



HIGH COURT OF AUSTRALIA

Public Information Officer

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OLD UGC INC, UIH ASIA/PACIFIC COMMUNICATIONS INC, AUSTAR UNITED COMMUNICATIONS LIMITED, AUSTAR ENTERTAINMENT PTY LIMITED, CTV PTY LIMITED AND STV PTY LIMITED v INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES IN COURT SESSION AND ROBERT McRANN

An agreement covering an executive's termination from the Austar pay television group did not amount to a contract of employment that fell within the jurisdiction of the Industrial Relations Commission of New South Wales, the High Court of Australia held today.

Mr McRann was employed from March 1995 until July 1997 as managing director of the Australian affiliates of a group headed by Old UGC which operated pay TV in various countries. Following termination of his position he was briefly employed by Old UGC's Dutch affiliate. In Australia, the Old UGC parties and Mr McRann made a "compensation and release agreement" (C&R agreement) to resolve any legal disputes arising from his employment and to provide him with compensation and benefits including stock options. The C&R agreement was governed by the laws of Colorado. In April 1998, Mr McRann brought proceedings in Colorado alleging that the C&R agreement was procured by fraudulent misrepresentation and asking that it be avoided. Those proceedings are ongoing.

In May 2001, Mr McRann applied to the Industrial Relations Commission, alleging the C&R agreement was or had become unfair, harsh and unconscionable and seeking relief under section 106 of the *Industrial Relations Act*. Section 106(1) of the Act provides that the IRC may make an order declaring wholly or partly void, or varying, any contract whereby a person performs work in any industry if the IRC finds the contract is unfair. The Old UGC parties applied to the IRC for orders dismissing Mr McRann's application as they alleged it lacked jurisdiction and contended that proceedings should be stood over until the Colorado matter was concluded. The IRC dismissed the Old UGC parties' application and the Full Bench refused leave to appeal. They applied to the Court of Appeal for a declaration that the IRC lacked jurisdiction to hear Mr McRann's application and for prohibition or injunction restraining the IRC from proceeding to hear the matter. The Court of Appeal dismissed the Old UGC parties' application, concluding that Mr McRann's employment agreement and the C&R agreement together constituted a single contract of employment.

The Old UGC parties appealed to the High Court which, by a 4-3 majority, allowed the appeal. The Court held that the question of the IRC's jurisdiction turns upon whether the contract is one whereby a person – Mr McRann – performs work in any industry. While it may be accepted that the C&R agreement varied the terms governing his relationship with the Old UGC parties in connection with his employment in NSW, it did not follow that all the resulting stipulations and arrangements fall within the expression "a contract whereby a person performs work in any industry". The Court held that the terms in the C&R agreement were not terms according to which Mr McRann performed work in any industry; they were terms by which the parties agreed that his employment would be terminated.

- *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.*