



HIGH COURT OF AUSTRALIA

Public Information Officer

8 September 2005

CHIEF EXECUTIVE OFFICER OF CUSTOMS v GRANITE ARMS PTY LTD AND OMEOWAY PTY LTD

This appeal concerned the true identification of the importer of consignments of firearms.

Garnet Featherstone is principal of Victorian firearms dealer Granite Arms and Ron Owen the principal of firearms dealer Omeo Way in Queensland. In 2000 Omeo Way organised to buy 3,000 pistols in two batches from a Chinese supplier for US\$144,576. Mr Owen had permits for both shipments but Queensland Police rescinded them due to concerns the pistols would be modified by a method that breached weapons laws. He then arranged for the pistols to be consigned to Granite Arms while he paid all expenses including Customs clearance, storage and freight. The first batch of 1,000 pistols arrived in Melbourne in March 2000 and was transported to Omeo Way. The next batch of 2,000 arrived in May and a customs broker arranged for their storage in Melbourne to enable the safety testing of the pistols and repairs to some.

Customs then seized the pistols as goods reasonably suspected to be “special forfeited goods” for failing to comply with the Customs (Prohibited Imports) Regulations. Omeo Way as owner of the pistols claimed their return. The *Customs Act* requires the return of goods unless proceedings are brought in a court of summary jurisdiction for a declaration that they are special forfeited goods and an order that they be forfeited to the Crown. This Customs did. With proceedings pending, the two dealers commenced separate proceedings in the Federal Court seeking a declaration that seizure of the second shipment was unlawful. Customs cross-claimed for a declaration that the pistols were special forfeited goods. The dealers pleaded that Granite Arms was importer as agent of Omeo Way and was at all times entitled to possess the pistols either on its own account or as an agent of Omeo Way. At the parties’ request, the Court heard the cross-claim first and dismissed it. The Full Court dismissed an appeal by Customs, which then appealed to the High Court.

The relevant parts of the Regulations were introduced as part of the national firearms controls adopted after the Port Arthur tragedy in 1996. Imports must comply with one of four tests, in this case the police authorisation test, requiring the importer to hold a licence or authorisation under the law of the relevant State or Territory to possess the article. The dealers contend that Granite Arms was the importer of the two shipments and the police authorisation test was satisfied because Granite Arms held a licence to possess the pistols under Victorian law. Customs argued that the police authorisation test was not satisfied and that “the importer” meant one designated entity and Granite Arms could not substitute as “the importer” for Omeo Way.

The High Court unanimously allowed the appeal by Customs and held that the handguns were “special forfeited goods”. It held that although Granite Arms lent its name to Omeo Way for the identification of “the consignee” on the air waybill for carriage of Omeo Way’s goods to Australia, Granite Arms was not “the importer”.

- *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.*