

ALLEY v GILLESPIE (S190/2017)

Date writ of summons filed: 7 July 2017

Date questions referred to Full Court: 29 September 2017

Since 30 August 2016 the defendant, Dr David Gillespie, has sat as a Member of the House of Representatives of the Commonwealth Parliament for the seat of Lyne, having been declared elected to that role as a result of the general election held on 2 July 2016.

On 7 July 2017 the plaintiff, Mr Peter Alley, commenced proceedings in this Court under the *Common Informers (Parliamentary Disqualifications) Act 1975* (Cth) ("the Common Informers Act"), claiming that the defendant was liable to pay the penalties prescribed by s 3(1) of that Act because he was declared by the Constitution to be incapable of sitting as a Member of the House of Representatives. The basis of the claim is that the defendant is declared incapable by s 44(v) of the Constitution on account of his having a pecuniary interest in an agreement with the public service of the Commonwealth.

The alleged pecuniary interest is based on the following arrangements. The defendant is the majority shareholder in Goldenboot Pty Ltd ("Goldenboot"), which owns premises that it leases to a tenant in return for the payment of rent. The tenant, a Ms Humphreys, operates and manages a retail post office business at the premises. This is pursuant to a contract between Australia Post and Lighthouse Beach Post Stop Pty Ltd ("Lighthouse"), a company of which Ms Humphreys is one of two shareholders. Lighthouse receives revenue from Australia Post under the contract.

The defendant contends that Australia Post is a corporate entity that is not a part of the public service of the Commonwealth. He also challenges the High Court's power to impose the penalties prescribed in s 3(1) of the Common Informers Act, on the basis that the Court only has such power in respect of a Member of the House of Representatives once a determination has been made that the Member in question is not qualified to sit. The defendant contends that such a determination can be made only by the House of Representatives, under s 47 of the Constitution, or by the Court of Disputed Returns, upon a reference to it by the House of Representatives.

At the time of writing, the House of Representatives had not referred to the Court of Disputed Returns (under s 376 of the *Commonwealth Electoral Act 1918* (Cth)) any question as to the defendant's qualification to be a Member of the House of Representatives, nor had the House made a negative determination under s 47 of the Constitution.

The defendant also opposes the issuance of subpoenas sought by the plaintiff.

On 29 September 2017 Justice Bell referred the following questions to the Full Court under s 18 of the *Judiciary Act 1903* (Cth):

1. Can and should the High Court decide whether the defendant was a person declared by the Constitution to be incapable of sitting as a Member of the House of Representatives for the purposes of s 3 of the Common Informers Act?
2. If the answer to question 1 is yes, is it the policy of the law that the High Court should not issue subpoenas in this proceeding directed to a forensic purpose of assisting the plaintiff in his attempt to demonstrate that the defendant was a person declared by the Constitution to be incapable of sitting as a Member of the House of Representatives for the purposes of s 3 of the Common Informers Act?

Notices of a Constitutional Matter have been filed by the plaintiff and by the Attorney-General of the Commonwealth, who is intervening in the matter. At the time of writing, no Attorney-General of a State or a Territory had given notice of an intention to intervene in the matter.