HIGH COURT OF AUSTRALIA

Manager, Public Information

18 June 2009

DAVID RAYMOND SPRIGGS v THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA
MARK RIDDELL v THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA
[2009] HCA 22

Today the High Court decided that two professional footballers, David Spriggs and Mark Riddell, who paid fees to managers to negotiate player contracts, sponsorships and other income earning activities on their behalf, may claim those fees as deductions on their income tax returns.

David Spriggs was selected in the Australian Football League (AFL) National Draft in November 1999. In January 2000 he signed a representation agreement with Connors Sports Management (CSM), which provided for a payment to CSM of 3 per cent of total gross earnings for the successful negotiation of an AFL Standard Playing Contract and 20 per cent of total gross earnings in respect of marketing and media activities. In December 2004 CSM negotiated an AFL Standard Playing Contract for Spriggs with the Sydney Swans which provided for a base payment of $70,000 for the 2005 AFL season. CSM issued Spriggs with a tax invoice for $2,100, which represented 3 per cent of the base payment, in respect of "management and promotional services by CSM for season 2004". Spriggs claimed the amount as a deduction in his 2005 income tax return. The Commissioner of Taxation refused the claim and disallowed Spriggs' objection to the Commissioner's assessment.

Mark Riddell, a player in the National Rugby League (NRL) competition, agreed with SFX Sports Group (SFX) that, in exchange for the provision of certain services related to the management of Riddell's affairs, he would pay to SFX 20 per cent of gross monies paid to him for sponsorship, media contracts, endorsements, advertising and promotional work, and 7 per cent of all monies he earned from his NRL Playing Contract. In June 2004 Riddell entered into an NRL Playing Contract with the Parramatta club which provided for an annual playing fee of $275,000 for each of the 2005–2007 seasons. In November 2004 SFX invoiced Riddell $19,250 for "2005 management fees", which represented 7 per cent of Riddell's playing fee for 2005. Riddell claimed the amount as a deduction on his 2005 income tax return, however, as with Spriggs, the Commissioner of Taxation refused the claim and disallowed Riddell's objection to the Commissioner's assessment.

Spriggs and Riddell each appealed to the Federal Court against the Commissioner's decision. In each case the primary judge set aside the Commissioner's decision and allowed the players to claim the deductions. On appeal the cases were heard together and the Full Court of the Federal Court unanimously upheld the Commissioner's appeals. The High Court granted special leave to both Spriggs and Riddell to appeal the Full Court's decision.

Section 8-1(1) of the Income Tax Assessment Act 1997 provides that a person may deduct from his/her assessable income losses or outgoings which are either incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. Pursuant to section 8-1(2) losses or outgoings of capital, or of a

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capital nature, may not be deducted from assessable income. The critical question the High Court had to determine was whether the management fees Spriggs and Riddell paid to CSM and SFX respectively were incurred *in gaining or producing* their assessable income.

The High Court considered that Spriggs and Riddell were each engaged in the business of commercially exploiting their sporting prowess and associated celebrity. These businesses encompassed contracts for employment with their respective playing clubs, and promotional activities on behalf of the AFL or the NRL, their respective clubs, and on their own behalf. Spriggs' and Riddell's promotional activities were inextricably linked to their employment as footballers. Spriggs and Riddell conducted their businesses in a commercial fashion, manifested particularly by retaining managers whose duties went well beyond the negotiation of playing contracts. For these reasons the Court held that there was a sufficient connection between the fees charged by CSM and SFX and the gaining or producing of assessable income for the management fees to be deductible.

The High Court set aside the orders made by the Full Court of the Federal Court and substituted orders dismissing the Commissioner's appeals to that Court.

- *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.*