



HIGH COURT OF AUSTRALIA

Public Information Officer

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MOBIL OIL AUSTRALIA PTY LIMITED v TRENDLEN PTY LIMITED

A single petrol retailer could not commence representative proceedings to recover invalid licensing fees from Mobil on the basis that other retailers may join in the proceedings later, the High Court of Australia held today.

The appeal raised many of the same issues as those raised in the *Campbells Cash and Carry v Fostif* group of cases heard at the same time. Five States and the ACT had schemes for the licensing of petroleum sellers. The relevant legislation was similar to tobacco licensing legislation struck down by the High Court's 1997 decision in *Ha v New South Wales* which held that tobacco licensing fees amounted to constitutionally invalid excise duties. (Only the Commonwealth can impose excise.) Mobil is a petrol wholesaler and Trendlen a retailer. Mobil had paid licence fees to the State of New South Wales based on the value of petrol sold and passed those fees on to retailers including Trendlen. Trendlen contends it was entitled to recover fees paid to Mobil but which Mobil no longer had to pay to NSW following the *Ha* decision.

Trendlen brought proceedings in the NSW Supreme Court against Mobil and these proceedings were commenced as representative proceedings. Two other representative proceedings were commenced at the same time by other petroleum retailers against petrol wholesalers. All three were commenced on their behalf by litigation funder Firmstones Pty Ltd which was to receive one-third of any amounts recovered from wholesalers plus any costs awarded to the retailers. Firmstones would bear any costs made against the retailers. The Trendlen summons claimed the refund of fees on behalf of itself and a class of unnamed persons who could potentially opt in to be represented by it. Trendlen also sought discovery of the names of other petroleum retailers supplied by Mobil.

Justice Robert McDougall, in light of what the NSW Court of Appeal had already decided in the *Fostif* group of cases, dismissed Mobil's application for orders terminating proceedings or requiring that the proceedings not continue as representative proceedings. He ordered Mobil to provide Trendlen with a list of petrol retailers across five States and the ACT. Mobil appealed directly to the High Court, which allowed the appeal by a 5-2 majority.

- *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.*