



HIGH COURT OF AUSTRALIA

5 October 2012

INTERNATIONAL LITIGATION PARTNERS PTE LTD v CHAMELEON MINING NL

(RECEIVERS AND MANAGERS APPOINTED) & ORS

[2012] HCA 45

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of New South Wales. The Court held that International Litigation Partners Pte Ltd ("ILP") was entitled to an early termination fee under a litigation funding agreement ("the Funding Deed") with Chameleon Mining NL ("Chameleon").

ILP agreed to fund Chameleon's litigation against another company in return for a share of the proceeds of that litigation. The Funding Deed allowed ILP to terminate this arrangement, and entitled it to an early termination fee, if there was a "change in control" of Chameleon. A change in control did take place, and ILP terminated the arrangement and claimed the early termination fee. Chameleon refused to pay, arguing that ILP was not entitled to the fee because ILP did not hold an Australian financial services licence under Pt 7.6 of the *Corporations Act 2001* (Cth) ("the Corporations Act").

The High Court held that ILP was entitled to the early termination fee. The Funding Deed was a form of financial accommodation in that ILP agreed to pay Chameleon's legal costs when asked to do so in return for a share of any amount recovered in Chameleon's litigation. The Funding Deed was therefore a credit facility within the meaning of the Corporations Act, and ILP was exempt from the requirement to hold an Australian financial services licence.

- *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.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar

Telephone: (02) 6270 6893

Email: bwickham@hcourt.gov.au Website: www.hcourt.gov.au