

# MAGISTRATES COURT OF QUEENSLAND

REGISTRY: HOLLAND PARK

NUMBER: 379/15

PLAINTIFF: **EDINBURGH PARK DEVELOPMENTS PTY LTD  
IN LIQUIDATION CAN 119579421  
DAVID JAMES HAMBLETON & JAMES MARK IMRAY  
LIQUIDATORS OF EDINBURGH PARK  
DEVELOPMENTS PTY LTD IN LIQUIDATION  
CAN 119579421**

DEFENDANTS: **LESTER GRAY  
JOSEPHINE GRAY**

## **CHAMBER DECISION SUMMARY JUDGEMENT APPLICATION**

The Plaintiff applies for summary judgement in respect of the whole of the claim for \$27,684.39 and costs and interest. In the alternative the Plaintiff applies to strike out the defence under section 171 UCPR. The claim is for relief under section 588FF of the Corporations Act 2001 for an unfair preference.

In order to obtain summary judgement the Plaintiffs must satisfy the court that the Defendant has no real prospect of successfully defending the claim and there is no need for a trial of the claim. The Plaintiffs must prove that the transaction was an unfair preference and an insolvent transaction within the meaning of the Corporations Act 2001. They must prove that the transaction was voidable and that the claim was brought within the relevant legislative time frames.

The evidence before the court establishes that prior to the transaction on 30 September 2014 Wellcamp Properties Pty Ltd (Wellcamp) owed \$102,318.83 to Edinburgh Park Developments

Pty Ltd (Edinburgh), and that Edinburgh owed \$27,684.39 to the First and Second Defendants (the Defendants). At all material times the Defendants were directors of both Wellcamp and Edinburgh.

On 30 September 2014 the amount of the loan owed to Edinburgh by Wellcamp was reduced by \$27,684.39 and at the same time the amount owed by Edinburgh to the Defendants was reduced by the same amount. Both entries are recorded as "offset loan account". This resulted in the debt owed by Edinburgh to the Defendants being reduced to a zero balance. In effect an asset of Edinburgh was offset against a liability of Edinburgh. It was not simply an offset of two different loans between two identical parties as Wellcamp was a third party involved in the transaction.

The Defendants argue that there are triable issues to be determined in this case. They argue that the offset is not a transaction and is not an unfair preference and that the transaction is not an insolvent transaction. They argue that the transaction was a journal entry only and that therefore it could be reversed at any time. They argue that Edinburgh was at all relevant times solvent and able to pay its debts.

I am satisfied that the two relevant entries recorded in the financial records of Edinburgh fall properly within the definition of transaction. The effect of the transaction as a whole is that the Defendants as creditors of a company received satisfaction of part of their debt at the expense of a receivable of the company. The Defendants should have stood as creditors for the whole of their debt alongside the Australian Taxation Office (ATO).

It is clear that Edinburgh held no assets that were available to be sold to pay the outstanding debt to ATO. The Defendants argue that they intended to sell a property owned by Wellcamp and to use those funds to discharge the taxation liability of Edinburgh. Wellcamp did owe Edinburgh \$102,318.83. Had Wellcamp repaid this debt to Edinburgh, Edinburgh may have been able to pay the outstanding debt to ATO.

No actual property said to be owned by Wellcamp and available for sale has been identified. No sale listing has been disclosed. No minutes of meetings of Directors of Wellcamp or Edinburgh have been disclosed. No sale ever eventuated. I accept that the Defendants had an intention to do what they could at some time to inject additional financial support into Edinburgh.

The Defendants argue that Edinburgh was solvent but was experiencing a temporary liquidity problem. It is argued that none of Edinburgh's debts were due and payable as at 30 September 2014. This argument ignores the debt to the ATO. The evidence establishes that Edinburgh was not able to pay all of its debts as and when they became due and payable at the time of the transaction. Edinburgh had a longstanding, significant and unpaid taxation debt. This was a debt that was due and payable and accruing interest. The financial records of Edinburgh indicate that it could not pay its taxation liabilities as and when they became due and payable. At the same time the Defendants receive payments from Edinburgh in payment of the loan owed by Edinburgh to the Defendants. There is no explanation as to why Edinburgh failed to pay the debt to the ATO some of which had been outstanding since 2011.

It is argued that the transaction was a journal entry only and could be reversed. I accept that the evidence does not conclusively prove that the Defendants actually received funds totalling \$27,684.39. This clearly was not a mere journal entry that could be reversed. It was not an offset between two entities, Edinburgh on the one hand and the Defendants on the other. It was a transaction that involved Edinburgh, the Defendants and a separate and distinct third party – Wellcamp. The effect of the transaction fundamentally altered the financial relationship between the three separate entities. After the transaction the liabilities of Edinburgh were significantly reduced, the assets of Edinburgh were significantly reduced, the liabilities of Wellcamp were significantly reduced and the assets of the Defendants were significantly reduced. The Defendants give no explanation as to why they structured a transaction that led to their personal assets being reduced simultaneously with an identical reduction in the liabilities of Wellcamp.

The Directors were directors of both Wellcamp and Edinburgh at all relevant times. This did not allow them to move funds between the two corporate bodies without restraint and without legitimate reason. The Directors were not entitled to deal with assets and liabilities of Wellcamp and Edinburgh as if they were their own. They were not authorised to mingle the assets of the two corporate bodies into one.

The pleadings are scandalous as they do not reflect the legal position that Wellcamp is a separate legal entity. The various transfers and offsets should be the subject of minuted directors meetings for each of Wellcamp and Edinburgh. No such minutes are disclosed. No other documents recording and reflecting the financial arrangements have been disclosed. No loan agreement is disclosed. No deed of assignment is disclosed.

I am satisfied the evidence establishes that the transaction was an unfair preference and an insolvent transaction within the meaning of the Corporations Act 2001. Further it establishes that the transaction is voidable under the legislation. The winding up application was filed on 27 April 2015 and the transaction was clearly within the four year period prior to that date. The liquidator has brought this proceeding within three years of the filing of the winding up application and within 12 months of his appointment.

The Plaintiffs have established that the Defendant has no real prospect of successfully defending the claim and there is no need for a trial of the claim. I give summary judgement to the Plaintiff for \$27,684.39 together with interest and costs.



S L Cornack Magistrate  
15 July 2016