FEDERAL CIRCUIT COURT OF AUSTRALIA

OWNIT CONVEYANCING AUSTRALIA PTY LTD v AKI18 & ANOR *[2018] FCCA 1790*

Catchwords:
CHILD SUPPORT – Summary dismissal. A question of the validity of a s72A notice to a conveyancing solicitor

Legislation:
Child Support (Assessment) Act 1989 (Cth)
Child Support (Registration and Collection) Act 1988 (Cth), s. 72A
Federal Circuit Court of Australia Act 1999 (Cth), ss. 16, 17A

Cases cited:
Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd [2014] FCA 1405
Australian Competition and Consumer Commission v Telstra Corporation Limited [2018] FCA 571

Applicant:	OWNIT CONVEYANCING AUSTRALIA PTY LTD
First Respondent:	AKI18
Second Respondent:	CHILD SUPPORT REGISTRAR
File Number:	BRG 75 of 2018
Judgment of:	Judge Cassidy
Hearing date:	10 May 2018
Date of Last Submission:	10 May 2018
Delivered at:	Brisbane
Delivered on:	10 July 2018

REPRESENTATION

Counsel for the Applicant:	Mr Andreatidis of Counsel
Solicitors for the Applicant:	Hyland Law
Solicitors for the First Respondent:	Walt Allan
Solicitors for the Second Respondent:	Mills Oakley Lawyers

ORDERS

THE COURT ORDERS UNTIL FURTHER ORDER:

(1) That the Application in a Case filed by the First Respondent on 14 April 2018 be dismissed.

(2) That any application for costs be dealt with by written submissions with the party or parties seeking costs to file and serve any affidavit/s and submissions within twenty-eight (28) days.

(3) The respondent to any costs application shall file and serve any affidavit/s and written submissions they seek to rely on within a further twenty-eight (28) days.

(4) That the matter be adjourned for mention only to hear submissions on how the substantive matter should proceed, at **9:00am** on **1 August 2018** in the Federal Circuit Court of Australia at **Brisbane.**

FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE

BRG 75 of 2018

OWNIT CONVEYANCING AUSTRALIA PTY LTD

Applicant

And

AKI18

First Respondent

And

CHILD SUPPORT REGISTRAR

Second Respondent

REASONS FOR JUDGMENT

Background

1. On 25 July 2017, the Federal Circuit Court of Australia made final consent Orders for the distribution of property between the First Respondent, Mr McDonald ("Mr McDonald"), and his former wife Ms McDonald.

2. The Orders provided for the sale of the former matrimonial home situated at Banksia Beach in the State of Queensland, 4501 ("the Property").

3. On 1 September 2017, Mr McDonald and his former wife entered into a contract to sell the property to Mr Glenn Anthony Taylor and Desiree Geraldine Taylor ("the buyers").

4. Ownit Law ("Ownit"), were engaged to conduct the purchase conveyance of the property for the buyers.

5. Mr McDonald acted for himself for almost all of the sale process.

6. The Child Support Registrar became involved because the Registrar issued a notice to Ownit to forward $41,452.26 to the Department of Human Services, such sum to be from Mr McDonald's share of the nett proceeds of sale.

7. It is against this background that the substantive application by Ownit and the summary dismissal application by Mr McDonald play out.

The Applications

8. On 29 January 2018, Ownit filed an Application that sought the following orders:

> *"1. Declaration the bank cheque for $41,452.26 payable to the Department of Human Services and held by the applicant is properly payable by the applicant to the Department of Human Services pursuant to the Notice to Pay dated 25 October 2017 from the second respondent to the applicant.*
>
> *2. That the applicant forward the bank cheque $41,452.26 to the Department of Human Services.*
>
> *3. That the first respondent pay the applicant's costs of the application on the indemnity basis in the amount fixed by the Court.*
>
> *4. Alternatively to paragraph 3, that the first respondent pay the applicant's costs of the application on the indemnity basis in the amount agreed by the applicant and the first respondent or failing agreement as assessed.*
>
> *5. That the applicant deliver the bank cheque for $177,112.74 payable to the first respondent and held by the applicant to the first respondent in exchange for a bank cheque payable to the trust account of the applicant's solicitors in the amount of the costs to be paid by the first respondent to the applicant pursuant to paragraph 3 or 4 hereof.*
>
> *6. That the applicant forward the bank cheque for $458.68 payable to Unity water and held by the applicant to Unity water."*

9. On 1 March 2018 Mr McDonald filed a Response seeking the Application be dismissed and an order for costs.

10. On 9 April 2018 the Child Support Registrar filed a Response seeking the following orders:

> *"1. The Court declares that the notices dated 6 September 2017 and 25 October 2017 issued by the Second Respondent pursuant to section 72A of the Child Support (Registration and Collection) Act 1988 are valid.*
>
> *2. The First Respondent to pay the costs of the Second Respondent."*

11. On 16 April 2018, Mr McDonald filed and Application in a Case seeking that the Application filed by Ownit be dismissed summarily and that Ownit pay his costs on an indemnity basis.

Chronology

12. The chronology of the matter is as follows:

Date	Event
6.9.2017	Ownit was sent a 'Notice to Pay Money' directly from the Child Support Registrar pursuant to section 72A ("the first notice"). The first notice required Ownit to pay $38,117.75 payable to Mr McDonald to the Child Support Registrar within seven days of the date on which the money becomes due or is held.
19.9.2017	Ownit received the first notice.
12.10.2017	Ownit sent a copy of the first notice to Mr McDonald.
25.10.2017	Mr McDonald forwarded an email to Ownit that copied an email from "admin@childsupport.com.au" to "admin@childsupport.com.au" ("the child support email"). The child support email commences: "*Recently we have noticed an increase in Notices being purportedly issued under section 72A of the Child*

	Support (Registration & Collection) Act 1988 (Cth) to recover money from third parties...(sic)" The email goes on to record: "*Because the letters are anonymous the only legal recourse is against the individual who takes the money and hands it over.* *We know for a fact that the "Human Services" will not take any action against someone who refuses to comply with a notice on the basis that there is nothing to evidence the notice being issued by the Child Support Registrar. They will also refuse to issue it with the Child Support Registrar and a name at the bottom. They will jump up and down and make threats and that is because the letter has no legal force or effect.* *Of concern is the number of lawyers and conveyancing clerks complying with these. In particular we have heard of conveyancing clerks instructing a fourth party, usually a bank, to make out a check to the Registrar even though section 72A provides no power to the Registrar to compel a third party to instruct a fourth party bank to hand over money. A lot of this is done with a wink and a nod over the phone with an anonymous Human Services employee.* *We are not looking for any member who has had such an experience. We want to commence legal proceedings against the individual who hands the money over. Given the legislation does not provide any power to direct a fourth party to hand money over we also intent to investigate the possibility that there is criminal as well as civil liability* *Kind regards*

	Admin (sic)".
26.10.2017	Ownit send an email to Mr McDonald attaching a settlement statement that did not deduct the amount in the child support notice from his settlement sum.
	Mr McDonald sent an email to Ownit that provides: "*I fully understand that if you have been issued with a valid notice from the Child Support Registrar (and I note you refer several times to the Child Support Agency) you would be required by law to comply if and only if you hold, or may subsequently hold, money for or on account of me or if you have authority from some other person to pay money to me. That isn't the case.* *Firstly, there is nothing on that document you hold to evidence it is issued by the Child Support Registrar and even you must wonder why not...* *My position is that the money is not in fact owed and that is why no person is willing to put themselves in a position of being liable.* *I advise therefore that I will be present at settlement to receive my cheque from the bank for the full amount...* *There is nothing on the face of that document you hold evidences it being issued by the Child Support Registrar.*"
27.10.2017	Alison Higgins from the Child Support Registrar sent an email to Ownit, saying: *"I thank you for your understanding of the legal requirement to comply with the section 72A notice for a deduction to occur at settlement. I confirm that Mr McDonald is unable to provide any instruction in relation to the notices issued by Child Support.*

	Today you have advised that Mr McDonald has contacted you by email and is threatening personal legal action against you if you comply with the notice and that you have responded by having a Solicitor respond in writing confirming your intention to comply and that you have directed Mr McDonald to speak with Child Support. *As discussed Child Support would be happy to discuss the issuing of the notice with Mr McDonald directly and he can call 131 272 during business hours.* *Please find attached copies of the revocation notice and a new section 72A notice. The original notices have been sent by email for your records."* That email also contained a Notice of Withdrawal/Revocation of the Notice to Pay (the first notice) and a Notice to Pay $41,452.26 ("the second notice").
30.10.2017	Ownit forwarded a settlement statement to Mr McDonald that set out a payment to the Department of Human Services of $41,452.26 and a corresponding reduction in the payment to Mr McDonald from $218,314.66 to $177,112.74.
31.10.2017	Mr G.R. Brown, a solicitor engaged by Mr McDonald sent the following let to Ownit: "*Dear Colleagues,* *Re: McDonald sale to Taylor – 14 Endeavour Drive, Banksia Beach* *I wish to advise I have been instructed to act on behalf of Glenn McDonald in relation to the sale of the above property to your client.* *My client has provided you with payment instructions in his settlement statement. I note the Department of*

	Human Services has issued a Notice to your office requesting your office to pay them a sum of money, which you then included in the payee section of the settlement statement. Accordingly, there is clearly a dispute regarding the cheques to be drawn at settlement. *As you may already be aware, my client is disputing that Notice on several grounds.* *I therefore have instructions to request an extension of time for settlement to tomorrow, 1 November 2017 with time to remain of the essence.* *Yours faithfully...*"
1.11.2017	G.R. Brown sent an email to Ownit that said: "*Dear Colleagues,* *Re: McDonald sale to Taylor – 14 Endeavour Drive, Banksia Beach* *I refer to our previous communications in relation to the above matter and advise that I no longer hold instructions to act for Glenn McDonald.*"
	Mr McDonald sends an email to Ownit that provides: "*I maintain my position in this matter is as below:* • *The requirement that you say arises as a consequent (sic) of the document you hold which you purport to be a notice issued under section 72A of the Child Support (Registration & Collection) Act 1988 [the Act] is invalid.* • *If it were valid you are not a person who is in a position to comply and are obligated therefore a person who has a reasonable excuse (and in fact*

	a lawful excuse) under section 72(2A) of the Act... *If there is a refusal to provide the new document with the name and official position of the person issuing for and behalf of the Child Support Registrar I will not agree to the transfer taking place on the basis of your settlement statement and I formally withdraw my consent in respect of my signature on the transfer documents. In that respect I pre-signed the transfer documents in good faith only on the basis that I would be paid my full share of the sale proceeds less the usual settlement costs in accordance with the terms set out in my settlement statement. In the event that you intend to proceed without my consent to the transfer I intend to hold you personally to full liability for the amount taken...* *I therefore do not agree or in fact consent for you to act on the purported requirement and or to direct the purchaser's bank to withhold the money claimed and to pay that money to the Child Support Registrar* (sic)."
	Settlement was to occur at 4:00pm at the Land Title Office at Caboolture. At the settlement: • Mr McDonald refused to accept the cheque for $177,112.74 because it was not the correct amount of consideration agreed in the contract for sale. • Mr McDonald was asked by Stephen Burton, "*so I understand you're terminating or are you not...*" • Mr McDonald responded "*no, I want them to fix the cheque up.*" • Mr McDonald left without taking the cheque made out to him.

2.11.2017	Mr McDonald wrote to the Director General, Department of Natural Resources and Mines, Land Titles Office Caboolture and advised: "*...Please be advised that settlement of the above referenced property yesterday afternoon at the Caboolture Office was affected by serious fraud in that there was no financial settlement and the sale of the land was therefore not completed...* *The reason for consideration for the property not being exchanged was the Polhmann received what was purported to be a requirement from the Child Support Registrar to withhold money from settlement and to pay the money to the Department of Human Services. There are three issues with the validity of the requirement...*"
6.11.2017	Mr McDonald wrote to Ownit still referring to the notice: "*...you purport is a notice from the Child Support Agency under Section 72A of the Child Support (Registration & Collection) Act 1988.*" and further on in the letter: *"Secondly, in respect of the statement I note the following that:* - *There was nothing on the document you purport to be a notice from the Child Support Agency under Section 72A of the Child Support (Registration & Collection) Act 1988 to evidence a requirement by the Child Support Registrar; and* - *You had communications with a person you purport had authority in respect to the said notice who you purport intended to issue a revised notice; and ...*"

9.11.2017	Mr McDonald wrote to Ownit: *"In that instance I was presented with a cheque for the incorrect amount of $177,109.33 and I refused to accept it. The correct amount of consideration to have settled the transfer was $218,565.00 as provided to you in my Settlement Statement...* *Accordingly, settlement did not occur or alternatively, I retain my full financial interest in the property and I will seek to have the transfer overturned on the basis of fraud."*
14.11.2017	Mr McDonald lodged a caveat on the Property alleging: "*4. Grounds of claim* *The house was bound to a Contract of Sale with 2 vendors: The Purchasers conveyancing agent failed to present my share at settlement and my consent to use my signature provided much earlier on their undertaking was formally withdrawn. The conveyancing agent and solicitors acting for the conveyancing firm and the other vendor lodged all Transfer document knowing this fact. My half of the property was not settled as I have not been paid the amount as per contract. Stat. Dec. attached..."* The caveat was not registered, it was requisitioned.
1.3.2018	Mr McDonald swears an affidavit in these proceedings where his evidence is: • *"11. On 12 October 2017, Ms Pohlmann sent me an email attaching a purported letter purported to be written under s 72A ("the first letter purported to be written under s 72A")...* • *13. On 26 October 2017 (5:49pm), I emailed Ms Pohlmann, disputing the validity of the requirement referred to in the first letter purported to be written under s 72A, and*

	disputing that I owe any money referred to in the notice... • *14. ... She also attached a revocation notice for the first letter purported to be written under s 72A, and attached a new letter purported to be written under s 72A in a slightly larger amount (ie $41,452.26) ("the second letter purported to be written under s 72A"). Similar to the first letter purported to be written under s 72A, there is nothing in the second letter purported to be written under s 72A to evidence a requirement referred to in the section and nothing in fact to evidence who the letter is from...* • *51. Further, I object on the basis that there was nothing in the letter purported to be under s 72A to evidence a requirement being made by the Child Support Registrar. I have never been properly assessed for child support under the Child Support (Assessment) Act 1989 (Cth). Accordingly, I have never had the opportunity to object to any such assessment, or to seek review or appeal of such assessment pursuant to the rights contained in the Child Support (Assessment) Act 1989 (Cth)."*
10.05.2018	Mr McDonald at the hearing of the summary dismissal application through his lawyer submitted: *"[15] Now, it's also indisputable that my client had not instituted any proceedings seeking to set aside the section 72A notice. Now, those are the principal facts, your Honour. Then there are two matters of law that I wish to discuss with your Honour. The first one is that it's a basic administrative law principle that notices such as this section 72A notice is valid at law unless and until it is set aside in proceedings. And I refer to Ousley*

	& Bhardwaj. The cases are in there. They're in my written submissions..." This was the first indication from Mr McDonald that he may not be contesting the validity of the s72A notice.

The law

Summary dismissal

13. The relevant provision is section 17A of the *Federal Circuit Court of Australia Act 1999* (Cth):

> *"Summary judgment*
>
> *(1) The Federal Circuit Court of Australia may give judgment for one party against another in relation to the whole or any part of a proceeding if:*
>
> > *(a) The first party is prosecuting the proceeding or that part of the proceeding; and*
> >
> > *(b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.*
>
> *(2) The Federal Circuit Court of Australia may give judgment for one party against another in relation to the whole or any part of a proceeding if:*
>
> > *(a) the first party is defending the proceeding or that part of the proceeding; and*
> >
> > *(b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.*
>
> *(3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:*
>
> > *(a) hopeless; or*

(b) bound to fail;

for it to have no reasonable prospect of success.

(4) This section does not limit any powers that the Federal Circuit Court of Australia has apart from this section."

14. The commentary on section 17A in *Australian Family Law* is a useful discussion of the relevant section:

> *"[19,120.5] Introductory comment*
>
> *Section 17A is supported by r 13.07 and 13.10 of the Federal Circuit Court Rules 2001 – see commentary. The section grants power to the court to summarily dismiss proceedings found to have no reasonable prospect of success. Given the ramifications of not conducting a trial to consider the evidence, it should be used sparingly: see Spencer v Commonwealth (2010) 241 CLR 118; 269 ALR 233; [2010] HCA 28; BC201006309. See the decision of Cassidy J in Hallett & Hallett (SSAT Appeal) [2015] FCCA 2462; BC201509001 for the application of s 17A in summarily dismissing a Notice of Appeal (Child Support (Registration and Collection) Act 1988).*
>
> *[19,120.10] Test is different as between the Court and the Family Court*
>
> *As observed by Judge Scarlett in Pullman v Pullman (2013) 50 Fam LR 460; [2013] FCCA 31; BC201313016 at [42] practitioners should be wary of relying on decisions made by the Family Court because the test is not the same in the Federal Circuit Court. That is, the test is not whether the application has "reasonable prospects of success": ibid at [45]. In that case the wife sought to summarily dismiss the husband's s 79A application. In determining whether a party has "no reasonable prospects of success" consideration must be given to the applicable law and facts of the case. "Prospects" should be gauged in terms of "rational, realistic, logical or sound: see Gaffney v Erikson [2011] FMCAfam 1177; BC201108782 at [50] – [51].*
>
> *Guidelines In Pullman (supra) Scarlett J considered that Kirby J's decision in Lindon v Commonwealth (No 2) (1996) 136 ALR 251; 70 ALJR 541; [1996] 8 Leg Rep 11; BC9601768 was useful and as para-phrased by Scarlett J is repeated below:*

The approach to be taken by the Court to the Commonwealth's application for summary relief is not in doubt.

1. It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief... is rarely and sparingly provided.

2. To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action or is advancing a claim that is clearly frivolous or vexatious.

3. An opinion of the Court that a case appears weak and such that it is unlikely to succeeds is not alone, sufficient to warrant summary termination. Even a weak case is entitle to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and argument and extended time for reflection will sometimes turn an apparently uncompromising cause into a successful judgment.

4. Summary relief... for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer. If her is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do so in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on a imagined or assumed facts.

5. If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a court will ordinarily allow that party to reframe its pleading...

6. The guiding principle is...doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit."

The notice to pay

15. Sections 72A(1),(2),(2A),(2B) and (9) of the *Child Support (Registration and Collection) Act 1988* (Cth) are the provisions relevant to this Application:

> *"Registrar may collect child support related debts from a third person*
>
> *(1) The Registrar may give written notice to a person:*
>
> *(a) by whom money is due or accruing, or may become due, to a child support debtor; or*
>
> *(b) who holds, or may subsequently hold, money for or on account of a child support debtor; or*
>
> *(c) who holds, or may subsequently hold money on account of some other person for payment to a child support debtor; or*
>
> *(d) who has authority from some other person to pay money to a child support debtor;*
>
> *requiring that person to pay to the Registrar:*
>
> *(e) if the amount of money is more than the maximum notified deduction total--an amount equal to the maximum notified deduction total; or*
>
> *(f) if the amount of money is equal to or less than the maximum notified deduction total--the amount of money; or*
>
> *(g) if the notice specifies an amount of money that is to be paid out of each payment that the notified person becomes liable, from time to time, to make to the debtor--that amount until the maximum notified deduction total is satisfied.*
>
> *(1A) A notice given under subsection (1) requires the notified person to continue to make payments in accordance with that subsection until the maximum notified deduction total is satisfied.*

(1B) For the purposes of subsection (1), maximum notified deduction total is an amount specified in a notice under that subsection that does not exceed the support debt of the child support debtor to whom the notice relates.

(2) A person who refuses or fails to comply with a notice under subsection (1) commits an offence.

Penalty: 10 penalty units.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

(2B) Subsection (2) is an offence of strict liability.

...

(9) A person who makes a payment in compliance with a notice under subsection (1) is taken to have made the payment under the debtor's authority or the authority of any other person concerned and is indemnified in respect of that payment."

The declarations

16. Ownit and the Child Support Registrar are seeking declarations as to the validity of the s72A notice. The power to make a declaration is set out in section 16 of the *Federal Circuit Court of Australia Act 1999* (Cth):

> *"Declarations of right*
>
> *(1) The Federal Circuit Court of Australia may, in relation to a matter in which it has original jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.*
>
> *(2) A proceeding is not open to objection on the ground that a declaratory order only is sought."*

17. This section is in similar terms to section 21 of the *Federal Court Act 1976* (Cth).

18. In *Australian Competition and Consumer Commission v Telstra Corporation Limited* [2018] FCA 571, at [18] Moshinsky J considered the Court's power to make declarations as summarised by Gordon J in *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 as follows:

"2.3.2 Declarations

[74] The Court has a wide discretionary power to make declarations under s 21 of the Federal Court Act: Forster v Jododex Australia Pty Ltd [1972] HCA 61; (1972) 127 CLR 421 at 437-8; Ainsworth v Criminal Justice Commission [1992] HCA 10; (1992) 175 CLR 564 at 581-2 and Tobacco Institute of Australia Ltd v Australian Federation of Consumer Organisations Inc (No 2) [1993] FCA 83; (1993) 41 FCR 89 at 99.

[75] Where a declaration is sought with the consent of the parties, the Court's discretion is not supplanted, but nor will the Court refuse to give effect to terms of settlement by refusing to make orders where they are within the Court's jurisdiction and are otherwise unobjectionable: see, for example, Econovite at [11].

[76] However, before making declarations, three requirements should be satisfied:

(1) The question must be a real and not a hypothetical or theoretical one;

(2) The applicant must have a real interest in raising it; and

(3) There must be a proper contradictor..."

The declarations

19. The argument by Mr McDonald is that this matter should be dismissed summarily because s72A (9) of the *Child Support (Registration and Collection) Act 1988* (Cth) provides an indemnity for a person who makes a payment in compliance with a notice under subsection (1). He submits that Ownit should have simply forwarded the cheque to the Child Support Registrar despite the complaints raised by Mr McDonald.

20. The submission made by Counsel for Ownit is that section 72A (2) and (2A) of the *Child Support (Registration and Collection) Act 1988* (Cth) allow Ownit to not make the payment if they have a reasonable excuse. It was argued that what Mr McDonald was asserting in his correspondence with them was that the notice was not valid. I accept that the force and effect of his correspondence was that the notice was not valid.

21. Ownit submit that Mr McDonald is challenging the legal effect of what was done. The validity of the notice was raised over and over again by Mr McDonald.

22. Counsel for Ownit submits at paragraphs [30] – [33]:

> *"30. Furthermore, whilst an administrative decision is prima facie valid unless declared invalid by a Court, as stated in Minister for Immigration v Bhardwji by Gaudron and Gummow JJ[1] (with whom McHugh J relevantly agreed[2]):*
>
> > *[51]... there is no reason in principle why the general law should treat administrative decision involving jurisdictional error as binding or having legal effect unless set aside...*
> >
> > *[53] ... As already pointed out, a decision involving jurisdictional error has no legal foundation and is properly to be regarded, in law, as no decision at all...*
>
> *31. Similarly Hayne J said (at [151]) (emphasis added):*
>
> > *... By contrast, administrative acts and decisions are subject to challenge in proceedings where the validity of that act or decision is merely an incident in deciding other issues. If there is no challenge to the validity of an administrative act or decision, whether directly by proceedings for judicial review or collaterally in some other proceeding in which its validity is raised incidentally, the act or decision may be presumed to be valid. But again, that is a presumption which operates, chiefly in circumstances where there is no challenge to the legal effect of what has been done. Where there is a challenge, the presumption may serve only to identify and emphasise the need for proof or of some invalidating feature before a conclusion of invalidity may be reached. It is not a presumption which may be understood as affording all administrative acts and decisions validity and binding effect until they are set aside. ...*
>
> *32. In Plaintiff S157/2002 v The Commonwealth (2003) 211 CLR 476 at [76] Gaudron, McHugh, Gummow, Kirby and Hayne JJ, in referring to passages from the reasons of Gaudron and Gummow JJ, McHugh J and Hayne J in Bhardwaj, said:*

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[1] (2002) 209 CLR at [51]-[53].
[2] Ibid at [63].

'This Court has clearly held that an administrative decision which involves jurisdictional error is 'regarded, in law, as no decision at all'." (citations omitted)

33. It is submitted that having regard to what the High Court has stated and in the context of the particular facts before the Court in the Principal Proceedings and the relevant legislative provisions, there is a dispute in the relevant sense."

23. I note the submissions of the Child Support Registrar record at paragraphs [5] – [7]:

"5. As to the second reason, whether the declaratory relief sought has any utility depends upon the position taken by the first respondent; on this issue, he has been less than forthcoming.

(a) If the first respondent contends or intends to contend that the notice issued by the Registrar under s 72A of the Child Support (Registration and Collection) Act 1988 (Cth) (Registration and Collection Act) is invalid, then there is a live controversy suitable for judicial determination and the grant of declaratory relief.

(b) If the first respondent accepts that the s 72A notice is valid, then there is no live controversy. It does not follow, however, that declaratory relief is futile. There was plainly a dispute previously, and declaratory relief would usually reflect the true legal position.

6. The first respondent must pin his colours to the mast. It is inappropriate for him to seek to have this proceeding summarily dismissed on the basis that there is no live controversy about the validity of the s 72A notice, on the one hand, yet then proceed to vex the applicant and the Registrar on the basis that the s 72A notice is invalid, on the other.

7. Indeed, is this proceeding were to be summarily dismissed because there is no live controversy, for the first respondent later to contend that the s 72A notice is invalid would constitute, at a minimum, an abuse of process.

24. The submission at the hearing of the Application by the solicitor for Mr McDonald, recorded at [12], being the entry for 10 May 2018 in the chronology in this judgment, does not resolve the matter in my view because all that is said is that Mr McDonald has not instituted any proceedings to set aside the s 72A notice.

25. The submission does not assert as a question of law, that the notice is valid. Furthermore if the notice is not valid because of jurisdictional error it is "*regarded in law as no decision at all.*"

26. These are matters that cannot be determined in a context of summary dismissal. If the validity of the notices is still in issue it will require a determination and Ownit were correct to seek a declaration as to the validity of the notice form the Court. If it is tainted with jurisdictional error the notice will have no force and effect.

27. The question of whether I should make a declaration even if Mr McDonald concedes the notice is valid and is also still in issue.

28. For those reasons I am not prepared to summarily dismiss the claims by the Applicant and the Second Respondent.

29. I will therefore dismiss the First Respondent's Application in a Case filed on 16 April 2018.

I certify that the preceding twenty-nine (29) paragraphs are a true copy of the reasons for judgment of Judge Cassidy

Deputy Associate:

Date: 10 July 2018