

Judgment 7 of 1978

IN THE PRIVY COUNCIL

No. 36 of 1977

O N A P P E A L
FROM THE FULL COURT OF THE SUPREME COURT OF SOUTH AUSTRALIA

B E T W E E N:

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

Appellant

- and -

PETER THOMAS ALLAN and
LANCELOT JOHN CHAPLIN

Respondents

CASE FOR THE RESPONDENT LANCELOT JOHN CHAPLIN

KNOX & HARGRAVE,
32 Grenfell Street,
Adelaide,
South Australia 5000

Solicitors for the
Appellant
by their London
Agents

WEDLAKE BELL & CO.
5 Breems Buildings,
Chancery Lane,
London, EC4

G.C. PRIOR,
33 Franklin Street,
Adelaide,
South Australia 5000

Crown Solicitor and
Solicitor for the
Respondent
Peter Thomas Allan

REILLY AHERNE & KERIN,
153 Flinders Street,
Adelaide,
South Australia 5000

Solicitors for the
Respondent
Lancelot John Chaplin
by their London
Agents

BLYTH DUTTON HOLLOWAY
9 Lincoln's Inn Fields,
London, WC2A 3DW

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CHAPLIN Respondents

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CASE FOR LANCELOT JOHN CHAPLIN

Record

1. This is an appeal from an order of the Full Court of the Supreme Court of South Australia (hereinafter referred to as "the Full Court") (Bray C.J., Hogarth J. and King J.) discharging with costs an application by Australian Mutual Provident Society (hereinafter called "the Prosecutor") to make absolute an order nisi for certiorari. P 180 L 8 -
P 181 L 1 -

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2. The Prosecutor complained of a decision of Judge Allan sitting as a Judge of the Industrial Court of South Australia (hereinafter referred to as "the Trial Judge") in which he held that one Lancelot John Chaplin was a worker employed by it within the meaning of the Long Service Leave Act 1967 as amended. The main issue before the Trial Judge (leaving aside certain disputes as to quantum which are not relevant in these proceedings) was whether Lancelot John Chaplin was at all material times an employee of the Prosecutor. Neither party suggested that there is any statutory consideration which would make the term "worker" any different from the term "employee". Since at no time has it been disputed that the said Lancelot John Chaplin was in fact a representative P 116 L 1 -
P 142 L 29

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Record

of the Prosecutor and referred to by it in that way he is hereinafter referred to as "the representative".

P 143 L 1 -
P 144 L 12

3. The representative applied for an order that the Prosecutor do pay him money in lieu of Long Service Leave and on the 20th April 1977 an order was made in his favour in the sum of THREE THOUSAND TWO HUNDRED AND SIXTY SIX DOLLARS AND SIXTY SIX CENTS (\$ 3,266.66)

P 144 L 18 -
P 146 L 30

4. The Prosecutor thereupon sought and obtained an order nisi in the Supreme Court of South Australia for certiorari to remove into that Court to be quashed the decisions and order of the Trial Judge on the ground that he had no jurisdiction to make the said order or alternatively that he exceeded his jurisdiction by failing to take certain relevant considerations into account. At the hearing before the Full Court the Trial Judge through his counsel submitted to an order and made no submissions. The representative contested the order sought on the grounds that certiorari was not applicable. The Full Court unanimously held that it was applicable and the representative elects not to further argued that point. Secondly, the representative argues that as a matter of merits the Trial Judge correctly held the representative to be a worker within the meaning of the Long Service Leave Act. 10

5. The representative says that the Trial Judge correctly found the facts in issue before him and with respect says that the Full Court rightly accepted this to be the case. 30

The argument on this appeal therefore is one of law based on, and the inferences to be drawn from, those facts found by the Trial Judge.

The representative respectfully maintains that the Full Court correctly applied the law to these facts.

In summary, the law as canvassed before the Full Court related to the various tests which have been applied in England and in Australia to determine the existence or otherwise of a contract of master and servant or employer and employee. 40

Most detailed reference was made to the various tests which it was said have applied from time to time.

Prominent among these tests was whether there is defacto control between one person (the employer) and another (the employee) in what he does as his work and also in the manner in which he does that work; the right of the employer to control what the employee does; and thirdly whether 50

a person said to be an employee is such an integral part of the organisational structure of the person alleged to be his employer that the relationship can be found.

The parties canvassed a very large number of cases dealing with each of these tests and various aspects of these tests.

Bray C.J. summed up his view at Page 160 paragraph 4 and the representative with respect adopts this position.

P 160 L42-51

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King J. summed up his position in somewhat similar language at Pages 174 and 175 of his judgment.

P 174 L 32-
P 175 L 51

Each of the Learned Judges then applied that view of the law to the facts as found by the Trial Judge and the representative respectfully maintains that in the application of the law Their Honours were correct.

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6. The Prosecutor maintained that a number of relevant considerations were not properly taken into account by the Trial Judge in determining the relationship between it and the representative. To the extent that the representative has not already dealt with this aspect in paragraph 5 hereof, he respectfully maintains the Full Court correctly applied the law to each of these matters of fact and drew the correct inferences in respect of each of them.

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7. The representative submits that this appeal should be dismissed with costs.

T.M. McRAE

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