



HIGH COURT OF AUSTRALIA

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ROSS FORSYTH v DEPUTY COMMISSIONER OF TAXATION

The District Court of New South Wales had jurisdiction to hear and determine an action by the Deputy Commissioner against Mr Forsyth to recover a penalty for failure to remit income tax deducted from employees' wages, the High Court of Australia held today.

Mr Forsyth was a director of Premium Technology Pty Ltd. Between 1 August 1997 and 31 May 1999, Premium deducted PAYE instalments totalling \$668,845.97 from the salary and wages of its employees but failed to remit the full amount to the Commissioner. Directors are personally liable to pay penalties for failure to comply with the obligation to pass on the deductions. The Deputy Commissioner issued penalty notices to Mr Forsyth on 27 October 1998 and 15 June 1999. The unpaid amount was ultimately assessed at \$414,326.45.

On 29 August 2001, the Deputy Commissioner instituted action in the District Court against Mr Forsyth to recover this money. Under section 39(2) of the *Judiciary Act*, state courts are invested with federal jurisdiction in all matters in which the High Court has original jurisdiction. Judgment was entered in favour of the Deputy Commissioner. Mr Forsyth had not objected to the District Court determining proceedings, but he appealed in the NSW Court of Appeal, claiming the District Court lacked jurisdiction.

Two Acts, both called the *Courts Legislation Further Amendment Act*, took effect in 1998 and 1999. The first Amendment Act introduced the current form of section 44(1)(a) to the *District Court Act*. This provided that the Court has jurisdiction to hear any action relating to claims of up to \$750,000 which if brought in the Supreme Court would be assigned to the Common Law Division. The second Amendment Act reduced the divisions of the Supreme Court to two, Common Law and Equity, and the business of the Court was reassigned between them. Mr Forsyth argued that the District Court was deprived of jurisdiction when an amendment to the Supreme Court Rules in 2000 assigned to the Equity Division of the Supreme Court any proceedings relating to a tax, fee, duty or other impost levied, collected or administered by or on behalf of the State or the Commonwealth. (These matters were transferred to the Common Law Division by a 2004 change to the Rules.) The Court of Appeal dismissed the appeal.

Mr Forsyth appealed to the High Court which, by a 6-1 majority, dismissed the appeal. It held that the jurisdiction of the District Court was to be identified by reference to the time the first Amendment Act introduced section 44(1)(a), not at 29 August 2001 when the action against Mr Forsyth was instituted. It held that when the first Amendment Act commenced, cases such as his would have been assigned to the Common Law Division of the Supreme Court. Therefore the action was within the section 44(1)(a) jurisdiction of the District Court. The Court noted that, even if Mr Forsyth had succeeded, a fresh action by the Deputy Commissioner could still have been brought in a court of competent jurisdiction.

- *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.*