DISTRICT COURT OF SOUTH AUSTRALIA

(Minor Civil Review)

BOHLIN and Others v Outback Communities Authority DCCIV-15-529

Application to Review a Minor Civil Decision

Judgment of His Honour Judge Boylan

[27 October 2015]

Applicant: Joseph Allan Ellis BOHLIN - In person
Respondent: Byron GOUGH on behalf of Outback Communities Authority

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Introduction

1 The four applicants are landholders in Andamooka. They have applied to this Court for a review of a Magistrate's decision that they are liable to pay "community contributions" in the nature of council rates to the Outback Communities Authority. While agreeing that the authority had not followed required legal procedures before imposing the contributions, the learned Magistrate decided that parliament did not intend that such a failure would invalidate the applicants' obligation to pay.

2 For many years, the people of Andamooka ran the town's affairs by consensus and raised money to provide necessary services by selling water and by making voluntary contributions. In 2009, all that changed. The parliament of South Australia established the Outback Community Authority[1] and empowered the Authority to require landholders to pay "community contributions". As I mentioned, those contributions are, effectively, council rates.

3 Before the Authority is permitted to impose a community contribution, it is obliged to consult with the Andamooka Community in accordance with its public consultation policy. The Authority imposed a contribution for the 2012/2013 year without adhering strictly to the terms of that policy. One affected resident, Mr McFarlane, complained to the Ombudsman, whose opinion it was that the levying of the contribution was invalid owing to the failure to comply with the policy. None of the parties to this dispute has argued that the ombudsman was wrong in finding that the Authority had failed to comply with its policy. The Magistrate acted on the basis that the ombudsman's opinion about that aspect of the matter was correct. I shall act on the same basis but I note that neither the Magistrates Court nor this Court is bound by the Ombudsman's opinions.

4 Before the Magistrate and before me, the applicants based their argument upon the Ombudsman's finding that the levying of the contribution was invalid. From that finding, they argue that they are not legally obliged to pay the contribution levied for the 2012/2013 year. I shall turn to the Magistrate's response to that after a short digression.

5 The Ombudsman found that the contribution levied for the 2012/2013 year only was invalid. He was only asked to consider the lawfulness of that period's levy. After the Authority became aware of the ombudsman's report, it altered its procedures. There has been no challenge to the altered procedures; at least, no argument has been put to the Magistrate or to me that the Authority failed to abide by its community consultation obligations when it fixed levies for subsequent years. Accordingly, there is no basis for a court to find that the levies for the subsequent years are invalid.

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[1] See *Outback Communities Administrations and Management Act 2009.*

6 I go to the Magistrate's response to the argument that the applicants are not liable to pay the levy for the 2012/2013 year. Having accepted, for the purposes of the argument, that the Ombudsman was correct in his finding about the failure to adhere to the policy, the learned Magistrate turned to the question of the consequence of the contributions having been unlawfully levied. Or, to put it another way, his Honour accepted that the Authority had breached its statutory obligation to consult and then asked himself what was the legal effect or legal consequence of that breach.

7 His Honour found the answer to that question in the reasoning of the judges of the High Court of Australia in a case called *Project Blue Sky Inc. and Others v The Australian Broadcasting Authority* (1998) 195 CLR 355. Before turning to his Honour's consideration of that case, I must digress again.

8 When arguing the application before me, Mr Gillings suggested that the applicants were taken by surprise in the Magistrates Court when *Project Blue Sky* was mentioned; that it was first mentioned in what he referred to as a "secretive document". I should clear that matter up.

9 It came to the Magistrate's attention that Mr Gough, who represented the Authority, was in possession of a legal opinion prepared by the Crown Solicitor. On advice from the Crown Solicitor, Mr Gough claimed legal professional privilege and declined to let the Magistrate see the opinion. In those circumstances, it is understandable that the applicants, who are not lawyers, might view the document as "secret". But they were not in any way disadvantaged. The Crown Solicitor's opinion was effectively given to them in the form of the respondent's outline of argument and the *Project Blue Sky* decision is available for all to read. In this Court, I offered the applicants an adjournment to consider the High Court decision but they chose to press on.

10 For the benefit of the applicants I say a little more about the "operation" of a decision of the High Court. In argument, Mr Bohlen said that he was a "bit concerned" about the Magistrate's having relied on the *Project Blue Sky* decision; saying that – as I understand him – a decision of such moment decided so many years ago could be of no significance to the applicants' "miniscule bit of problem here". I say two things about that.

11 First, I do not regard the applicants' problem in these proceedings as "miniscule". The sums of money are small, to say the least, compared with those involved in the High Court case but, to many of the respondents of Andamooka, sums of $400 are in no way small. And then there is the principle involved. It is plain that many of those residents are much aggrieved by the role the government, through the Authority, is playing in their community and by the way in which their money is being spent. Those are very important matters and I have treated them as being important. Of course, I do not know if the residents are justified in their complaints: I have not heard the other side of the story. But their problem is in no way "miniscule" as far as I am concerned.

12 Secondly, the importance of the High Court's decision is the legal principle which it sets out. That principle applies to many and varied factual situations, including Andamooka's.

13 I return to the Magistrate's decision. His Honour quoted this passage from *Project Blue Sky*:

> An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends on whether there can be discovered a legislative purpose to invalidate any act that fails to comply with the condition.

There is the principle to which I have referred.

14 If the facts of this case are applied the principle is this: the Outback Communities Authority's failure properly to consult with the Andamooka community does not necessarily mean that the levying of the community contribution was unlawful. Whether it is unlawful and whether the landholders must pay it depends upon whether the South Australian Parliament intended that the levy would be of no effect if the Authority did not strictly comply with the consultation policy.

15 The Magistrate then set about determining if the parliament had such an intention. He took into account that the Authority had substantially complied with the policy and that it was unlikely that the parliament intended that unfairness should result by some residents reaping the benefits of services paid for by others. He said:

> There is in my opinion, nothing in the Outback Communities Administration and Management Act from which one can discern a legislative purpose to invalidate the CARMS Agreement having regard to the minor defects in the consultative process which occurred in this situation. The defects in the consultative process are not of such significance that it should be said that no effective consultation has occurred.

16 In considering an application for the review of a decision such as this, I am not to depart from the Magistrate's decision unless there are cogent reasons for doing so.[2] No such cogent reasons have been demonstrated. In my view, the Magistrate was correct. Accordingly, the application is dismissed and I confirm the learned Magistrate's decision.

17 I say a little more out of respect for the time and effort which the applicants put into their arguments, arguments which were put with great respect and courtesy. Many of those arguments were simply irrelevant to the issues which the Magistrate and I had to consider. I refer particularly to the arguments based on the law of contract and on the Commonwealth Constitution.

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[2] *District Court Act* (1991) s.42E (3).

18 The effect of my decision is that the applicants are obliged to pay the community contributions for the 2012/2013 year. There has been no attack upon the Authority's procedures when it levied contributions in subsequent years and there is no ground upon which the applicants can claim that they are not liable to pay the contributions for those subsequent years.