



HIGH COURT OF AUSTRALIA

4 December 2013

WILLMOTT GROWERS GROUP INC v WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)

[2013] HCA 51

Today the High Court, by majority, held that the liquidators of a company had power under Div 7A of Pt 5.6 of the *Corporations Act* 2001 (Cth) to disclaim leases granted by the company to investors. It also held that disclaimer terminated the landlord's obligations and the tenants' correlative rights arising under the leases. The Court dismissed the appeal from the Court of Appeal of the Supreme Court of Victoria.

Willmott Forests Limited (the first respondent) was the manager of forestry investment schemes associated with a group of companies known as the Willmott group. Willmott Forests (or its predecessor) leased to participants in those schemes portions of land which Willmott Forests owned or leased.

In September 2010, Willmott Forests (and other companies in the Willmott group) went into voluntary administration. Receivers and managers were also appointed to property which companies in the group had charged. In March 2011, the creditors of Willmott Forests resolved that the company should be wound up. They appointed the second and third respondents as liquidators of the company. The liquidators concluded that the schemes could not continue to operate and, in conjunction with the receivers and managers, sought to sell the assets of Willmott Forests. No one expressed interest in purchasing any of the assets encumbered by the schemes or in becoming the responsible entity or manager of any of the schemes. When sale contracts were concluded, each contract provided that title to the assets the subject of the contract was to pass to the purchaser free from the encumbrances arising out of the schemes.

The liquidators applied to the Supreme Court of Victoria for directions and orders about the sales that had been negotiated. Willmott Growers Group Inc (the appellant) acted as a contradicitor of the arguments advanced by the liquidators. Relevantly, s 568(1) of the *Corporations Act* gave the liquidator of a company power to disclaim certain property of the company, including property consisting of a contract. Section 568D(1) provided that a disclaimer was taken to terminate, from the effective date of the disclaimer, the company's rights, interests, liabilities and property in or in respect of the disclaimer property. The Supreme Court held that those provisions did not empower the liquidators to disclaim the leases with the effect of extinguishing the tenants' estates or interests in the land. The Court of Appeal reversed this decision, finding that it was necessary to extinguish the tenants' rights under the leases in order to release Willmott Forests from liability.

By special leave, Willmott Growers Group appealed to the High Court. A majority of the Court held that s 568(1) of the *Corporations Act* gave the liquidator of a company power to disclaim a lease granted by the company to a tenant. A lease granted by the company to a tenant was "a contract" within the meaning of that provision. The effect of s 568D(1) was that, from the effective date of the disclaimer, the tenant's rights arising under the lease were terminated and the tenant's

estate or interest in the land was brought to an end. As such, the liquidators had the power to disclaim the leases to investors with the effect of terminating the tenants' estates or interests in the land.

- *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.*