

*T C Distributors (NT) Pty Ltd, Christina Jennifer Kalogeropoulos,
Theodorou Kalogeropoulos v Northern Territory of Australia* [2001] NTSC 14

PARTIES: T C DISTRIBUTORS (NT) PTY LTD
CHRISTINA JENNIFER KALOGEROPOULOS
THEODOROU KALOGEROPOULOS

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: CIVIL

FILE NO: No 57 of 2000

DELIVERED: 16 March 2001

HEARING DATES: 14 & 15 February 2001

JUDGMENT OF: ANGEL J

REPRESENTATION:

Counsel:

Appellant: Mr J B Waters QC
Respondent: Mr T I Pauling QC and Mr P McNab

Solicitors:

Appellant: Geoff James
Respondent: Cridlands

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

*T C Distributors (NT) Pty Ltd, Christina Jennifer Kalogeropoulos,
Theodorou Kalogeropoulos v Northern Territory of Australia* [2001] NTSC 14
No. 57 of 2000

BETWEEN:

**T C DISTRIBUTORS (NT) PTY LTD
CHRISTINA JENNIFER KALOGEROPOULOS
THEODOROU KALOGEROPOULOS**
Plaintiffs

AND:

NORTHERN TERRITORY OF AUSTRALIA
Defendant

REASONS FOR JUDGMENT

(Delivered 16 March 2001)

ANGEL J:

- [1] In *Elliott and Others v the Minister for Transport and Infrastructure Development and the Northern Territory of Australia* [2000] NTSC 91 I held that the cancellation of the plaintiffs' taxi licences in virtue of the Commercial Passenger (Road) Transport Amendment Act 1998 constituted an acquisition of property. Those taxi licences, like the present plaintiffs' omnibus licences, were issued pursuant to the Commercial Passenger (Road) Transport Act as in force immediately before 1 January 1999.
- [2] In the present action the plaintiffs seek a declaration to the effect that the Commercial Passenger (Road) Transport Amendment Act 1998 effected an

acquisition of property otherwise than on just terms for the purposes of s 86 of the Act.

[3] The defendant denies that there has been any acquisition of property otherwise than on just terms brought about by the Commercial Passenger (Road) Transport Amendment Act 1998 because:

(1) the plaintiffs' interests as the holders of motor omnibus licences under the Commercial Passenger (Road) Transport Act do not constitute "property" interests, and

(2) there was no "acquisition" because no benefit or reciprocal liability was acquired, whether by transfer, vesting or otherwise and the 1998 amendment constituted no more than a modification or extinguishment of a statutory entitlement which had no basis in the general law.

[4] Prior to the commencement on 1 January 1999 of the amendment Act, the holder of a motor omnibus licence under the Commercial passenger (Road) Transport Act was "immunized" from the criminal offence of plying a vehicle for hire without a motor omnibus licence: see s 39: cf *Commonwealth v WMC Resources Ltd* (1998) 194 CLR 1 at 72 per Gummow J. After 1 January 1999 a motor omnibus licence holder who operated a mini bus, that is, a private motor vehicle fitted, equipped or constructed to carry more than eight passengers but not more than fifteen passengers, was required to hold a mini bus licence in place of or in addition to a motor

omnibus licence. A motor omnibus for the purposes of the new legislative scheme is a motor vehicle fitted, equipped or constructed to carry more than eight passengers and used to carry passengers for hire or reward. Prior to the amendments an ordinary mini bus operator with a motor omnibus licence was entitled to solicit for and carry passengers for hire or reward: s 3 (definition of “operate”): s 3(2) as then in force. Prior to 1 January 1999 a motor omnibus licence remained in force for a period of three years “unless sooner cancelled or suspended”: Commercial Passenger (Road) Transport Act s 43 as then in force. A motor omnibus licence could be renewed but there was no obligation on the Northern Territory to renew: s 43 as then in force. By way of contrast a taxi licence remained in force for such period as the holder of the licence was an accredited operator: s 25 as then in force. A motor omnibus licence was issued subject to conditions which could be amended from time to time: s 41 as then in force. Unlike the case for taxis and private hire car licences, no provision was made in the Act for transfer of motor omnibus licences. Taxi licences could be transferred: s 26 as then in force, could be used as security for loans: s 27 as then in force, were limited in number: s 16 as then in force, could be acquired by tender: s 17 as then in force, or at auction: s 18 as then in force, and were expressly transferable: s 26 as then in force.

- [5] After 1 January 1999 an omnibus licence holder was subject to a new regulatory regime: see Commercial Passenger (Road) Transport Act Part 5A dealing with licence conditions and mini bus areas. Mini bus licences are

issued for twelve months only: s 38G, and an annual fee is payable: see Mini Bus Regulations 98 Schedule 1(b).

[6] Having regard to the statutory provisions prior to 1 January 1999 relating to an omnibus licence I have reached the conclusion that the former omnibus licence was not an interest in property.

[7] The plaintiffs' argument is encapsulated in paragraph 10 of their written submission which was in the following terms:

“10. The Plaintiffs in the case at bar contend that the 1998 CRPTA Amendments did not ‘simply modify or extinguish a statutory right’. The right that was abolished was the plaintiffs’ right to offer their vehicles for hire and to contract with passengers. It confiscated the plaintiffs’ business including its goodwill. The plaintiffs did not just have a right granted or created by the licensing regime which applied prior to 1998. The Plaintiffs had a common law right or entitlement which was merely regulated by the creation of the earlier licences (s 39 of the Act). The Act previously only regulated matters of safety, etc. The abolition of the old licensing scheme and the institution of the new ‘mini bus’ licence (s 38A) and the limitations on the omnibus licences did more than simply modify or extinguish a statutory right. It extinguished the common law right to ply for hire and extinguished the goodwill that attached to the plaintiffs’ business (which had been built up upon that right to hire).”

[8] I am unable to agree with these submissions. In *R v Toohey; ex parte Meneling Station* (1983) 158 CLR 327 at 342, 343. Mason J, as he then was, said:

“In *National Provincial Bank Ltd v Ainsworth*, Lord Wilberforce said:

‘Before a right or interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of

assumption by third parties, and have some degree of permanence or stability.’

In my opinion, the rights of the holder of a grazing licence created under the *Crown Lands Act* fall short in two respects of the concept of property or proprietary rights expressed by Lord Wilberforce. Regulation 71 (the Minister’s power to forfeit a grazing licence where the licensee fails to comply with a condition of the licence after having been given notice to do so) and reg. 71B (the right of a licensee to surrender his licence) are not inconsistent with the notion that a grazing licensee holds an interest in land. But reg. 71A represents a substantial obstacle to the applicants’ case. That regulation enables the Minister to cancel a licence, the only precondition being that he give three months’ notice in writing of his intention to do so. No default on the part of the licensee is necessary. The regulation suggests that the licensee has no interest in the land at all. The future of his right to graze stock is, by virtue of the Minister’s power to cancel, absolutely in the hands of the Minister and beyond his own control. A right terminable in the manner permitted by reg. 71A lacks that degree of permanence of which his Lordship spoke.”

- [9] A motor omnibus licence is necessarily characterized by the statutory provisions enshrouding it. It was not capable of assumption by third parties and was without any degree of permanence or stability. It could be cancelled without fault on the part of the licensee. An omnibus licence was a statutory entitlement inherently susceptible of statutory modification or extinguishment. In my opinion, the amending Act modified a statutory right that had no basis in the general law. In my opinion the amending Act did not confer any interest in property or other benefit on the Territory or any other person and was not a law that could be characterized as a law with respect to the acquisition of property. Both before and after 1 January 1999 there was no restriction on the number of licenced omnibus operators.

Unlike the case with taxis there was no subsisting statutory monopoly at the time of the amending Act.

[10] I would only add that the plaintiffs' argument is incorrectly premised on a pre-statute private right to ply motor vehicles for hire, whereas the pre-statute right of which the plaintiffs speak is a public right rather than a private right: cf *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314 at 334–35. Moreover the omnibus licences, given their statutory features, could not be a source of goodwill: *Commissioner of Taxation v Murry* (1998) 193 CLR 605 at 629, 637–38.

[11] The plaintiffs are not entitled to the declarations sought.

[12] I will hear the parties as to costs and as to the future course of these proceedings.