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ARTICLES

SUING FOREIGN DEFENDANTS IN CONTRACT: DOES A COURT HAVE JURISDICTION WHERE THE CONTRACT MAY NOT EXIST?

Dan Butler KC

The rules of court delineate the circumstances in which a foreign defendant can be served with an originating process. This article discusses the outer limits of the court's jurisdiction in relation to contractual claims against a foreign defendant. In particular, does a court have jurisdiction over a foreign defendant where the issue confronting the court is whether the plaintiff and defendant entered into a contract at all? If such a proceeding were to continue to trial, the court may conclude that no such contract was entered into. Does such

a possibility mean that a court should conclude, when confronted with a challenge to its jurisdiction, that such a claim is beyond jurisdiction? This article considers the differing views expressed by the authorities on this issue. It contends that the court does have jurisdiction in those circumstances, even though on a final hearing on the merits it may ultimately decide that no such contract ever existed. 321

COMPELLING PRODUCTION OF A DEFAMATORY DRAFT

Michael Douglas

In *Ajaka v Nine Network Pty Ltd*, the Supreme Court of New South Wales considered an application by persons who believed they would soon be defamed by forthcoming media publications for interim injunctive relief and preliminary discovery, among other things. The Court compelled the media defendants to produce the draft story to the applicants, so the applicants’ lawyers could review the material in advance of the hearing of an interlocutory injunction to restrain publication. While this kind of pre-publication order is “extraordinary”, there is a principled basis for a court to make this kind of order. In the right circumstances, an Australian court may compel production of a defamatory draft through various procedural means. The powers of superior courts, including State Supreme Courts and the Federal Court of Australia, to compel the production of a defamatory draft by a would-be publisher are abundant, and may be exercised in rare circumstances. 337

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