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GAL:SND U6764-K1 37/07

LOCAL COURT
NORTH SYDNEY

MAGISTRATE CULVER

WEDNESDAY 8 AUGUST 2007

GIO GENERAL LIMITED v JOHN WILSON

Notice of Motion for sheriff to enter premises

Mr Koyuncu for the Applicant
Respondent appeared in person

KOYUNCU: Your Honour I might be able to assist you in that matter. My name is Koyuncu, I appear for the plaintiff. It's the third matter in the civil list.

HER HONOUR: Yes.

KOYUNCU: I believe the defendant's position is that he has not been afforded a right for a trial by jury. It is a matter in the Small Claims Division. There are no such provision. There is a judgment debt against him. I'm happy to wait in the list until you determine the criminal matters your Honour.

HER HONOUR: I'll just see if the matter can be dealt with quickly or whether it needs more time in the list. Just one moment. It's Mr Koyun(?) is it?

KOYUNCU: K-O-Y-U-N-C-U.

HER HONOUR: Mr Wilson you're the defendant in a civil matter, number 3 in the list?

RESPONDENT: That's right, yeah.

HER HONOUR: Now I understand from the representative for the plaintiff that there is a judgment debt against you, there is a Notice of Motion for the sheriff to enter your premises.

RESPONDENT: No, there's no judgment against me at all.

HER HONOUR: Why do you say that –

RESPONDENT: Because there was no court of proper jurisdiction to make that judgment. There was never a trial by jury. I did not give my consent to be without a trial by jury.

HER HONOUR: Sir, just to stop you there –

RESPONDENT: That's all there is to it.

HER HONOUR: No, well—

RESPONDENT: I'm challenging the jurisdiction—

HER HONOUR: Okay, my turn now. Parliament has decided that in these small claim matters they are not to be determined by trial by jury. The local court is sufficient-

RESPONDENT: No, no, no parliament—

HER HONOUR: No, don't interrupt Mr-

RESPONDENT: I'm overriding you because you are a public servant-

HER HONOUR: Don't interrupt. Okay, this matter will wait. You'll have to wait now. I'm sorry sir you'll have to wait

RESPONDENT: I'm telling you that no, no, no parliament can-

HER HONOUR: Please take a seat. ..(not transcribable)next matter-

RESPONDENT: No parliament can make any laws to take away the rights of the people, do you understand?

HER HONOUR: Someone else put up their hands sir. Could you come forward to the microphone-

RESPONDENT: No, I'm talking to her. Do you understand?

SPEAKER: Mr Wilson, don't ask me to get the sheriffs officers. Please take a seat-

MATTER STOOD IN LIST

HER HONOUR: All right, now Mr Wilson this is how it's going to work. I'm going to just state the position for today, then I'm going to ask you for your response. I'll give you a limited time because his is only listed for mention. It is not listed for final hearing today. I will give you a limited time to tell me what your position is and then I will turn to the plaintiff's representative just to confirm the plaintiff's position and then we'll find out where we stand. All right but this matter is not listed for a full blown hearing today. I have other criminal matters which must take priority.

So the position as I understand it is this. This is Civil Matter Number 3 concerning Plaintiff GIO General Limited and Defendant John Wilson. I am told by the legal representative for the plaintiff that the plaintiff has achieved a judgment debt against you in the local court. I am told that the plaintiff is putting on a Notice of Motion to seek orders that the sheriff be allowed to enter your premises to secure that judgment debt, in other words to obtain goods which can be sold and paid off to discharge the debt. What is your response to the Notice of Motion Mr Wilson?

RESPONDENT: There is no judgment against me for a start. That's wrong. That is false. There is no judgment against me because there was never a court, a proper jurisdiction. I did not give my consent at any time to be without a jury so therefore any court that was formed had no jurisdiction to proceed summarily and any awards, doings and proceedings from that hearing are null and void, not to drawn into consequence or example, though –

HER HONOUR: All right sir

RESPONDENT: They ought to be struck out.

HER HONOUR: Do you rely on any piece of legislation or case to found that proposition?

RESPONDENT: Yes, I rely upon the law. I rely upon –

HER HONOUR: What aspect of the law sir?

RESPONDENT: I rely upon the rule of law. I rely upon entrenched constitutional enactments.

HER HONOUR: Which ones sir?

RESPONDENT: Magna Carta, Petition of Rights, Habeas Corpus, Bill of Rights. They are all entrenched constitutional law in Australia and I rely upon those –

HER HONOUR: Alright, anything else that you rely on?

RESPONDENT: I rely upon yeah because like I say I have to have trial by jury. It's my inalienable(?) right, just like it's your right and your children's right and the sheriff's right. It's everybody's right. Everybody is equal under the law. That right is inalienable. It cannot be taken away. I cannot even be given away. It is the right which is there.

HER HONOUR: All right. So that's your first proposition that there is no judgment debt.

RESPONDENT: There is no judgment --

HER HONOUR: If I find against you on that, what do you say in answer –

RESPONDENT: But you can't –

HER HONOUR: No, no, no, no –

RESPONDENT: Do anything –

HER HONOUR: Sir, this is the way it works in court. We sometimes have to deal in hypotheticals before the ultimate decisions are made. So hypothetically if I agree with you, that's the end of it. If I don't agree with you then I've got to look at the Notice of Motion. What would your response be to the Notice of Motion?

RESPONDENT: But I don't allow you any jurisdiction to make any judgments whatsoever - to agree with me, not to agree with me, nothing.

HER HONOUR: All right, anything else you want to say—

RESPONDENT: So therefore you know anything you might say is totally irrelevant, has no substance, no consequence whatsoever. I demand the right to trial by jury. Every time anybody walks into a court, whether it's a Magistrate's Court, High Court, Family Court, they must have trial by jury. There's no big drama to have the sheriff who with a stack of consent forms, ..(not transcribable)- consent forms and say "Do you want to have trial by jury or not?" They say "No, no we don't want to have trial by jury in this case". They say "Okay you've got to sign this memorandum of consent". That's in the law.

HER HONOUR: All right.

RESPONDENT: So therefore if anything's achieved out of all these proceedings and we get back to the rule of law and so that everybody knows that no matter what the offence is, whether it's a speeding offence, an AVO, whatever, they've got the right to trial by jury and it's their choice whether they want to exercise that right or not. It cannot be taken away from you. You said that the parliament has made laws that there is no trial by jury in these so-called small claims. That is totally wrong. Even Quick and Garran has written in analysing the constitution that no parliament has the power to make any laws that has not been granted in the constitution to do so and the constitution has never, would never say, yes the parliament can take away the rights of trial by jury or any rights of the people. It is fundamental.

HER HONOUR: All right sir. I have to ask you this because you do not have a lawyer with you today. Would you be assisted by some legal advice. We have a registrar here at court who, if you make an appointment with him, may be able to give you brief legal advice if you wish to have it. Do you wish to have that sir?

RESPONDENT: Well I've been at this campaign now for about 11 years and I've had pro bono barristers giving me opinions-

HER HONOUR: All right. So I take it you don't wish to have some advice-

RESPONDENT: And I've been down that track and I find that the lawyers and the magistrates and the judges are all totally wrong in their understanding –

HER HONOUR: Okay but I take it you don't wish to have any legal advice today?

RESPONDENT: No. I was helping a friend in court yesterday and I said "Yes, if you can get good legal advice take it" but the trouble is that nobody is getting good legal advice because the lawyers have been taught wrong.

HER HONOUR: All right. Now I see that there's some paperwork that you've put on. I just want to have a look at the paperwork.

RESPONDENT: Good.

HER HONOUR: Because I've not had a chance to see it. So please take a seat.

KOYUNCU: Your Honour I haven't seen any paperwork from the defendant. Perhaps if I could be –

HER HONOUR: Yes. There's an affidavit from the defendant referring to, it appears to refer to a number of things that were perhaps encapsulated by what the defendant has just said but I'll ask that a copy of that be made available to you.

KOYUNCU: Thank you your Honour.

HER HONOUR: Would you mind making a copy. I think that's the only thing I have on record ..(not transcribable) defendant.

KOYUNCU: Your Honour if it's going to assist you any further the history of this matter is the –

HER HONOUR: I'll go through the paperwork first. I suspect the paperwork will –

KOYUNCU: Judgment was obtained ..(not transcribable)your Honour.

HIS HONOUR: Perhaps evidence that he's ..(not transcribable)

KOYUNCU: Thank you.

RESPONDENT: Those were sent to you by express post. They were sent to you on Monday.

KOYUNCU: Monday –

RESPONDENT: This Monday at 11 o'clock. I filed it last Wednesday and I said "Okay we'll send you out copies" so you could just ..(not transcribable)- I got those on Friday okay and first thing on Monday I put those in ..(not transcribable)- express ..(not transcribable)and it's been sent to you. I've got the receipt here for that, so it has been –

KOYUNCU: I'm not saying you haven't sent it.

RESPONDENT: No –

KOYUNCU:(not transcribable)- received it.

HER HONOUR: I do propose Mr Wilson to finalise this Notice of Motion today.

RESPONDENT: You've got no jurisdiction to do so.

HER HONOUR: No, no, no, sir –

RESPONDENT: No way Jose.

HER HONOUR: Sir, sir, I do propose to finalise it today. Is there anything else you wish to say to me?

RESPONDENT: You are acting illegally, criminally. In fact treasonously. It is treason to take away an Australian's right to trial by jury. It's nothing short of that. If you do what you intend doing you are a criminal and a traitor and that's all there is to it. Think of your conscience. Think - it's hard to get through when people have got a mindset which is so determined to be oppressive and go against what is right that - I'm lost for words.

HER HONOUR: Sir, can I just ask you a couple of fundamental questions. You do not have to answer these questions, let me make that very clear. You don't –

RESPONDENT: Well it's just ..(not transcribable)..

HER HONOUR: Hold on. You don't have to answer these questions. My first question is this. Bear in mind you don't have to answer this but just so I can try and get a feeling for this matter, do you owe the plaintiff any money?

RESPONDENT: I refuse to answer that until I get a proper jurisdiction because this is –

HER HONOUR: No, no, hold on, hold on. If you did owe the plaintiff money would you repay the plaintiff?

RESPONDENT: No, no, not until I have my rights established and not until I've been compensated for falsely being imprisoned.

HER HONOUR: All right. Well let me just read your affidavit—

RESPONDENT: I have been imprisoned—

HER HONOUR: Because I see you've put a detailed affidavit on and I'd like to be fair and read that-

RESPONDENT: There's a lot more to it than meets the eye. There's a lot more to it and-

HER HONOUR: All right. Well I'll have a look at that now, thank you.

RESPONDENT: Well I suggest you go away and do a bit of research—

HER HONOUR: I ..(not transcribable)-

RESPONDENT: And I suggest that you get some legal advice.

HER HONOUR: Sir, that's quite all right. I'll see if this raises anything but I can assure you I've got a great deal of experience, so I'll have a look at this-

RESPONDENT: Experience of doing the wrong thing. I'm asking you to do right. You made an oath to do right.

HER HONOUR: Sir, I've read your affidavit. Anything else you wish to say?

RESPONDENT: Well the affidavit is in support of a challenge to the jurisdiction of the court.

HER HONOUR: Yes, I understand that.

RESPONDENT: Now the challenge to the jurisdiction of the court is a recognised legal procedure and when that challenge is made all proceedings must be halted, stopped until the jurisdiction has been determined and the only way a jurisdiction could be determined is by a special jury summoned by the sheriff to do that judgment.

Now you're saying you want to conclude the matter. You cannot conclude the matter because I have made a legal challenge to challenge the jurisdiction of the court. Now a kangaroo court is one that disregards legal rights and disregards legal procedures. Now this is monumentally important. This is fundamental to peace, order and good government, fundamental. Unless these rights are re-established people are being stripped of their homes illegally by the banks. There is so much injustice because people haven't got an access to justice. They haven't got an access to their own rights. They haven't got an access if the rights are protected and wrongs are punished. That is justice. They haven't got an access to justice. So this might be a little court in North Sydney but it could be the trigger that launches us back into what we're supposed to be. We're supposed to be a democratic justice loving country but we are not at the moment and so this might be a small issue on the surface but it's monumental.

HER HONOUR: No, certainly I understand the force of your submissions. I just need to give the plaintiff's representative a chance to just explain something to me. So if you wouldn't mind taking a seat.

RESPONDENT: I'm prepared to advise him too.

HER HONOUR: Do you have a copy of the original judgment there?

KOYUNCU: I'm happy to look through my file your Honour. I do have a sealed copy of the Notice of Motion for Default Judgment your Honour.

HER HONOUR: Thank you. All right, thank you. The Notice of Motion before me is brought by the plaintiff for orders in respect of the sheriff entering the defendant judgment debtor's premises to secure goods for the satisfactory of a judgment debt obtained by the plaintiff against the defendant.

The defendant disputes firstly the jurisdiction of this court to determine such a matter and if the court is against him on that matter he disputes the jurisdiction of the court to have made the original judgment debt.

The defendant has placed an affidavit with the court papers and served that on the plaintiff together with having made oral submissions before me to the effect that the jurisdiction of the court is unconstitutional. It furthermore is stated within the affidavit that-the appointment of a magistrate to the local court is made ultra vires, according to the defendant on the basis that the governor general is not validly appointed because the Privy Council has confirmed that there is no order for the appointment. The argument of the defendant is elaborated upon for fulsomely within the affidavit before the court.

The defendant has submitted that I cannot proceed in any way to deal with this matter because he has raised an issue of jurisdiction and even if I am against him about that issue of jurisdiction the court must immediately halt the proceedings for that jurisdictional issue to be determined.

The context of this matter is a small claims matter in the civil jurisdiction of the court. I am aware that as such it does not involve any urgent question of liberty to a party. If this were a criminal matter where a person's liberty was in jeopardy by virtue of any determination of the court I would consider that it would be necessary to-

RESPONDENT: You're obviously going down the track you're determined to go down. It is-

HER HONOUR: The jurisdictional issue ..(not transcribable)- another court but in the circumstances of a civil claims matter I am of the view that I do not need to immediately halt the matter for the determination –

RESPONDENT: You have no jurisdiction –

HER HONOUR: ..(not transcribable)- jurisdiction. I furthermore am of the view that there is a valid appointment of this court to determine a civil claims matter as the legislation makes it quite clear that this is a matter squarely within the jurisdiction of the local court principally by virtue of the amount in dispute. The judgment debt appears to have been properly entered.

The plaintiff has brought evidence that there has been no satisfaction of that judgment debt –

RESPONDENT: I will resist any criminal action –

HER HONOUR: And furthermore that the sheriff has –

RESPONDENT: By you or by the sheriffs –

HER HONOUR: Been unable to enter the –

RESPONDENT: If the sheriffs enter my premises illegally –

HER HONOUR: ..(not transcribable)- satisfaction of the ..(not transcribable)- -

RESPONDENT: I will resist them. I have a right to protect –

HER HONOUR: Accordingly –

RESPONDENT: My person and my property.

HER HONOUR: ..(not transcribable)- before me I am of the view that it is in the interests of justice for the ..(not transcribable)

KOYUNCU: Excuse me, can I just listen to the –

RESPONDENT: No, this is nonsense. She's rambling on –

HER HONOUR: And having disposal of the matter THAT I –

RESPONDENT: Has no consequence whatsoever.

HER HONOUR: GRANT THE PLAINTIFF'S NOTICE OF MOTION AND THE ORDERS AS SOUGHT ARE MADE.

KOYUNCU: Thank you your Honour.

HER HONOUR: All right.

RESPONDENT: You have no jurisdiction to do it.

KOYUNCU: I also seek costs your Honour. It's in the motion, today's appearance.

HER HONOUR: Yes, now just let me have a look specifically at that aspect.

RESPONDENT: This transcript will go onto my website so everybody can see how illegal –

HER HONOUR: Yes, COSTS AT THE STATUTORY RATE ARE ORDERED IN FAVOUR OF THE PLAINTIFF.

KOYUNCU: May it please the court.

HER HONOUR: Thank you. And those costs are for today's appearance only.

KOYUNCU: Thank you. Your Honour is the sheriffs office notified of the orders or do I need to notify them?

HER HONOUR: You'll need to go through to the registry and discuss those arrangements.

KOYUNCU: Thank you your Honour.

HER HONOUR: Thank you. COSTS TO BE PAID WITHIN 28 DAYS. Anything else gentlemen?

KOYUNCU: No your Honour.

HER HONOUR: Thank you.

oOo