

11/85

## SUPREME COURT OF VICTORIA

***CULLIN and ANOR v RT EDGAR PTY LTD***

Marks J

26 June 1984

**PRACTICE AND PROCEDURE – CIVIL PROCEEDING – WHO MAY APPEAR ON HEARING – DEFENDANT COMPANY – WHETHER AGENT MAY APPEAR WITHOUT WRITTEN AUTHORITY: MAGISTRATES (SUMMARY PROCEEDINGS) ACT 1975, S95.**

C. was a managing director of a Company which was sued by RT Edgar Pty Ltd in the Magistrates' Court for \$3000 allegedly earned by way of commission on the sale of a property. When the matter came on for hearing, C. sought to appear on behalf of his Company notwithstanding that he had not been duly authorised in writing to appear on the Company's behalf as required by s95 of the *Magistrates (Summary Proceedings) Act 1975*. When C.'s appearance was challenged, the Magistrate adjourned the matter to enable the appearance and documents to be put in order. On application for an order nisi to review—

**HELD: Application refused.**

**As the applicant was unable to show that he had the necessary written authority to appear on behalf of his Company, the Magistrate was not in error in adjourning the matter.**

**MARKS J:** *[After setting out the facts, His Honour continued]: ... [2] Mr Cullin sought to rely on the provisions of s95 of the Magistrates (Summary Proceedings) Act 1975.*

Section 95 provides:-

"Upon the hearing of a complaint every party to the complaint may appear either personally or by his counsel or solicitor or, upon the hearing of a complaint for a cause of action for a debt or liquidated demand, by any person in the exclusive employment of the party who is duly authorized in writing to appear on his behalf."

The affidavits filed by the applicant indicate that at the time he sought to appear on behalf of the company he had not been duly authorised in writing or authorised in writing at all. Since that time he has obtained the authority and sought to put it before me on this application. However, the question is whether the Magistrate at the time that he ruled on the matter had that written authority before him. It is **[3]** clear that he did not.

The Stipendiary Magistrate, after hearing argument, appears to have done three things as set out in paragraph 11 of the first affidavit of the applicant sworn June 19th 1984. Those three things were to adjourn the complaint to a date to be fixed; secondly, to order that the company file and serve on the complainant, RT Edgar Pty Ltd, within 14 days a notice of defence drawn by a solicitor or by counsel and that the company pay \$390.40 costs of the day.

As I have said, the problem here arises because there has been no purported appearance on behalf of the company in this court and the applicant maintains that he himself, because he is a managing director and because the company acts as a trustee for a discretionary trust, is a person who "feels aggrieved" within the meaning of s88 of the *Magistrates' Courts Act 1971*.

In my opinion, the material before me does not show any basis for the applicant being properly regarded as a person who "feels aggrieved" within the meaning of that section. There are many authorities on the meaning of that expression in the *Magistrates' Courts Act* and its statutory predecessors. In no way, in my view, does the applicant come within the meaning of that expression no matter how liberally it is regarded. However, I add that in any event no proper foundation for an order nisi to review has been laid.

The application before the Magistrate was that the applicant be permitted to appear by virtue of s95. However, he was unable to show that he had the necessary authority in writing

and, on that basis, the Stipendiary Magistrate has not been shown to be *prima facie* at error in simply adjourning the matter to enable the appearance and documents to be put in order.

Because the applicant at that stage appeared to have no standing, I cannot say that the order of the Magistrate that the complainant file and serve his notice of defence drawn by a solicitor or by counsel at that stage was wrong. It seems to me that no valid attack could be made on the order for costs. For those reasons this application must be refused.

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