an application for costs, do you, Mr Bennett?

MR BENNETT: For costs, your Honour.

DAWSON J: What do you say about the application for costs against you, Mr Wilson?

MR WILSON: I have already written in I think it was the summary of argument that I received a letter from the respondent's solicitors saying that they would disregard the jurisdiction of the Court and they would impose all costs onto me, whether I won or not. Now, you will find that in the summary of argument as well. So I believe that the total progress of this case is totally unjust.

DAWSON J: That is not on the question of costs, Mr Wilson.

MR WILSON: This is to do with costs.

DAWSON J: Very well.

MR WILSON: Because as far as I am concerned the arguments I have put are very very simple. It is the argument that "variable" means uncertain.

DAWSON J: We know what the argument is.

MR WILSON: That is it.

DAWSON J: Yes.

MR WILSON: That is all there is to it?

DAWSON J: Very well.

MR WILSON: As simple as that. And you, by overruling me, are overruling that logic. You are saying that variable means certain, and that is a straight out untruth.

DAWSON J: We appreciate the point you put.

MR WILSON: Do you?

DAWSON J: Yes. Thank you. Have you anything further to say, Mr Bennett?

MR BENNETT: No, your Honour.

DAWSON J: The application will be refused with costs. The Court will now be adjourned sine die.

MR WILSON: I have one final comment.

DAWSON J: Resume your seat please, Mr Wilson.

MR WILSON: No, I am absolutely livid about this.

DAWSON J: Adjourn the Court sine die

MR WILSON: I regard this as a total injustice

AT 2.37 PM THE MATTER WAS CONCLUDED