Flaherty v Girgis (1997) 126 CLR 574

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Facts

- In Queensland on 19 November 1981, the Respondent suffered severe injuries after being hit by a motor vehicle driven by the Appellant.
- The Respondent normally lived in NSW but at the time of the accident she was on holiday in Queensland.
- After her discharge from hospital in Queensland, the Respondent returned to NSW to continue to receive treatment.
- The Respondent commenced an action in the NSW Supreme Court seeking damages for her injuries, including the cost of her medical treatment in NSW and future economic loss based upon the diminution of her earning capacity.
- The action was commenced by statement of claim which under Pt 4, Rule 1 of the *Supreme Court Rules 1970* (NSW). The statement of claim was filed in support of an application for leave to serve the statement of claim out of NSW in Queensland.
- By administrative error, the respondent was required to file another statement of claim, this time endorsed in accordance with section 5 of the *Service and Execution of Process Act* ("**the SEPA**"). That statement of claim was, without leave, served upon the Appellant in Queensland. The Appellant entered a conditional appearance and sought to set aside the service of the originating process.
- Hunt J held the service as effective. The Appellant appealed, contending that Pt 10, Rule 1, in providing for the service of originating process out of the State and within the Commonwealth, was inconsistent with the SEPA and was invalid under section 109 of the Constitution. This was dismissed and then appealed to the High Court.

Issues

- Was the relevant provisions in the Supreme Court Rules inconsistent with section 109 of the Constitution?
- Was service of the originating process effective?

Held

- The High Court held that the relevant NSW provisions were not inconsistent with the SEPA. If it were found to be so, all State laws concerning the service of originating processes out of that particular state would be invalid.
- There is a presumption that re-enactment constitutes approval of previous judicial interpretations. This presumption has gone into decline.
- The High Court held that there was no such presumption here. The interpretation of the SEPA did

not lend itself to that presumption. The Court should interpret legislation as it is written.
- Service was found to be effective.

Quotes

"*It was submitted on behalf of the respondent that the amendment of the Service and Execution of Process Act a number of times over the years during which it has consistently been interpreted as having no exclusive operation with respect to the service of process, indicates the tacit approval of the Commonwealth Parliament ....That is to overstate the position somewhat. Whilst ...true that, where an inference can be drawn from the terms in which subsequent legislation has been passed that parliament itself has approved of a particular judicial interpretation of words in an earlier statute, a court should adhere to that interpretation, the difficulty is in discerning the existence of parliamentary approval ...Mere amendment of a statute not involving any re-enactment of the words in question could seldom if ever constitute approval of an interpretation of those words. Even re-enactment of the words in circumstances not involving any reconsideration of their meaning, as for example, in a consolidating statute, does not do so ...At most the principle affords a presumption of no great weight concerning the meaning of the words used and cannot be relied upon to perpetuate an erroneous construction...*

For the reason given by Dixon C.J., the suggested rule nowadays is little use as a guide and it will not be permitted to prevail over an interpretation otherwise appearing to be correct. In any event, the circumstances which would justify its application are lacking in this case."

(Mason ACJ, Wilson and Dawson JJ at [594])

Full Text

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