

Bateman Project Engineering Pty Ltd & Ors v Pegasus Gold Australia Pty Ltd [2000] NTSCFC 34

PARTIES: BATEMAN PROJECT ENGINEERING
PTY LTD & ORS

v

PEGASUS GOLD AUSTRALIA PTY LTD
(ADMINISTRATORS APPOINTED)

ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY AS
INTERVENER

TITLE OF COURT: FULL COURT OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY

JURISDICTION: FULL COURT

FILE NOS: 306 of 1997 (9728220), 21 of 1998
(9801771), 81 of 1998 (9809080)

DELIVERED: 6 June 2000

HEARING DATES: 19 April 2000

JUDGMENT OF: MARTIN CJ, ANGEL & THOMAS JJ

CATCHWORDS:

CONSTITUTIONAL LAW

Legislative powers of Commonwealth parliament in relation to Territories – whether proceedings in a Territory court be validly transferred to the Federal Court of Australia and can that court hear and determine the proceedings under the provisions of the *Jurisdiction of Courts (Cross-Vesting) Act* 1987 (Cth).

Held:

Full Court concluded in the affirmative

Commonwealth of Australia Constitution Act 1900, s 122

Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth), s 5 and s 9

Northern Territory of Australia v GPAO & Ors (1999) 196 CLR 553,
applied.

Spinks v Prentice (1999) 163 ALR 270, considered.

REPRESENTATION:

Counsel:

Plaintiffs:	D Alderman
Defendant:	D Grieves
Intervener	T Pauling QC

Solicitors:

Plaintiffs:	Hunt and Hunt
Defendant:	Ward Keller
Intervener:	Solicitor General for the NT on behalf of the Attorney-General

Judgment category classification:	A
Judgment ID Number:	mar20009
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Mar20009

IN THE FULL COURT OF THE
SUPREME COURT OF THE
NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Bateman Project Engineering Pty Ltd & Ors v Pegasus Gold Australia Pty
Ltd* [2000] NTSC 34

Nos. 306/97 (9728220), 21/98 (9801771), 81/98 (9809080)

BETWEEN:

**BATEMAN PROJECT ENGINEERING
PTY LTD**

First Plaintiff

AND:

KINHILL PACIFIC PTY LIMITED

Second Plaintiff

AND:

**KILBORN ENGINEERING PACIFIC
PTY LIMITED**

Third Plaintiff

AND

**PEGASUS GOLD AUSTRALIA PTY
LTD (ADMINISTRATORS
APPOINTED)**

Defendant

AND

**ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY**

Intervener

CORAM: MARTIN CJ, ANGEL & THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 6 June 2000)

[1] The *Jurisdiction of Courts (Cross-vesting) Act* of the Commonwealth 1987 provides in s 5 that in the circumstances prescribed this Court shall transfer proceedings pending in the court to the Federal Court of Australia or the Family Court of Australia as the case may require. The Act further provides in s 9 that each of those courts have jurisdiction to hear and determine a proceeding so transferred.

[2] Pursuant to s 21 of the *Supreme Court Act* 1979 (NT) a Judge of the court, Justice Mildren, hearing proceedings between these parties, referred part of them to this Court. The reference accepted by this Court is:

“Can these proceedings be validly transferred by this Court to the Federal Court of Australia and can that court validly hear and determine the proceedings under the provisions of the *Jurisdiction of Courts (Cross-vesting) Act* 1987 of the Commonwealth.”

[3] In summary, the proceedings involved claims by the plaintiffs for work carried out at the request of the defendant and for orders for enforcement of statutory liens under the *Workmens Liens Act* 1893 (NT). There are a number of defences pleaded, including breach of contract, negligence and breaches of the *Trade Practices Act*.

[4] The reference arises in the context of the decisions by the High Court in *re Wakim ex parte McNally & Anor* (1999) 163 ALR 270 and other cases decided at the same time. It was there held that the purported conferral of

jurisdiction on the Federal Court by the Corporations Laws of the States to hear and determine proceedings are invalid. That is so notwithstanding that the Corporations Laws of the Parliament of the Commonwealth provide that the Federal Court can exercise the jurisdiction conferred on it by the law of a State. Such a scheme foundered on Ch III of the Constitution.

- [5] Amongst that group of decisions, however, was *Spinks v Prentice* arising from proceedings in the Federal Court under the Corporations Law of the Australian Capital Territory. It was unanimously held that the appeal challenging the Corporations Law cross-vesting scheme by the conferral of jurisdiction on the Federal Court under Territory law and the power to exercise that jurisdiction under Commonwealth law is valid.
- [6] Their Honours Gummow and Hayne JJ at pp 318 – 321 survey the authorities and relied in particular on the *Northern Territory of Australia v GPAO and Others* (1999) 196 CLR 553, Gleeson CJ and Gaudron J separately agreed with those reasons at p 281, McHugh J said that since the decision in *GPAO* the jurisdiction of the Federal Court to make the order in question cannot be challenged, Kirby J agreed with the decision of the Full Court of the Federal Court from which the application for special leave to appeal was brought, p 339, and Callinan J at p 353 applied *GPAO* in coming to his decision that the Federal Court had jurisdiction to make the orders in question.

- [7] The result in *GPAO* did not flow from a unanimous decision. However, the majority, comprising Gleeson CJ and Gummow J. at p 591, Hayne J concurring at p 650 and Gaudron J at p 605 held it was within constitutional power for a law of the Parliament of the Commonwealth to confer jurisdiction on a Federal Court in matters arising under laws made for Territories under s 122 of the Constitution.
- [8] The decisions of the High Court in *Wakim* and the related cases demonstrate that the provisions of the cross-vesting scheme there under consideration are severable so as to render conferral of jurisdiction by State Parliaments on the Federal Court invalid, but conferral by a Territory Parliament on a Federal Court valid. There is no reason why the provisions of the Commonwealth law here being considered should not be dealt with in the same manner. In so far as they deal with the general power to transfer proceedings from this Court to the Federal Court and the power of that court to hear and determine them, it is a law enacted under s 122 of the Constitution. It stands aside from the provisions held to be invalid and can thus be regarded quite separately.
- [9] The plaintiffs did not seek to be heard upon the reference, but counsel for the defendant, and the Solicitor General for the Northern Territory intervening, submitted that upon those authorities the answer to the question was yes.

[10] At the conclusion of the hearing we answered the reference in the affirmative and these are the reasons for that order.
