



Précis Paper

Tran v Kodari Securities Pty Ltd [2019] FCA 968

A discussion of the case of Tran v Kodari Securities Pty Ltd, which involved workers rights to seek legal advice before signing an employment contract.

Discussion Includes

- Facts of the case
- Significance of a workplace right
- Conflict of evidence
- Claim of coercion
- Relief for Mr. Tran
- Lessons for employers

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Tran v Kodari Securities Pty Ltd [2019] FCA 968

1. In this edition of BenchTV, Tom Brennan (Barrister, 13 Wentworth Selborne) and Dilan Mahendra (Barrister, Greenway Chambers) discuss the case of Tran v Kodari Securities Pty Ltd, which involved workers rights to seek legal advice before signing an employment contract.

Facts of the case

2. The case concerned an individual, Mr. Tran, who was initially employed as a bodyguard to one Mr. Michael Kodari, who was the sole director and shareholder of Kodari Securities. He eventually became CFO of the company. The relationship broke down. He was asked to sign an employment contract and replied that he wished to seek legal advice. Following this, Mr. Tran was dismissed.
3. This was a contravention of s 340 of the *Fair Work Act 2009 (Cth)*.
4. There was also a claim that Mr. Kodari's father, Mr. George Kodari, had coerced Mr. Tran into not exercising that workplace right by demanding that he signed the contract.

Significance of a workplace right

5. A workplace right under s 340 of the *Fair Work Act 2009 (Cth)* is where you have a benefit or a responsibility under a workplace law. It also includes making complaints and/or inquiries in relation to your employment.
6. Mr. Tran making an assertion that he wanted to get legal advice fell within the compass of making an inquiry and/or complaint in relation to his employment.

Conflict of evidence

7. This case was about a conflict of evidence, because the facts that were being presented by each party were unable to be reconciled.
8. The judge was looking at the entirety of the evidence and the objective evidence, including the surrounding circumstances, which included for example contemporaneous text messages.
9. There was no subsequent denial by Kodari Securities that there was no exercise of a workplace right and no denial that Mr. Tran actually said that he wished to seek legal advice.

Claim of coercion

10. The coercion claim concerned an exchange between Mr. George Kodari and Mr. Tran, where Mr. Tran was saying that he wanted to get legal advice, and Mr. George Kodari was demanding that he signed the contract in effect without getting legal advice, in effect trying to coerce him into not exercising the workplace right to seek legal advice.
11. The legal test in relation to coercion is in effect the intention to negate someones choice.

Relief for Mr. Tran

12. Mr Tran got six months pay which equated to \$75,000; there were penalties against the company, and there were also penalties against each of the individual respondents, being Mr. Michael Kodari and Mr. George Kodari.

Lessons for employers

13. People are entitled to get legal advice about and employment contract.
14. It is important to keep contemporaneous records of what you say occurred.
15. Employers should have someone independent present who doesn't have a personal interest in the outcome.

BIOGRAPHY

Tom Brennan

Barrister, 13 Wentworth Selborne, Sydney

Tom Brennan is a barrister who conducts a generalist commercial and regulatory practice. He is recognised as expert in administrative, competition and consumer, insurance, employment and private international law and in equity; including in five specialist areas:

- (a) Civil aviation – regulatory, commercial, insurance and civil liability;
- (b) The law governing intelligence and security agencies and operations;
- (c) Public access to government information;
- (d) Employment disputes; and
- (e) Anti-suit injunctions.

Dilan Mahendra

Barrister, Greenway Chambers, Sydney

Dilan's practice is focused on employment law, restraints of trade, administrative law, and commercial/equity law. Prior to coming to the Bar in 2010, Dilan was a Senior Associate at Sparke Helmore Lawyers, where he worked in Employment and Industrial Relations law.

Dilan provides a stress-free experience for solicitors who brief him. He has a clear thinking and practical approach to litigation. Dilan aptly deals with the pressures of litigation and tight deadlines, by employing a calm demeanour and attention to detail.

Dilan is recognised for his strategic approach to litigation and his forensic questioning, he is well prepared for each unique situation and thinks quickly on his feet. He is a thorough advocate and is always committed to presenting all available arguments in a persuasive and succinct manner. Dilan receives consistent positive feedback from solicitors, due to his clients receiving exceptional legal representation.

Dilan is particularly interested in matters involving post-termination restraints. Since coming to the Bar Dilan has developed a reputation as a "go to" junior counsel for restraint of trade matters. Since July 2016, Dilan has been involved in well over 30 restraint of trade matters (some of which are mentioned below).

Since 2016, Dilan has been recognised in Doyle's Leading Employment & WHS Barristers for NSW and Australia.

BIBLIOGRAPHY

Focus Case

Tran v Kodari Securities Pty Ltd [2019] FCA 968

Benchmark Link

https://benchmarkinc.com.au/benchmark/weekly_government/benchmark_28-06-2019_weekly_government.pdf

Judgment Link

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2019/968.html>

Cases

Esso Australia Pty Ltd v The Australian Workers' Union; The Australian Workers' Union v Esso Australia Pty Ltd [2017] HCA 54

Legislation

Fair Work Act 2009 (Cth)