ROY MORGAN RESEARCH PTY LTD v COMMISSIONER OF TAXTION & ANOR (M177/2010)

Court appealed from: Full Court, Federal Court of Australia
[2010] FCAFC 52

Date of judgment: 26 May 2010

Date special leave granted: 10 December 2010

Between 1 July 2000 and 30 June 2006 the appellant ("Roy Morgan") conducted market research, gathering some of the information it required by paying people to interview members of the public either face to face or through telephone interviews. It did not treat the interviewers as employees, and did not lodge superannuation guarantee statements in relation to them under the *Superannuation Guarantee (Administration) Act 1992* (Cth) ("the SGA Act"). On 13 September 2007 the first respondent ("the Commissioner") issued superannuation guarantee default assessments in relation to the periods in respect of which he considered Roy Morgan had been required to report. Roy Morgan objected to the assessments. The Commissioner disallowed the objection and the Administrative Appeals Tribunal affirmed the Commissioner's decision.

On appeal to the Full Federal Court (Keane CJ, Sundberg and Kenny JJ), Roy Morgan contended that the SGA Act and the *Superannuation Guarantee Charge Act 1992* (Cth) ("the SGC Act") are constitutionally invalid because the only relevant head of power for legislative imposition of the charge is s 51(ii) of the Constitution which empowers the Commonwealth Parliament to make laws with respect to taxation, and that the charge is not a tax because it is not imposed for public purposes. The court rejected that argument, holding that the exaction effected by s 5 and s 6 of the SGC Act is for public purposes insofar as it provides an incentive to all employers to contribute to the superannuation needs of their employees. The circumstance that the moneys exacted are paid into the Consolidated Revenue Fund in conformity with s 71 of the SGA Act establishes, in the absence of a countervailing consideration, that the exaction effected by s 5 of the SGC Act is for public purposes. The SGA Act and SGC Act do not operate to substitute a new statutory obligation for a pre-existing private obligation in an employer to make a payment to any employee. Rather, the legislation exacts a payment from an employer; and that payment is paid to the Consolidated Revenue Fund. While payments from the Consolidated Revenue Fund pursuant to s 65 of the SGA Act are made by the Commissioner for the ultimate benefit of individual employees, that benefit is only received by an individual employee in the event of infirmity or retirement. The Court held that its conclusion that the exaction imposed by the SGC Act and the SGA Act is for public purposes was supported by the decisions of the High Court in *Australian Tape Manufacturers Association Ltd v The Commonwealth* [1993] 176 CLR 480 and *Northern Suburbs General Cemetery Reserve Trust v The Commonwealth* [1993] 176 CLR 555.

The appellant has filed a Notice of a Constitutional Matter.

The grounds of appeal are:

- the Court below erred in holding that the superannuation guarantee charge imposed by the SGC Act and the SGA Act was imposed for public purposes and was valid, and should have held that the charge was not supported by s 51(ii) of the Commonwealth Constitution or any other head of power.