



HIGH COURT OF AUSTRALIA

8 February 2017

CLIVE FREDERICK PALMER v MARCUS WILLIAM AYRES, STEPHEN JAMES
PARBERY AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS
OF QUEENSLAND NICKEL PTY LTD (IN LIQ) & ORS;
IAN MAURICE FERGUSON v MARCUS WILLIAM AYRES, STEPHEN JAMES PARBERY
AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF
QUEENSLAND NICKEL PTY LTD (IN LIQ)
[2017] HCA 5

Today the High Court published its reasons for orders made after a hearing on 10 November 2016, which dismissed writs of summons seeking, amongst other relief, a declaration that s 596A of the *Corporations Act* 2001 (Cth) is invalid as contrary to Ch III of the Constitution. The High Court held that s 596A of the *Corporations Act*, which provides for the mandatory examination of certain persons in relation to a corporation's examinable affairs, does not confer non-judicial power on federal courts or on courts exercising federal jurisdiction and so is not invalid as contrary to Ch III of the Constitution.

The plaintiff in each proceeding – Mr Palmer and Mr Ferguson – was a former director of Queensland Nickel Pty Ltd ("QN"). QN was placed under administration and the creditors of QN subsequently resolved that QN be wound up in insolvency. Additional liquidators of QN were subsequently appointed by an order of the Federal Court of Australia ("the Special Purpose Liquidators").

The Special Purpose Liquidators applied to the Federal Court for, and obtained, an order for the issue of a summons under s 596A of the *Corporations Act* requiring, among others, Mr Palmer and Mr Ferguson to attend for examination about QN's examinable affairs. Mr Palmer and Mr Ferguson both attended the Federal Court and were each examined.

Mr Palmer and Mr Ferguson then each filed a writ of summons in the High Court. In each proceeding, the following question was reserved for the consideration of a Full Court – is s 596A of the *Corporations Act* invalid as contrary to Ch III of the Constitution in that it confers non-judicial power on federal courts and on courts exercising federal jurisdiction?

The High Court unanimously held that an application for the issue of a summons for mandatory examination under s 596A is a "matter" in the constitutional sense and its determination engages the judicial power of the Commonwealth. Therefore, s 596A does not confer non-judicial power on federal courts or on courts exercising federal jurisdiction and so is not invalid as contrary to Ch III of the Constitution.

- *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.*