



HIGH COURT OF AUSTRALIA

1 June 2011

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v LANEPOINT
ENTERPRISES PTY LTD (RECEIVERS AND MANAGERS APPOINTED)
[2011] HCA 18

The High Court today allowed an appeal brought by the Australian Securities and Investments Commission ("ASIC") against a decision of the Full Court of the Federal Court (North and Siopis JJ, Buchanan J dissenting). The Full Court had allowed an appeal by Lanepoint Enterprises Pty Ltd ("Lanepoint") from the decision of Gilmour J in which his Honour had, on an application by ASIC made under s 459P of the *Corporations Act* 2001 (Cth) ("the Act"), granted leave to ASIC to apply to the Court for a winding up order, and ordered that Lanepoint be wound up in insolvency pursuant to s 459A of the Act and that liquidators be appointed to the company.

The Full Court accepted submissions by Lanepoint that the discretion exercised by Gilmour J under ss 459A and 467, to order that the company be wound up rather than to stay or dismiss the proceedings, had miscarried, and that the winding up application was an inappropriate vehicle for the determination of questions as to Lanepoint's solvency. At the hearing before Gilmour J, Lanepoint had sought to establish its solvency so as to rebut the presumption of insolvency, which arose by reason of s 459C(2)(c) of the Act, following the appointment of receivers and managers to Lanepoint by two creditor companies. However, Gilmour J held that certain transactions relied upon by Lanepoint to establish its solvency were ineffective to reduce its indebtedness and therefore Lanepoint could not rebut the presumption of insolvency.

The High Court unanimously allowed ASIC's appeal from the decision of the Full Court, holding that the winding up application was not an inappropriate vehicle for the determination of Lanepoint's solvency, and that the discretion exercised by Gilmour J to order the winding up of Lanepoint did not miscarry. Lanepoint was unable to point to further evidence relevant to rebutting the presumption of insolvency that was not adduced at the hearing of the winding up application. Furthermore, it was not necessary that other parties be joined to the proceedings before the question of Lanepoint's solvency should be determined. Rather, the postponement of the winding up application would have added to the considerable delays which had already been encountered by ASIC since the application had been filed. The Court set aside the orders of the Full Court, and instead ordered that the appeal by Lanepoint to the Full Court be dismissed with costs.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.