



HIGH COURT OF AUSTRALIA

7 April 2021

VICTORIA INTERNATIONAL CONTAINER TERMINAL LIMITED v LUNT & ORS
[2021] HCA 11

Today, the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned whether proceedings brought by a plaintiff on behalf of a trade union to quash the approval of an enterprise agreement, in circumstances where the predecessor trade union had originally supported the approval, should be summarily dismissed on the basis that the proceedings were an abuse of process.

The appellant, Victoria International Container Terminal Limited ("VICT"), applied to the Fair Work Commission ("the Commission") for approval of the *Victoria International Container Operations Agreement 2016* ("the Enterprise Agreement"). The application was made with the support of the Maritime Union of Australia ("the MUA"), which later merged to form the fourth respondent, the Construction, Forestry, Maritime, Mining and Energy Union ("the CFMMEU"). The Commission approved the Enterprise Agreement. Following that approval, the MUA brought several proceedings against VICT in reliance on the Enterprise Agreement. However, the MUA soon became dissatisfied with the Enterprise Agreement and began publicly to criticise it.

The first respondent ("Mr Lunt") was a longstanding member of the MUA who had been employed by VICT. Mr Lunt commenced proceedings seeking to quash the Commission's approval of the Enterprise Agreement. VICT sought summary dismissal of the proceedings, arguing that they were an abuse of process because the CFMMEU (as it now was) was the true moving party behind the proceedings, with Mr Lunt being deployed as a "front man" to conceal the CFMMEU's role. The MUA and CFMMEU had funded the proceedings and were found to have been unwilling to bring proceedings in their own names because of the perceived risk that they would be refused relief on discretionary grounds, including because the MUA had acquiesced in the approval of the Enterprise Agreement. Mr Lunt, however, maintained that he sought the quashing of the approval of the Enterprise Agreement by reason of his concerns about its conditions and the manner in which it was made.

On appeal to this Court, VICT argued that to permit the pursuit of the proceedings by Mr Lunt would bring the administration of justice into disrepute, emphasising the lack of candour involved in Mr Lunt's attempt to conceal the role of the CFMMEU in the proceedings. The High Court dismissed the appeal, holding that the choice of Mr Lunt as plaintiff would not have prevented, in any real way, scrutiny by the court of the role played by the MUA in the making of the Enterprise Agreement. The court's powers in relation to abuse of process were not to be exercised in order to deter or punish a want of candour on the part of a litigant of the kind revealed in this case; they are exercised in order to protect the integrity of the court's own processes. In any event, a stay or summary dismissal of proceedings should not be ordered where there are less drastic means to protect the integrity of the court's processes. With the arrangements between Mr Lunt and the CFMMEU now being well known, the administration of justice could not be brought into disrepute by allowing the proceedings to continue to a determination on their merits.

- *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.*