



HIGH COURT OF AUSTRALIA

Public Information Officer

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VANDA RUSSELL GOULD v DONALD MAGAREY, DAVID OLIFANT AND PATRICK PONTING
being the members constituting the COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY
BOARD AND AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
RICHARD ALBARRAN v MEMBERS OF THE COMPANIES AUDITORS AND LIQUIDATORS
DISCIPLINARY BOARD AND AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
MILAN VISNIC v AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

The suspension of two liquidators and the disqualification of a company director were not invalid as they did not involve the exercise of the judicial power of the Commonwealth by a non-judicial body, the High Court of Australia held today.

ASIC applied to the Companies Auditors and Liquidators Disciplinary Board for orders suspending Mr Gould's registration as a liquidator and cancelling Mr Albarran's registration as a liquidator. The Board suspended Mr Gould's registration for three months. He applied to the High Court for prohibition against the Board and ASIC to prevent them carrying out the order. He also sought a declaration that certain laws, particularly section 1292 of the *Corporations Act* which confers powers and functions on the Board, were invalid on the ground that the power to suspend someone's registration is punitive, hence exclusively part of the judicial power of the Commonwealth which could not be exercised by the Board. Before ASIC's application relating to Mr Albarran was heard by the Board, he applied to the High Court for an order preventing ASIC from proceeding with the application. The Court refused a stay of the application. It remitted both liquidators' proceedings to the Federal Court, where both were dealt with by the Full Court. In May 2006, the Full Court held that the Board's exercise of power under section 1292 does not involve the exercise of the judicial power of the Commonwealth and dismissed both proceedings. In the meantime, the Board had proceeded to a determination adverse to Mr Albarran and ordered a nine-month suspension of his registration. Both Mr Albarran and Mr Gould appealed to the High Court.

Mr Visnic was a director of 14 companies which had been wound up. In January 2006, ASIC, exercising power under section 206F of the *Corporations Act*, disqualified him from managing corporations for five years. ASIC's statement of reasons said Mr Visnic was not fit to manage corporations as he had demonstrated a lack of responsibility towards creditors, so for the protection of the public he should be prohibited from managing a corporation. In the Federal Court he sought a declaration that section 206F was invalid but the matter was removed into the High Court and heard concurrently with the two appeals.

The High Court unanimously dismissed both appeals and Mr Visnic's action. It held that the Board's function is not to find whether an offence has been committed and, if so, to inflict a punishment, but is to assess whether someone should continue to occupy a statutory position involving skill and probity, in circumstances where the Board is satisfied that the person has failed in the performance of their professional duties. The Court held that section 1292 confers upon the Board a power that is administrative in nature, not a power of an essentially judicial character, which may be conferred only upon courts exercising federal jurisdiction. It held that section 206F confers upon ASIC a power to be exercised for the maintaining of professional standards in the public interest. Section 206F empowers ASIC to determine that a person no longer manage corporations and may look to the person's corporate conduct but there is no determination of guilt with respect to any offence. The Court held that in acting under section 206F ASIC does not exercise the judicial power of the Commonwealth. Both sections 206F and 1292 are constitutionally valid.

- *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.*