

FEDERAL COURT OF AUSTRALIA

Schiff v Nine Network Australia Pty Ltd (No 6) [2023] FCA 1427

File number(s): NSD 1086 of 2021

Judgment of: **JACKMAN J**

Date of judgment: 16 November 2023

Date of publication of reasons: 17 November 2023

Catchwords: **COSTS** – costs of subpoena dispute – where the relevance of the documents sought turned on a particular pleading which was abandoned in the course of argument – proper basis for both parties to dispute the subpoena – each party to bear their own costs

Division: General Division

Registry: New South Wales

National Practice Area: Other Federal Jurisdiction

Number of paragraphs: 3

Date of hearing: 16 November 2023

Counsel for the Applicant: Ms S Chrysanthou SC and Mr N Olson

Solicitor for the Applicant: Kennedys (Australasia) Partnership

Counsel for the Respondents: Mr D Sibtain SC and Mr M Lewis

Solicitor for the Respondents: Minter Ellison

ORDERS

NSD 1086 of 2021

BETWEEN: **PETER DAVID SCHIFF**
Applicant

AND: **NINE NETWORK AUSTRALIA PTY LTD**
First Respondent

THE AGE COMPANY PTY LTD
Second Respondent

NICHOLAS MCKENZIE (and others named in the Schedule)
Third Respondent

ORDER MADE BY: **JACKMAN J**

DATE OF ORDER: **16 NOVEMBER 2023**

THE COURT ORDERS THAT:

1. The subpoenas to each of the proper officer of Australian Taxation Office and the Proper Officer Subpoena Team Australian Federal Police be set aside.
2. Each party pay their own costs of the dispute concerning those subpoenas.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT
(REVISED FROM TRANSCRIPT)

JACKMAN J:

1 There is a dispute between the parties concerning a subpoena issued at the request of the respondents to the proper officer of the Australian Taxation Office. Mr Sibtain SC, counsel for the respondents, provided written submissions to the Court as to the relevance of the documents sought in that subpoena as turning on paragraph 12.4 of the statement of claim and a particular given by the applicant by letter dated 6 July 2023. In the course of argument, the applicant has abandoned reliance on paragraph 12.4 of the statement of claim and on the particular in question in the letter of 6 July 2023.

2 In my view, there was a proper basis at the time that leave to issue the subpoena was requested to have a subpoena issued in the terms in which it was; however, there was also a proper basis for the applicant to contend that the subpoena should not have been issued. As it is no longer necessary for me to decide the merits of the subpoena in question, and there was a proper basis for both parties to have adopted the positions which they took before today, in my view, the appropriate order is that each party should bear their own costs of the dispute concerning that subpoena.

3 In relation to the subpoena issued in similar terms to the proper officer of the subpoena team of the Australian Federal Police, in light of the abandonment by the applicant of the paragraph of the statement of claim and the particulars to which I have referred, that subpoena should also be set aside, and I make the same costs order, namely, that each party bears their own costs of the dispute concerning the subpoena to the Australian Federal Police.

I certify that the preceding three (3) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jackman.

Associate:

Dated: 17 November 2023

SCHEDULE OF PARTIES

NSD 1086 of 2021

Respondents

Fourth Respondent: CHARLOTTE GRIEVE

Fifth Respondent: JOEL TOZER