SUPREME COURT OF QUEENSLAND

CITATION:	*Woods v Australian Taxation Office & Ors* [2017] QCA 28
PARTIES:	**SONYA JOANNE WOODS** (applicant) **v** **AUSTRALIAN TAXATION OFFICE** ABN 51 824 753 556 (first respondent) **ROBERT RAVANELLO** (second respondent) **DEPUTY COMMISSIONER OF TAXATION** (third respondent) **DAVID DIMENT** (fourth respondent) **ERIN HOLLAND** (fifth respondent) **PETER BUTLER** (sixth respondent) **CHRIS JORDAN** (seventh respondent) **ELIZABETH MENERE** (eighth respondent)
FILE NO/S:	Appeal No 9175 of 2016 DC No 124 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Southport – [2016] QDC 198
DELIVERED ON:	9 March 2017
DELIVERED AT:	Brisbane
HEARING DATE:	2 March 2017
JUDGES:	Gotterson and Philip McMurdo JJA and Boddice J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Extend time for the filing of the Notice of Appeal until 8 September 2016.** **2. Leave to appeal refused.** **3. The applicant is to pay the respondents' costs of and incidental to the application on the standard basis.**

CATCHWORDS: HIGH COURT AND FEDERAL COURT – THE FEDERAL JUDICATURE – EXCLUSIVE AND INVESTED JURISDICTION – FEDERAL JURISDICTION OF STATE COURTS – POWER TO INVEST STATE COURTS WITH FEDERAL JURISDICTION – where the applicant contends the District Court of Queensland lacks jurisdiction to hear matters of fact and law concerning the interpretation of Commonwealth Acts – whether the Commonwealth Constitution permits the Commonwealth Parliament to vest federal jurisdiction in the District Court of Queensland – whether the interpretation of Commonwealth Acts is a matter within the federal jurisdiction the Parliament has vested in the courts of the States pursuant to *Judiciary Act* 1903 (Cth) s 39(2)

TAXES AND DUTIES – ADMINISTRATION OF FEDERAL TAX LEGISLATION – COLLECTION AND RECOVERY OF TAX – GENERALLY – where the applicant was indebted to the Deputy Commissioner of Taxation for unpaid tax – where the applicant purported to satisfy the debt by way of unilateral delivery of two promissory notes – where the applicant contends that the *Bills of Exchange Act* 1909 (Cth) permits the use of promissory notes for the discharge of tax liability – where *Taxation Administration Regulations* 1976 (Cth) reg 18 provides for the methods by which tax liability may be paid – whether the applicant could discharge her tax liability by way of promissory notes

CONTRACT – GENERAL CONTRACTUAL PRINCIPLES – FORMATION OF CONTRACTUAL RELATIONS – where the Australian Taxation Office (ATO) sent two running balance of account notices to the applicant – where the applicant marked up the running balance of account notices with the words, "acknowledged statement of the transaction giving rise to payment and acknowledged offer of contract between the parties disclosed" – where the applicant contends the ATO defaulted under the terms and conditions of the alleged contracts – where the applicant contends the ATO is liable to pay a penalty for the said defaults – whether a legally binding contract or contracts had been formed between the applicant and any of the respondents

Bills of Exchange Act 1909 (Cth)
Commonwealth Constitution, s 77(iii)
Judiciary Act 1903 (Cth), s 39(2)
Taxation Administration Act 1953 (Cth), s 16A(2)
Taxation Administration Regulations 1976 (Cth), reg 18

Atkinson & Anor v Commissioner of Taxation (2015) 318 ALR 585; [2015] FCAFC 18, cited
Wilmink v Westpac Banking Corporation (2015) 318 ALR 572; [2015] FCAFC 17, cited

COUNSEL:	The applicant appeared on her own behalf R C Schulte for the respondents
SOLICITORS:	The applicant appeared on her own behalf Australian Government Solicitor for the respondents

[1] **GOTTERSON JA:** On 18 May 2016, the applicant, Sonya Joanne Woods, commenced proceedings in the District Court of Queensland at Southport against the Deputy Commissioner of Taxation and certain other parties who are officers of the Australian Taxation Office ("ATO"). They are the respondents to the application. It is sufficient for present purposes to refer to the role taken in the litigation by the Deputy Commissioner as representing that taken by the other respondents.

[2] A statement of claim[1] was delivered with the claim. On 10 August 2016, a judge of the District Court made an order on the application of the Deputy Commissioner, striking out the statement of claim. The plaintiff, the present applicant, was ordered to pay the Deputy Commissioner's costs of the application, including reserved costs, on an indemnity basis. His Honour also dismissed a cross-appeal made by the plaintiff for default judgment.[2]

[3] The applicant filed a Notice of Appeal[3] against these orders on 8 September 2016. This was on the day immediately after the expiration of 28 day time limit set by r 748 of the *Uniform Civil Procedure Rules* for filing the notice. On 6 February 2017, the applicant filed an application for an extension of time. The applicant, who is not a lawyer and has no legal representation, has given an explanation for the late filing which attributes it to a delay in obtaining a sealed copy of the court order. In light of this, the very short extension sought, and the absence of evidence of prejudice to the Deputy Commissioner caused by the late filing, I would grant the extension of time sought.

[4] The appeal, however, is one for which the applicant must obtain leave from this Court pursuant to s 118(3) of the *District Court of Queensland Act* 1967. The immediate question for this Court, therefore, is whether there should be a grant of leave. Consideration of this question necessarily requires an assessment of the prospects of success of the appeal. Before undertaking an assessment of prospects, I shall outline the factual circumstances on which the plaintiff's statement of claim depended, the legal issues to which it gave rise, and the view that the learned primary judge took of them.

[5] His Honour proceeded on the following factual footing which is unchallenged on appeal.[4] The applicant was indebted to the Deputy Commissioner for unpaid tax. On 5 August 2014, she was refused an application for release from payment of her tax debt which then stood at $51,744.90.

[6] On 3 December 2015, the applicant gave a number of documents to the Deputy Commissioner. They were:

(a) A document headed "Notice of Tender of Payment";[5]

(b) A promissory note in the amount of $21,600 "redeemable on demand at 85 Spencer Road, Nerang, Queensland at 10.45 hours ... on the third day of December 2015";[6]

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1 AB430-438.
2 AB478.
3 AB479-482.
4 Reasons [5]-[11].
5 AB103.
6 AB105.

(c) A marked-up running balance of account notice issued by the Deputy Commissioner dated 31 October 2015 with the following features:[7]

- the words "acknowledged statement of the transaction giving rise to payment and acknowledged offer of contract between the parties disclosed" handwritten on it;
- the applicant's signature above the stamped words "accepted as indorsed (sic)";
- the handwritten description "acknowledged party" written against the printed names of the Deputy Commissioner and another of the defendants;
- a 5 cent Australian postage stamp above the stamped words "Stamp Duty Paid."[8]

(d) A two-page document headed "Default and Liability Clause & Notice";[9]

(e) A second promissory notice in the amount of $54,000 also redeemable at the same address but at 10.50 hours on the same day;[10]

(f) A second similarly noted-up running balance of account dated 5 November 2015;[11] and

(g) A second two-page document headed "Default and Liability Clause & Notice".[12]

[7] These documents were accompanied by a letter[13] signed by the applicant which included assertions that:

(a) a promissory note is as good as cash and must be treated as such;

(b) a three day limit was placed on any challenge to the two promissory notes; and

(c) if the promissory notes were not returned to the maker at the time, date and place stipulated in them, they were to be deemed to have been accepted by the ATO as sufficient consideration to discharge the applicant's liabilities to it.

[8] The letter also spoke of "NOT NEGOTIABLE contracts", to which the applicant and the ATO were said to be parties, and of a range of circumstances in which the ATO would be "in commercial default of the contracts".

[9] Unsurprisingly, the ATO took the position that payment by promissory note was not a sufficient discharge of the tax liabilities.[14] It has issued garnishee notices for recovery purposes.

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7 AB106-107.
8 AB116.
9 AB108-109.
10 AB111.
11 AB112-113.
12 AB114-115.
13 AB104.
14 Letter to applicant dated 4 December 2015: AB340-342.

[10] The statement of claim pleaded that two contracts were "settled" between the applicant and the defendants on 23 November 2015. One appears to have been associated with the promissory note for $21,600 and the other with the promissory note for $54,000. It was alleged that, by the contract, the defendants agreed to accept the promissory note in full and final satisfaction on the applicant's tax liability.[15]

[11] Each contract, it was alleged, had for its terms and conditions, those contained in the "Default and Liability Clause & Notice" document which related to it.[16] Each defendant, it was alleged, had defaulted under the terms and conditions when demand was subsequently made for payment of the tax debt concerned.

[12] It was further alleged that, by reason of the defaults, the defendants became liable to pay "a sum certain" to the applicant under the documented terms and conditions. In the case of the promissory note for $21,600, the sum to be paid was stated to be $86,400;[17] and in the case of the promissory note for $54,000, $216,000.[18]

[13] It is for the liquidated amounts of $86,400 and $216,000 that the applicant sued the defendants together with interest thereon and costs. These are the amounts stated in the claim.[19] However, the amounts claimed by way of relief in paragraph 29 of the statement of claim are $84,600 and $216,000.[20]

[14] His Honour was of the view that the two promissory notes were not truly promissory notes within the meaning of the *Bills of Exchange Act* 1909 (Cth).[21] They were not payable on demand; nor was it pleaded, or proved by evidence, that they were given to the ATO prior to 10.45 am or 10.50 am on 3 December 2015, such as to have made them payable at a fixed future time.[22] Additionally, his Honour did not accept that, as a matter of law, a unilateral delivery of a promissory note was a means of payment of a tax debt within the scope of regulation 18 of the *Taxation Administration Regulations* 1976 (Cth). The Deputy Commissioner did not agree to accept payment "in this eccentric way"; nor could he have done so consistently with regulation 18.[23]

[15] Turning to the contractual basis on which the claim for the liquidated sums was based, his Honour concluded that the pleading was wholly deficient. It failed to plead a factual basis upon which it could be contended that a mutual intention to contract in writing on the terms and conditions alleged, existed. Specifically, no conduct on the part of any of the defendants evidencing such an intention, was pleaded.[24]

[16] Having determined that the statement of claim did not disclose a reasonable cause of action, his Honour ordered that it be struck out.[25]

[17] I now turn to an assessment of the applicant's prospects of success on appeal.

The grounds of appeal

[18] The applicant's notice of appeal sets out the following grounds of appeal:[26]

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15 AB342 paragraph 14, AB434 paragraph 18.
16 Ibid.
17 AB108.
18 AB114.
19 AB427.
20 AB437.
21 *Bills of Exchange Act* 1909 (Cth) s 89(1).
22 Reasons [17].
23 Reasons [18].
24 Reasons [20]-[22].
25 Reasons [22].
26 AB480-481.

"1. The District Court of Queensland lacks jurisdiction to hear matters of fact and law concerning interpretation of Commonwealth Acts, and

2. The Bills of Exchange Act 1909 (Cth), being the principle (sic) Act of the Commonwealth of Australia ("the Commonwealth") and still in force within the Commonwealth, permits the use of promissory notes and bills of exchange within the Commonwealth, whether the Commissioner of Taxation or any other legal tax entity disputes the fact or not,

3. The Appellant intends to lodge a Section 78b (sic) Judiciary Act 1903 Notice regarding the Constitutional issues regarding Bills of Exchange,

4. Errors of law, errors of interpretation and misinterpretation of Acts, law and facts, interpretation and misinterpretation of documents by the Judge of the Primary Court

5. Misapplication of case law to this case."

Ground One

[19] This ground of appeal is misconceived. The Deputy Commissioner submits, correctly, that the District Court of Queensland is capable of exercising federal jurisdiction. Section 77(iii) of the *Commonwealth Constitution* permits the Commonwealth Parliament to vest federal jurisdiction in any "court of a State", of which the District Court of Queensland is one. Pursuant to s 39(2) of the *Judiciary Act* 1903 (Cth), the Parliament has vested Federal jurisdiction in courts of the States, with the exception of certain "exclusive jurisdiction" matters of which this is not one.

Ground Two

[20] This ground implicitly contends that provisions of the *Bills of Exchange Act* have primacy over inconsistent provisions in the *Taxation Administration Act* 1953 (Cth) and the *Taxation Administration Regulations* 1976 (Cth). Section 16A(2) of the former authorises provision in the latter "for and in relation to the methods by which the amount of (a tax) liability may be paid". Regulation 18 provides for such methods.

[21] The applicant's implicit contention is misplaced. The *Bills of Exchange Act* does not legislate for the manner in which tax related debts may be paid. No inconsistency arises.

Ground Three

[22] This is not a proper ground of appeal. The applicant did, however, give notice of a constitutional matter on 16 September 2016.[27] I would make the following brief remarks with respect to it.

[23] The notice appears to raise the following questions:

(a) do ss 51(xvi) and 51(xii) of the *Commonwealth Constitution*, which authorise the Commonwealth Parliament to make laws with respect to bills of exchange and promissory notes in the one case and currency, coinage and legal tender in the other, mean that tax related liabilities can be paid by promissory note?

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27 AB483-486.

(b) Is the District Court of Queensland a properly constituted court that is capable of exercising federal jurisdiction to determine questions concerning the *Bills of Exchange Act*?

[24] The first question is misconceived. It assumes that these two placita in s 51 are the sole sources of power available to the Commonwealth Parliament for making laws with respect to the payment of tax related debts. They are not. The taxation power in s 51(ii) is such a source. The second question, which is also misconceived, has been addressed in the discussion of Ground One.

Grounds Four and Five

[25] The applicant's claim is solely contract-based. It necessarily depends upon a proper pleading of a contract or contracts between the applicant and the respondents pursuant to which the sums claimed have become payable. A critical consideration, therefore, is whether the applicant has a viable argument that his Honour erred in finding that the statement of claim was wholly deficient in that respect.

[26] In my view, no arguable error, or misapplication, of law on the part of the learned primary judge with regard to that finding is identified in the applicant's written submissions. Moreover, his Honour's finding is consistent with decisions of the Full Court of the Federal Court of Australia in *Atkinson & Anor v Commissioner of Taxation*[28] and *Wilmink v Westpac Banking Corporation*[29] with respect to comparable documentation. As these decisions illustrate, the notion that, upon delivery of the documents to the ATO, there arose a legally binding contract or contracts between the applicant and any of the defendants containing the terms and conditions alleged, is without any legal merit. It is truly fanciful.

Disposition

[27] For these reasons, I assess the applicant's appeal as having no prospects of success. Leave to appeal must therefore be refused. The applicant should pay the respondents' costs of the application.

Orders

[28] I would propose the following orders:

1. Extend time for the filing of the Notice of Appeal until 8 September 2016.
2. Leave to appeal refused.
3. The applicant is to pay the respondents' costs of and incidental to the application on the standard basis.

[29] **PHILIP McMURDO JA:** I agree with Gotterson JA.

[30] **BODDICE J:** I have read the reasons of Gotterson JA. I agree with those reasons and the proposed orders.

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28 [2015] FCAFC 18; (2015) 318 ALR 585.
29 [2015] FCAFC 17; (2015) 318 ALR 572.