



HIGH COURT OF AUSTRALIA

8 February 2023

METAL MANUFACTURES PTY LIMITED v MORTON AS LIQUIDATOR OF MJ
WOODMAN ELECTRICAL CONTRACTORS PTY LTD (IN LIQ) (ACN 602 067 863) &
ANOR
[2023] HCA 1

Today, the High Court dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The appeal concerned whether a creditor is entitled, pursuant to s 553C(1) of the *Corporations Act 2001* (Cth) ("the Act"), to set off an amount equivalent to that received as an unfair preference against another debt which the creditor can prove in the winding up of a company.

Metal Manufactures Pty Limited ("the appellant") was paid \$50,000 and \$140,000 by MJ Woodman Electrical Contractors Pty Ltd ("MJ Woodman"), a company now in liquidation. Both payments were made within the six-month period prior to the winding up of MJ Woodman. The liquidator of MJ Woodman ("the first respondent") sought to recover those payments from the appellant under s 588FF(1)(a) of the Act on the basis that each was an unfair preference under s 588FA of the Act. The appellant sought to set off its potential liability to repay the alleged unfair preferences against a separate and distinct debt owed to it by MJ Woodman.

By an Amended Special Case, the primary judge reserved the following question for consideration by the Full Court of the Federal Court: "Is statutory set-off, under s 553C(1) of the [Act], available to the [appellant] in this proceeding against the [first respondent's] claim as liquidator for the recovery of an unfair preference under s 588FA of the Act?" The Full Court said that the question posed should be answered "No".

Before the High Court, the appellant submitted that it was entitled to set off its potential liability under s 588FF(1)(a) against amounts owing to it by MJ Woodman because there had been a mutual dealing between it and that company. The appellant contended that its future liability under s 588FF(1)(a) was no different to any other claim owed to the company because the company would be entitled to receive that amount beneficially.

In dismissing the appeal, the High Court held that any liability arising from the making of an order under s 588FF(1)(a) was not eligible to be set off against the debt owed to the appellant. Construed in the context of the statutory scheme of liquidation, s 553C(1) requires that the mutual credits, mutual debts or other mutual dealings be credits, debts or dealings arising from circumstances that subsisted in some way or form before the commencement of the winding up. Here, immediately before the winding up there was nothing to set off as between the appellant and MJ Woodman; the company owed money to the appellant, but the appellant owed nothing to the company. The contingent right held by the liquidator to sue for an order under s 588FF could not and did not exist before then. Moreover, there was no mutual dealing within the meaning of s 553C(1) because there had been no dealing between the same persons and there was no mutuality of interest.

- *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.*