



HIGH COURT OF AUSTRALIA

Public Information Officer

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WILLIAM ARTHUR FORGE, JOZSEF ENDRESZ, DAWN MAY ENDRESZ, ALLAN PAUL
ENDRESZ AND BISOYA PTY LTD v AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION, THE STATE OF NEW SOUTH WALES AND THE COMMONWEALTH OF
AUSTRALIA

The High Court of Australia today rejected a challenge to the appointment of acting judges to the Supreme Court of New South Wales.

Mr Forge is the director of Bisoya, his private family company. The Endreszes are husband, wife and son, whose family company is Kamanga Holdings Pty Ltd. They were directors of CTC Resources NL and Mr Forge its managing director. In 1998, eight transactions disbursed more than \$3.5 million from CTC to Bisoya and Kamanga in the form of management and consultancy fees and unsecured loans. In 2001, ASIC brought proceedings in the Supreme Court alleging that the transactions contravened the NSW *Corporations Law*. By the time of the hearing before Justice Michael Foster in 2002, the *Corporations Law* had been replaced by the Commonwealth *Corporations Act*. Justice Foster held that the transactions contravened the *Corporations Law* and imposed penalties. The Court of Appeal dismissed an appeal except for penalty and remitted the issue to the Supreme Court for hearing. That hearing has not taken place because at this point Mr Forge and the Endreszes questioned for the first time the validity of Mr Foster's appointment.

Mr Foster retired from the Federal Court when he reached the statutory retirement age of 70 in 1998. Under a series of commissions pursuant to section 37 of the *Supreme Court Act* he served as an acting judge of the NSW Supreme Court between 1999 and 2003 when he turned 75, the maximum age for an acting judge. In 2001, the Supreme Court had 45 permanent judges. Twenty people, all retired judges or serving District Court judges, were acting judges or judges of appeal for terms of three to 12 months.

Three related proceedings came before the High Court questioning the validity of appointments of judges as acting judges of the Supreme Court under section 37 of the *Supreme Court Act* and the validity of transitional provisions relating to contravention in the *Corporations Act*. The first was a constitutional challenge, the second was removal of the penalty issue into the High Court, and the third was an application for special leave to appeal from the Court of Appeal decision.

The High Court, by a 6-1 majority, found in favour of ASIC in all three proceedings. It held that the legislation providing for the appointment of acting judges was valid and that none of Mr Foster's appointments as an acting judge were invalid. In the constitutional challenge, the Court allowed the demurrers (denials of the legal sufficiency of the facts to entitle Mr Forge and the Endreszes to a legal remedy) of ASIC and NSW. It held that the transitional provisions of the *Corporations Act* are valid and the proceedings before Justice Foster and the Court of Appeal constituted a matter arising under a law made by parliament within the meaning of section 76(ii) of the Constitution in a situation where the original offences arose under a State Act. The application for special leave to appeal was refused.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*