



HIGH COURT OF AUSTRALIA

16 February 2022

WALTON & ANOR v ACN 004 410 833 LTD (FORMERLY ARRIUM LIMITED) (IN LIQUIDATION) & ORS
[2022] HCA 3

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned the purposes for which a court may, on the application of an eligible applicant, summon an officer or provisional liquidator of a corporation in external administration for examination about the corporation's examinable affairs pursuant to s 596A of the *Corporations Act 2001* (Cth).

The appellants were shareholders of the first respondent, formerly Arrium Limited ("Arrium"). In October 2014, Arrium completed a capital raising, having published its 2014 financial results and provided shareholders with an Information Memorandum for that purpose. In January 2015, Arrium announced the suspension or closure of one of its principal mining operations. In April 2016, Arrium was placed into administration and, in June 2019, liquidators were appointed.

The appellants, having been authorised by the Australian Securities and Investments Commission to do so, applied to the Supreme Court of New South Wales for an order pursuant to s 596A of the *Corporations Act 2001* (Cth) that a summons be issued for the examination of the third respondent, a former director of Arrium. A Registrar in Equity duly made that order. The appellants' purpose was to investigate and pursue potential personal claims arising from the 2014 capital raising in their capacity as shareholders against the former directors and auditors of Arrium. It was accepted that any future proceedings would be confined to a limited class of shareholders of Arrium. Arrium applied to the Supreme Court for that order to be stayed or set aside as an abuse of process. The Supreme Court declined to stay or set aside the order. The Court of Appeal allowed Arrium's appeal and decided that an examination sought predominantly for the purpose of pursuing private litigation against third parties, and not for the purposes of conferring a demonstrable or commercial benefit on the corporation or its creditors, was an abuse of process.

By majority, the High Court allowed the appeal. In deciding if the use of a court process authorised by statute is an abuse of process, the question is whether the litigant's predominant purpose is inconsistent with the scope and purpose of the statutory process. The purpose and concern of s 596A is not confined to the interests of the corporation, its creditors, or its contributories, or to the bringing of criminal or regulatory proceedings in connection with the affairs of the corporation. Examining an officer of a corporation for the purpose of pursuing a claim against the corporation in external administration or one of its officers or advisers for the enforcement of the law can be a legitimate use of the power conferred by s 596A, irrespective of whether it is in the interests of the corporation or whether the claim relates to all or only some of the corporation's creditors or contributories. The summons was therefore not issued for a purpose that was an abuse of process.

- *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.*