

5

LOCAL COURT
PARRAMATTA

MAGISTRATE RUSSELL

5

TUESDAY 25 SEPTEMBER 2007

DEPARTMENT OF TAXATION - v John WILSON

10

Mr Camporeale for the Plaintiff
Defendant appeared in person

15

HIS HONOUR: There's one final matter Mr Camporeale.

CAMPOREALE: Your Honour that's the matter of Wilson,
taxation matter.

20

HIS HONOUR: Mr Wilson, there's some correspondence here
from the crown solicitor. I have a letter here dated
17 August 2007, Mr Campeoreale, from the New South Wales
Crown Solicitor's office.

25

CAMPOREALE: Your Honour I don't seem to have that letter
on file but I suspect it's to do with the Attorney General
intervening in the matter.

30

HIS HONOUR: Yes I think this matter - the letter says and
I'll show both you gentlemen, you've got a copy Mr Wilson?

DEFENDANT: Dated 17 August.

35

HIS HONOUR: Basically what it says that the
New South Wales Attorney General does propose to intervene
and therefore wants to be recorded as a party on the
proceedings and wants to be advised in writing, informed
of future listings.

40

CAMPOREALE: Yes your Honour.

45

HIS HONOUR: Now what's the current position with the
matter? It's in today for reply, brief had to be served
by 11 September 2007.

50

CAMPOREALE: That's correct your Honour. The brief
consists of one statement served by private courier on
20 September. Over the course of the past - or seven
weeks ago - faxes were sent to the various Attorney
Generals around the country. We haven't received a
response from the Attorney General of South Australia and
the Northern Territory so we're not able to indicate
whether they seek to intervene. The position of my office
would be to adjourn the matter for a further four weeks to
allow them--

55

HIS HONOUR: Look I mean--

DEFENDANT: It's got to have a jury anyway. You've got to appoint a jury.

5 HIS HONOUR: Can I just indicate this. Is only one Attorney General proposing to intervene at this stage, just New South Wales not the Commonwealth.

CAMPOREALE: Yes, just New South Wales.

10 HIS HONOUR: Can I indicate this. I used to work in the crown solicitor's office running this section so I know how it all works. I'm not going to put it over again for South Australia and the Northern Territory. Subject to hearing what Mr Wilson wants to say we'll fix it, I think, 15 just for legal argument, is that to decide the constitutional issue.

20 CAMPOREALE: Well it could be listed for both defendant hearing and for the constitutional matter and that could all be done on the same day.

HIS HONOUR: Very well.

25 DEFENDANT: It's got to be in a court of proper jurisdiction, that means a jury.

30 HIS HONOUR: It's a legal issue, it's a constitutional issue, juries don't decide those Mr Wilson. What I will do is, how long will the legal argument take? What I propose to do Mr Wilson--

DEFENDANT: Okay any argument before a jury.

35 HIS HONOUR: Are you pleading guilty or not guilty?

DEFENDANT: There's no plea until there's a court of proper jurisdiction.

40 HIS HONOUR: Under the Criminal Procedure Act I will accept that as a plea--

DEFENDANT: That is illegal.

45 HIS HONOUR: --a plea of not guilty. I am now going to fix the matter for hearing. How long do you expect the matter to take Mr Camporeale?

50 DEFENDANT: You said what? You can't plead on my behalf. I haven't given my permission for you to do that.

CAMPOREALE: Two hours.

55 HIS HONOUR: Will you keep quiet Mr Wilson or you will be - call the sheriff's officer please.

DEFENDANT: I'm surprised they're not here already. They normally are. Here's about five or six of them.

HIS HONOUR: If you don't behave.

DEFENDANT: I am behaving, I'm demanding--

5 HIS HONOUR: Mr Wilson I'll have you put in the dock, do you understand that?

DEFENDANT: Anyone who exercises his right does no harm.

10 HIS HONOUR: That's to be argued on the next occasion, that's what we're talking about. How long is it going to take Mr Camporeale.

15 CAMPOREALE: Your Honour my instructions are it would be two hours including the constitutional argument.

HIS HONOUR: Mr Wilson how long do you think the legal argument is going to take?

20 DEFENDANT: It could take a week because a jury's got to determine every aspect of this case. It's a very complicated issue, it's down to rights.

25 HIS HONOUR: Mr Wilson at this stage I apprehend your argument to be this can only be dealt with by a jury so the threshold question is how the matter is to proceed, so there's going to be a legal argument. That will be in the absence of a jury, that will be a matter for the judge to decide--

30 DEFENDANT: Well it'll be a kangaroo court.

HIS HONOUR: --whether the court has the jurisdiction to deal with the matter. That's a simple question, isn't it?

35 DEFENDANT: I'm challenging the jurisdiction of the court.

40 HIS HONOUR: Well you can challenge it on the next day when I fix it down for hearing. I think it might take a little longer than that Mr Camporeale. I'll fix it for about three hours. Yes thank you officers.

DEFENDANT: I can challenge on the next, what did you say? Occasion, was it?

45 HIS HONOUR: I'm going to fix it for legal argument. On the next occasion you better be present, the Commissioner for Taxation is going to put forward legal argument why this court can deal with the matter to finality. That will be assisted by the New South Wales Attorney General and if South Australia and the Northern Territory decide to get involved in it as well. You then will get your opportunity to argue why you say it should be heard by a jury and the court's got no jurisdiction.

55 DEFENDANT: Well it'll be a kangaroo court, won't it. You know what a kangaroo court is? By definition.

HIS HONOUR: Very well. I'll fix it for three hours I think Mr Camporeale.

5 CAMPOREALE: Your Honour a preferred date for the hearing would be in the week commencing 19 November and your Honour will that just be for the constitutional argument or both the argument and the defendant hearing?

10 HIS HONOUR: I think it should be the lot, everybody's here. So how long will the defendant hearing take with that?

15 CAMPOREALE: My instructions were the whole thing would be two hours.

HIS HONOUR: Has that issue been decided in the past, do you know?

20 CAMPOREALE: Not that I'm aware of.

DEFENDANT: Never been a jury. It can't be decided.

25 HIS HONOUR: Mr Wilson it's very simple. If you challenge the jurisdiction of a court it's just simply legal argument. The court might agree with you and say no jury, has to be by a jury therefore this court can't hear the proceedings in the form of which the Commonwealth seek to run them. If the court says otherwise then it proceeds as a hearing.

30 DEFENDANT: Well what is a court? The court is a jury. A judge can't decide judging his own cause.

35 HIS HONOUR: Mr Wilson the matter is not in for hearing or legal argument today, it's only in for mention. I am going to fix it to a date in November for that to happen and I'm going to ask the sheriff's officers here to note in their diaries the date has been listed so they can be in attendance--

40 DEFENDANT: And you have said that I can challenge.

45 HIS HONOUR: --to ensure that you behave and don't interrupt the way the proceedings are conducted. You will get your day in court Mr Wilson.

DEFENDANT: I'm trying to get a fair hearing--

50 HIS HONOUR: You'll get a fair hearing on same date in November.

55 DEFENDANT: --by a properly constituted court, not a kangaroo court, and the only people who can decide the jurisdiction of the court is a special jury. Correct, is that correct?

HIS HONOUR: I'm not hearing the legal argument today Mr Wilson, I'm only fixing it for hearing.

DEFENDANT: Who do you think decides the jurisdiction of the court?

5 HIS HONOUR: Courts.

DEFENDANT: The court decides its own jurisdiction, not a jury, even though the law says the jurisdiction of the court can only be determined by a special jury.

10

HIS HONOUR: That's for argument on the day.

DEFENDANT: That's the legal argument, yes.

15

HIS HONOUR: You can take a seat if you like Mr Wilson. The end of November did you say Mr Camporeale? Are you available towards the end of November Mr Wilson?

20

DEFENDANT: I'd like to hand up a leaflet in regard to--

HIS HONOUR: I'm not hearing the matter, I'm not receiving anything.

25

DEFENDANT: You're not receiving anything?

HIS HONOUR: This matter is only here to fix the matter for a hearing. Tuesday 27 November.

30

CAMPOREALE: Your Honour is there anything the week commencing 19 November?

HIS HONOUR: Other matters are listed, we're fairly full. No, Mr Camporeale.

35

CAMPOREALE: I've got a range of unavailable dates. Is there anything between 15 December through to 23 December?

40

HIS HONOUR: 15 December. It'd be a Monday then, Monday 17th then, that week.

CAMPOREALE: That's suitable your Honour.

45

HIS HONOUR: Any day that week by the looks of it. Monday?

CAMPOREALE: Monday would be fine your Honour.

50

HIS HONOUR: Monday 17 December Mr Wilson, are you available?

DEFENDANT: What date was that?

HIS HONOUR: Monday, 17 December.

55

DEFENDANT: 18 December, anytime, yes. So how will it be structured? The Attorney General will have a barrister here, correct?

35

40

HIS HONOUR: A barrister, solicitor, I don't know.

DEFENDANT: Okay, and he will be arguing purely the constitutional issues?

5

HIS HONOUR: Yes.

DEFENDANT: Okay, and this chap here from the Taxation Department he'll be only arguing the taxation issue?

10

HIS HONOUR: No, they're a party to the proceedings. The Commissioner for Taxation can argue the constitutional argument as well. Quite often it may well be that they'll let the New South Wales Attorney General run it and adopt it or say something but they can argue the legal issue as well. They're a party to the proceedings.

15

DEFENDANT: All right. And they're - let me work it out. The Attorney General, he's been appointed by the crown, correct? And a judge is also appointed by the crown. So there's no competent independent and impartial tribunal to hear the issues because if there's only a judge who is an agent--

20

25

HIS HONOUR: I'm not getting into your argument but--

DEFENDANT: I'm just trying to put it squarely--

30

HIS HONOUR: Mr Wilson if you follow that through you might reflect upon this little issue, that at the end of the day even your jury, if that concept follows, is appointed by the crown. We all exist under the crown Mr Wilson.

35

DEFENDANT: No, the crown doesn't appoint a jury, who told you that? Who told you - the crown has no jurisdiction over a jury, no way. I'd like a transcript of that one.

40

HIS HONOUR: Yes, the matter of Commissioner of Taxation and Wilson and now the New South Wales Attorney General fixed for hearing three hour estimate 17 December 2007. I note that the hearing proper, that is the charges are to follow if the court holds there is jurisdiction to hear the matter.

45

DEFENDANT: Well for a start there's been no plea entered. So first of all we've got to have a court of proper jurisdiction before a plea can be entered otherwise you've got a kangaroo court. A kangaroo court disregards legal rights and disregards legal procedures. I have not given my consent to be without a jury. If the court proceeds summarily it has no jurisdiction. A court with no jurisdiction is no court.

50

55

HIS HONOUR: The court notes in the matter of Commissioner of Taxation and Wilson that Mr Wilson fails or refuses to make a plea. He does so on the basis because he says that this court has got no jurisdiction to hear the matter.

DEFENDANT: Good.

5 HIS HONOUR: Pursuant to section 195 the court enters a plea of not guilty.

DEFENDANT: 195 what?

10 HIS HONOUR: Criminal Procedure Act.

DEFENDANT: It's not legal.

HIS HONOUR: Thank you.

15 DEFENDANT: Can't take over my rights. Any law that attempts to do that is no law.

20 HIS HONOUR: Yes, can you please leave the courtroom so the court can go on with its ordinary business Mr Wilson.

DEFENDANT: Read a bit of law.

SPEAKER: It's time to go now Mr Wilson.

25 DEFENDANT: I'm perfectly capable.

SPEAKER: Quick.

30 DEFENDANT: Not quick at all, don't tell me quick. This bloke's telling me quick.

35 HIS HONOUR: I'm asking you to be quick. If that wasn't clear from my thing, I'm telling you to be quick to leave the courtroom Mr Wilson.

DEFENDANT: You've got no jurisdiction either. Learn the law.

40 HIS HONOUR: Sorry Mr Camporeale is that the last of your matters?

ADJOURNED TO MONDAY 17 DECEMBER 2007

oOo

45