

12/77

## SUPREME COURT OF VICTORIA

**WALDRON v COOK**

Murray J

1 March 1977

**COMPANIES — AUTHORISING STATEMENT TO BE FILED — COMPANY OFFICER CHARGED WITH MAKING A FALSE OR MISLEADING "DOCUMENT" REQUIRED FOR THE ACT — NO GENERAL MEETING HELD AND NO SPECIAL RESOLUTION PASSED — WHETHER ACT REQUIRED NOTICE OF A NON-EXISTENT SPECIAL RESOLUTION TO BE FILED — FINDING BY MAGISTRATE THAT CHARGE PROVED — WHETHER MAGISTRATE IN ERROR: COMPANIES ACT 1961, S375(2).**

The applicant was convicted of an offence against s375(2) of the *Companies Act* 1961 - ie. being a person who in a report, certificate ... or other document required for the purpose of the Act, makes or authorises a statement which is false or misleading in a material particular. The information concerned the filing by a clerk employed by a company of which the applicant was a member, at the direction of the applicant, a "Notice of Resolution" which purported to show that a special resolution was passed by a specific general meeting resolving the subject company's name be changed forthwith. It was a finding of fact that no such meeting was held and no such special resolution was passed. It was argued that since no meeting was held and no special resolution passed it could not be said that the document was one which was required by or for the purpose of the Act. Upon appeal—

**HELD: Appeal allowed. Conviction set aside.**

**It is impossible to say that where no general meeting was held and no special resolution passed the *Companies Act* required a notice of a non-existent resolution to be filed or that such a notice, if filed, was for the purposes of the Act. The Act clearly did not require notice of a non-existent special resolution and the filing of such a notice cannot be said to be for the purposes of the Act. Indeed, it would defeat the purposes of the Act. For this reason only the magistrate was in error in thinking that the decision of the High Court in *Guss v Veenhuizen* was distinguishable. The applicant may well be guilty of some other offence either under the *Companies Act* or at common law, but he was not guilty of an offence under s375(2).**

*Guss v Veenhuizen* [1976] HCA 25; (1976) 136 CLR 34; 9 ALR 461; 50 ALJR 638; 2 ACLR 337, followed.

**MURRAY J:** ... "Strong reliance was placed on the decision of *Guss v Veenhuizen* [1976] HCA 25; (1976) 136 CLR 34; 9 ALR 461; 2 ACLR 337 (1976) 50 ALJR 638. Mr Gaffey of counsel, who appeared for the respondent, submitted that this decision was distinguishable. There is a distinction, he argued, between a document such as the accounts of a company, which is brought into existence independently of any requirement of the Act, but which having been brought into existence and placed before the members at a general meeting, the Act requires to be filed at the office of the Commissioner of Corporate Affairs, on the one hand, and a document which has only been brought into existence because the Act requires it to be filed at the office of the Commissioner of Corporate Affairs, on the one hand, and a document which has only been brought into existence because the Act requires it and which is only brought into existence for the purposes of the Act, on the other.

Having given the matter careful consideration, I have reached the conclusion that the decision of the High Court governs this case and that I am bound by it. It appears to me to be impossible to say that where no general meeting was held and no special resolution passed the Act requires a notice of a non-existent resolution to be filed or that such a notice, if filed, is for the purposes of the Act. The Act clearly does not require notice of a non-existent special resolution and the filing of such a notice cannot be said to be for the purposes of the Act. Indeed, it would defeat the purposes of the Act. For this reason only I think the magistrate was in error in thinking that the decision of the High Court in *Guss v Veenhuizen* (*supra*) was distinguishable. The applicant may well be guilty of some other offence either under the *Companies Act* or at common law, but I do not think he was guilty of an offence under s375(2)."