

FORSYTH v DEPUTY COMMISSIONER OF TAXATION (S543/2005)

Court appealed from: New South Wales Court of Appeal

Date of Judgment: 20 December 2004

Date of grant of special leave to appeal: 7 October 2005

The appellant was the director of a company which failed to remit group tax deductions at various times over a two year period. The appellant became personally liable to pay a penalty equal to the unpaid amount of the company's liability under s 222AOC of the *Income Tax Assessment Act* 1936. The Commissioner issued three notices under s 222AOE of his intention to commence proceedings to enforce the penalty. Each notice was in respect of a discrete period. The appellant failed to comply with the notices and the Commissioner commenced recovery proceedings against the appellant in the District Court of New South Wales. Judgment was entered in favour of the respondent in the sum of \$414,326.45.

The appellant appealed, claiming that the District Court had no jurisdiction to determine the proceedings or alternatively, that the notices were invalid. The appellant submitted that the District Court was deprived of jurisdiction by reason of an amendment made to the *Supreme Court Rules* on 30 June 2000, assigning to the Equity Division of the Court proceedings in relation to any provision in a Commonwealth Act by which a tax, fee, duty or other impost was levied, collected or administered by or on behalf of the Commonwealth.

The Court of Appeal dismissed the appeal, holding per Spigelman CJ (Giles JA and Gzell J agreeing) that the jurisdiction of the District Court under s 44(1)(a) of the *District Court Act* 1973 (NSW) was fixed at the date the *District Court Amendment Act* 1997 came into effect and accordingly the District Court had jurisdiction to entertain the proceedings. The Court commented "It is most unlikely that Parliament intended that the jurisdiction of the District Court was able to be modified by the Supreme Court Rule Committee."

The appellant has issued a Notice of Constitutional Matter pursuant to s 78B of the *Judiciary Act* 1903 (Cth). Only the State of New South Wales has indicated an intention to intervene.

The respondent has filed an amended notice of contention asserting that the decision of the Court below should be affirmed, but on the ground that the Court below erroneously decided or failed to decide some matter of fact or law.

The grounds of appeal include:-

- The Court of Appeal erred in holding that the District Court of New South Wales had jurisdiction to hear and dispose of the actions raised in the Proceeding.

- The Court of Appeal should have held that:
 - s 44(1) of the *District Court Act 1973* (NSW) conferred jurisdiction on the District Court of New South Wales to hear and dispose of any action of a kind which if brought in the Supreme Court of New South Wales, at the time the action was instituted, heard and disposed of by the District Court of New South Wales would be assigned to the Common Law Division of the Supreme Court of New South Wales.