

5/94

## SUPREME COURT OF VICTORIA

**PEDERSEN v STANSFIELD-SMITH PTY LTD and ANOR**

Coldrey J

20, 27 August 1993

**PROCEDURE – CASE TRANSFER – FROM MAGISTRATES' COURT TO SUPREME COURT – NO JURISDICTION IN MAGISTRATES' COURT – MATTER TRANSFERRED – NO OBJECTION TO TRANSFER – WHETHER DETERMINATION TO TRANSFER ERRONEOUS: COURTS (CASE TRANSFER) ACT 1991, PART 3.**

Pursuant to the provisions of the *Courts (Case Transfer) Act* 1991 ('Act') the designated judicial officers of the Supreme Court and Magistrates' Court determined to transfer a proceeding under the *Corporations Law* to the Supreme Court. Without pursuing the objection procedure to the transfer under the Act, the defendants to the proceeding sought a declaration that the determination to transfer was erroneous and an order transferring the proceeding back to the Magistrates' Court.

**HELD: Motion dismissed. Relief sought declined.**

**The proceeding can be resolved more conveniently and economically by remaining in the Supreme Court. Further, the order is refused having regard to the fact that the defendants have not exhausted their rights to object under the Act.**

**COLDREY J:** [1] The plaintiffs in this summons on an originating motion were the defendants in a proceeding (issued 24/2/93) in respect of a claim pursuant to s592 of the *Corporations Law* brought by the firstnamed defendant (as plaintiff) in the Magistrates' Court of Victoria (No. EO2662980). In their defence to the Magistrates' Court action (dated 6/4/93), the plaintiffs asserted that the Magistrates' Court had no jurisdiction in respect of this claim. That assertion was based (*inter alia*) on a reading of ss40 and 42 of the *Corporations (Victoria) Act* 1990 which, it was submitted, vested jurisdiction in respect of civil proceedings under the *Corporations Law* in the Supreme Court and County Court alone. As a result of the defence filed in the Magistrates' Court proceedings, the firstnamed defendant, by notice dated 19 April 1993 referred the proceeding to the designated judicial officer of the Magistrates' Court pursuant to s17(1) of the *Courts (Case Transfer) Act* 1991 (the Act), as a proceeding which was or may have been suitable for transfer to the Supreme Court of Victoria at Melbourne under Part 3 of that Act.

By s1(a) the expressed purpose of the relevant Act is "to establish a new system for the transfer of civil proceedings between Courts in order to improve efficiency in the administration of civil justice in Victoria". It enables (*inter alia*) the transfer of individual cases by the designated judicial officers (defined in s3 of the Act) of the transferor and transferee Court upon criteria set out in s16 of the Act. [2] In accordance with the provisions of s17(2) of the Act the plaintiffs (as defendants) were invited to make written submissions on the matter on or before 19 May 1993. They availed themselves of that opportunity and extensive written submissions were provided to the designated judicial officer (in this instance the Magistrate Mr Patrick Street). Those submissions were Exhibit LF6 to the affidavit of Mr Lloyd Felman sworn on 6 August 1993.

The gravamen of those detailed submissions was that, the Magistrates' Court proceedings being a nullity (for want of jurisdiction by that Court) the designated judicial officer had no power to transfer the proceeding to the Supreme Court. Ultimately, on 6 June 1993 notice was given that the Designated Judicial Officer of the Supreme Court of Victoria (the Listing Master), and the Designated Judicial Officer of the Magistrates' Court of Victoria had considered the matter as required by s17(3) of the Act and had determined that this proceeding be transferred to the Supreme Court of Victoria. That is its current status as Supreme Court action No.7312/93.

However, the plaintiff in this Court sought (*inter alia*) a declaration that the Magistrates' Court had no jurisdiction to hear and determine the proceeding in respect of the claim pursuant to s592 of the *Corporations Law*; that any such claim brought in the Magistrates' Court was a nullity,

and consequently that the provisions of Part 3 of the *Court (Case Transfer) Act* did not empower designated judicial officers of the Magistrates' Court of Victoria to transfer such a proceeding to the Supreme Court.

[3] An order effectively in the form of a mandamus was sought requiring the secondnamed defendant to reconsider the referral under Part 3 of the Act and to determine the question of referral in accordance with the declarations as to the law made by this Court. I should interpolate that since, in my view, the original referral involved the Listing Master of this Court, it was arguable that an order in the form of mandamus would not lie.

If I were to accede to the plaintiffs' submissions and grant the relief sought, the effect would be that the matter would be referred back to the Magistrates' Court, where it would be struck out and the firstnamed defendant would be required to re-issue in the Supreme Court, in which court the action currently resides. In this regard Mr Lucas, who appeared on behalf of the plaintiffs, frankly conceded that what was sought to be achieved by the relief claimed had very little merit.

Quite apart from that aspect of the matters, it was also conceded by the plaintiffs that they had not exhausted their rights pursuant to ss19 and 20 of the Act which enables the referral of any objection to the transfer of the case to the Senior Judicial Officers of the two Courts, here the Chief Magistrate and the Chief Justice (see s3 of the Act). By Rule 16 of the *Courts (Case Transfer) Rules* 1991 notice of objection must be given within 14 days of notification of the decision of the Designated Judicial Officer but this time may be extended by leave of the Senior Judicial Officer of the higher Court.

[4] It may well be as submitted by Mr Lucas, that the failure to follow the procedure under the Act did not preclude the plaintiffs proceeding by the alternative route of an originating summons (see for example *R v Foster & Anor.*; *Ex Parte v Commonwealth Steamship Owners' Association & Anor* [1953] HCA 86; 88 CLR 549; [1953] ALR 1108, but it is relevant in the exercise of the Court's discretion as to whether to grant the relief sought. That the Court has such discretion cannot be doubted (see for example *Keller v Drainage Tribunal & Montague* [1980] VicRp 43; [1980] VR 449; (1980) 45 LGRA 192.)

On the material before me I have concluded that I should not interfere with the determination of the Designated Judicial Officers dated 8 June 1993. The proceeding is now in the Court in which the plaintiffs assert it ought to be heard. The issue between the parties can consequently be resolved both more conveniently and economically by permitting the proceedings in their current form to remain before the Supreme Court. I am further strengthened in the view that I should not exercise my discretion in making the order sought by both what I perceive as a lack of merit in the result which the plaintiffs seek to achieve and the fact that they have not exhausted their rights under the Act.

It should not be thought, however, that my comments indicate a view that the Designated Judicial Officers were acting *ultra vires* the powers bestowed upon them by the Act in determining to transfer this action. In the circumstances it is unnecessary for me to address the arguments advanced by the parties on this issue. [5] For the reasons I have given I decline to grant the relief sought.

**APPEARANCES:** For the plaintiffs Pedersen: Mr G Lucas, counsel. Sly & Weigall, solicitors. For the first defendant Stansfield-Smith Pty Ltd: Mr M Lapirow, counsel. Lewis Walker, solicitor. For the second defendant Patrick Street, Magistrate: Mr M Ruddle, counsel. Victorian Government Solicitor.