



HIGH COURT OF AUSTRALIA

17 June 2015

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION v BORAL RESOURCES (VIC) PTY LTD & ORS

[2015] HCA 21

Today the High Court unanimously dismissed an appeal from the Court of Appeal of the Supreme Court of Victoria and held that the appellant was amenable to an order under r 29.07(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) ("the Rules") to make discovery of particular documents in proceedings brought to punish it for contempt of court.

The first to sixth respondents (together, "Boral") applied under r 75.06(2) of the Rules to punish the appellant for contempt of court, alleging that the appellant had disobeyed court orders by establishing a blockade of a construction site. The blockade was alleged to have been organised and implemented by an employee of the appellant. Boral sought an order under r 29.07(2) directing the appellant to make discovery of particular documents going to the question of whether the appellant had authorised its employee to establish the blockade. The appellant's status as a corporation meant it could not invoke either the privilege against self-incrimination or the privilege against self-exposure to a penalty to resist the order sought by Boral.

In the Supreme Court of Victoria, Daly AsJ refused to make an order for discovery under r 29.07(2) on the basis that the contempt proceeding was properly characterised as a criminal proceeding, and so the Rules did not apply. Digby J allowed an appeal from that decision, holding that the contempt proceeding was a civil proceeding to which the Rules did apply, and that it was appropriate to order discovery in the circumstances. The Court of Appeal refused the appellant leave to appeal from that decision on the basis that there was insufficient reason to doubt its correctness and the appellant would suffer no substantial injustice if the order for discovery were permitted to stand.

By grant of special leave, the appellant appealed to the High Court. The appellant contended that it could not be ordered to make discovery under r 29.07(2) because to do so would conflict with the principle that a defendant to an accusatorial proceeding cannot be required to assist the prosecution to prove its case. The Court accepted that this principle applies to criminal proceedings but held that the contempt proceeding was a civil proceeding. Rule 29.07(2) applied to the contempt proceeding according to its tenor enabling an order for discovery to be made.

- *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.*