



## HIGH COURT OF AUSTRALIA

11 March 2015

FORTRESS CREDIT CORPORATION (AUSTRALIA) II PTY LIMITED & ANOR v WILLIAM JOHN FLETCHER AND KATHERINE BARNET AS LIQUIDATORS OF OCTAVIAR LIMITED (RECEIVER AND MANAGERS APPOINTED) (IN LIQUIDATION) AND OCTAVIAR ADMINISTRATION PTY LIMITED & ORS

[2015] HCA 10

Today, the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales and held that a court can make an order under s 588FF(3) of the *Corporations Act* 2001 (Cth) ("the Act") to extend the time within which a company's liquidator may apply for orders in relation to voidable transactions entered into by the company, in circumstances where those transactions cannot be identified at the time of the order. Such orders are known as "shelf orders".

Section 588FF(1) of the Act empowers a court, on the application of a company's liquidator, to make a number of orders in relation to voidable transactions. Section 588FF(3), as it stood at the date of the order giving rise to this appeal, provided that an application for orders under s 588FF(1) had to be made: (a) during a specified period ("the paragraph (a) period"); or (b) "within such longer period as the Court orders on an application under this paragraph made by the liquidator during the paragraph (a) period".

The first respondents are the liquidators of the second and third respondents, Octaviar Limited and Octaviar Administration Pty Limited. The paragraph (a) period in relation to the third respondent expired on 3 October 2011. Before that date, the first respondents applied for an order under s 588FF(3)(b) extending the time for making an application under s 588FF(1) in relation to the third respondent to 3 April 2012. On 19 September 2011, the order sought was granted, expressed without reference to an identified transaction. On 3 April 2012, the first respondents commenced proceedings against the appellants for orders under s 588FF(1).

The primary judge in the Supreme Court of New South Wales dismissed an application by the appellants to set aside the extension of time order, and the Court of Appeal dismissed the appellants' appeal. Both the primary judge and the Court of Appeal followed the earlier decision of the Court of Appeal in *BP Australia v Brown* (2003) 58 NSWLR 322. By grant of special leave, the appellants appealed to the High Court, submitting that the extension of time order was required to specify the particular transactions in respect of which the order was made.

The High Court unanimously dismissed the appeal, holding that a court can make an order extending time under s 588F(3)(b) without identifying the particular transaction or transactions to which it would apply. That construction is consistent with the evident purpose of s 588F(3)(b), to allow the court to mitigate the strictness of the time limits imposed by s 588FF(3)(a) in an appropriate case. The re-enactment of s 588FF(3), which took place after the holding in *BP Australia v Brown* that a court could make an order granting an extension of time in general terms, may be taken to support that construction.

- *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.*