HIGH COURT OF AUSTRALIA

GLEESON CJ,
McHUGH, GUMMOW, HAYNE AND CALLINAN JJ

AUSTRALASIAN MEMORY PTY LIMITED & ANOR — APPELLANTS

AND

RICHARD CAMPBELL BRIEN & ANOR — RESPONDENTS

Australasian Memory Pty Limited v Brien [2000] HCA 30
25 May 2000
S84/1999

ORDER

1. *Appeal dismissed.*

2. *Second appellant to pay the respondents' costs.*

On appeal from the Supreme Court of New South Wales

Representation:

B W Rayment QC with J G Duncan for the appellants (instructed by Gillis Delaney Brown)

S D Robb QC with G L Raffell for the respondents (instructed by Barker Gosling)

CATCHWORDS

Australasian Memory Pty Limited v Brien

Corporations – External administration – Administration with a view to executing a deed of company arrangement – Power of court to make such order as it thinks appropriate about how Pt 5.3A is to operate in relation to a particular company – Whether power to remedy defect caused by convening of creditors meeting prior to specified period – Whether power to alter time periods fixed by Pt 5.3A where specific provisions for extension of time – Whether power retrospectively to vary the operation of Pt 5.3A – Whether power to affect vested rights.

Words and phrases – "is to operate".

Corporations Law, s 447A, Pt 5.3A.

1 GLEESON CJ, McHUGH, GUMMOW, HAYNE AND CALLINAN JJ. The *Corporate Law Reform Act* 1992 (Cth) made many amendments to "the Corporations Law set out in section 82" of the *Corporations Act* 1989 (Cth)[1]. By operation of s 7 of the *Corporations (New South Wales) Act* 1990 (NSW), and equivalent provisions of other State Corporations Acts, those amendments changed not only the Corporations Law set out in s 82 of the Commonwealth *Corporations Act*, but also the Corporations Law of each State. (There being no relevant difference between the provisions of the various Corporations Laws, it is convenient to refer simply to the "Corporations Law" or "the Law".)

2 The *Corporate Law Reform Act* introduced a new Part (Pt 5.3A, ss 435A-451D) into the Corporations Law. It was headed "Administration of a Company's Affairs with a View to Executing a Deed of Company Arrangement". The object of Pt 5.3A was said, by s 435A, to be

> "to provide for the business, property and affairs of an insolvent company to be administered in a way that:
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> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
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> (b) if it is not possible for the company or its business to continue in existence–results in a better return for the company's creditors and members than would result from an immediate winding up of the company."

Part 5.3A contains elaborate and detailed provisions about how and when the administration of a company is to begin and end[2], about the consequences of administration[3], and about how and when a company may pass from administration to the making of a deed of company arrangement[4], or into liquidation[5] or back into the hands of its directors[6].

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1 *Corporate Law Reform Act* 1992 (Cth), s 3.

2 ss 435C, 436A, 436B, 436C.

3 Particularly in Divs 3 to 8 of Pt 5.3A (ss 437A-442F).

4 Div 10 of Pt 5.3A (ss 444A-444H).

5 ss 439C, 445E and Div 12 of Pt 5.3A (ss 446A-446B).

6 s 439C.

3 The central issue in this appeal concerns the extent of the power given to a court (here the Supreme Court of New South Wales) by s 447A of the Law. That section provides:

> "447A(1) The Court may make such order as it thinks appropriate about how this Part is to operate in relation to a particular company.
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> (2) For example, if the Court is satisfied that the administration of a company should end:
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> (a) because the company is solvent; or
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> (b) because provisions of this Part are being abused; or
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> (c) for some other reason;
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> the Court may order under subsection (1) that the administration is to end.
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> (3) An order may be made subject to conditions.
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> (4) An order may be made on the application of:
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> (a) the company; or
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> (b) a creditor of the company; or
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> (c) in the case of a company under administration–the administrator of the company; or
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> (d) in the case of a company that has executed a deed of company arrangement–the deed's administrator; or
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> (e) the Commission; or
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> (f) any other interested person."

There are also some issues about the width of the powers of a court to make orders under s 1322 of the Law to deal with certain irregularities but it is convenient to deal first with the issue about s 447A because that is the matter to which argument was primarily directed. That issue arises in the following circumstances.

4 On 18 February 1997, the respondents were appointed joint administrators of the first appellant (which it is convenient to refer to as "the Company"). They were appointed following a resolution of the directors of the Company pursuant to s 436A of the Law, presumably to the effect that, in the opinion of the directors voting for the resolution, the Company was insolvent, or was likely to become insolvent at some future time, and that administrators should be appointed. One of those directors (Mr B C Amor) is the second appellant.

5 An administrator appointed under Pt 5.3A must convene a meeting of the company's creditors in order to determine whether to appoint a committee of creditors and, if so, who are to be its members[7]. That meeting "must be held within 5 business days after the administration begins"[8]. The respondents convened that first meeting of creditors of the Company within the prescribed time.

6 Division 3 of Pt 5.3A provides that the administrator of a company under administration is to assume control of the company's affairs. In particular, by s 437A(1), the administrator is given "control of the company's business, property and affairs" and is given power to carry on, terminate or dispose of all or part of the business and dispose of any of its property. The powers of other officers of the company are suspended while a company is under administration[9] and only the administrator can deal with the company's property[10].

7 Section 438A requires the administrator "[a]s soon as practicable after the administration of a company begins … [to] investigate the company's business, property, affairs and financial circumstances" and to form an opinion about whether it would be in the interests of the company's creditors for the company to execute a deed of company arrangement, for the administration to end, or for the company to be wound up. These opinions, and the reasons for them, are to be set out in a statement given to creditors[11] at the time they are given notice of a second meeting of creditors.

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7 s 436E(1).

8 s 436E(2).

9 s 437C.

10 s 437D.

11 s 439A(4)(b).

8 Section 439A deals with the convening and holding of that second meeting. Sub-section (1) provides that the administrator "must convene a meeting of the company's creditors within the convening period as fixed by subsection (5) or extended under subsection (6)" and sub-s (2) provides that the meeting "must be held within 5 business days after the end of the convening period". Sub-sections (5) and (6) provide:

> "(5) The convening period is:
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> (a) if the administration begins on a day that is in December, or is less than 28 days before Good Friday–the period of 28 days beginning on that day; or
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> (b) otherwise–the period of 21 days beginning on the day when the administration begins.
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> (6) The Court may extend the convening period on an application made within the period referred to in paragraph (5)(a) or (b), as the case requires."

9 The respondents convened (in the sense of gave notice of) the second meeting of the creditors of the Company within the convening period prescribed by the Law and that meeting was held on 3 March 1997. The convening period ended on 10 March 1997 and it follows that the meeting was not held within five business days *after* the end of the convening period. It was held eight days too early[12]. The meeting was adjourned and, by notice dated 18 March 1997 a further meeting was convened for 24 March 1997. At that meeting the creditors resolved to wind up the Company. Section 446A provides (in effect) that when creditors resolve to wind up a company in administration, the administrator becomes the liquidator for the purposes of the winding up.

10 Following the creditors' resolution of 24 March 1997 the respondents took substantial steps to get in and realise the assets of the Company. They terminated the employment of all of the Company's employees, sold most of its property and paid out the Company's secured creditor.

11 In May 1997, the respondents issued statutory demands (as liquidators of the Company) to two companies associated with the second appellant. After

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12 Section 105 of the Law provides for how times are to be calculated.

these demands had been made, the two companies to which the demands were directed brought proceedings in the Federal Court of Australia seeking orders setting the demands aside and also seeking declarations, including declarations that "the purported meeting of creditors of [the Company] held on 3 March 1997 and subsequently adjourned to 24 March 1997 … was invalid and of no effect" and that "all resolutions of creditors of [the Company] purportedly made at [that meeting] are invalid and of no effect".

12 On 6 June 1997, a judge of the Federal Court (Whitlam J) held[13] that the meeting of creditors of the Company held on 3 March 1997 was not convened in accordance with s 439A(2) of the Law and ordered that the statutory demands be set aside. Whitlam J made no declaratory order. On 10 June 1997, application to validate the meeting of 3 March 1997 was made to the Federal Court in the name of the Company. That application was summarily dismissed on 19 June 1997, it being held (in effect) that the proceedings were irregularly constituted, the present respondents not being able to bring the application in the name of the Company.

13 The present respondents then made urgent application to the Supreme Court of New South Wales[14]. At first the application was for orders pursuant to s 1322 for orders curing the irregularity that had occurred in calling the second meeting of the Company's creditors but later the application was amended to seek orders pursuant to that section or s 447A. On 19 September 1997, Santow J made orders

(a) under s 1322(4)(d) abridging the period for holding the second meeting of creditors of the Company;

(b) declaring, pursuant to s 1322(4)(a), that the resolution of the creditors for winding up the Company was not invalid by reason of any contravention of s 439A;

(c) declaring, pursuant to s 1322(4), that the winding up of the Company commenced on 18 February 1997 and has continued to the date of the order,

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13 *Supervac Australia Pty Ltd v Australasian Memory Pty Ltd* unreported, Federal Court of Australia, 6 June 1997.

14 *Re Australasian Memory Pty Ltd; Brien v Australasian Memory Pty Ltd* (1997) 149 ALR 393.

and that the administration of the Company did not terminate on 11 March 1997 but continued until the passing of the resolution by the creditors on 24 March 1997; and

(d) pursuant to s 447A, that Pt 5.3A of the Law was to operate in relation to the Company as if the effect of ss 439A(2), 435C(3)(b), 439B, 439C, 449E(1) and 446A of the Law were modified in respects set out in the order.

From these orders the present appellants appealed to the Court of Appeal of New South Wales. That appeal was dismissed[15]. Sheppard AJA, with whose reasons Meagher JA agreed, held that s 447A (and s 1322) of the Law authorised the orders which Santow J had made[16] and that the discretion to exercise the powers given by those sections had not miscarried[17]. Powell JA would have allowed the appeal, being of the view[18] that it is not open to a court, when exercising the powers conferred by s 447A, to negate retrospectively the operation of other provisions of Pt 5.3A (for example, ss 439A and 444B) which fix times and prescribe the consequences of failing to comply with the provision. Further, his Honour was of the view that s 1322(4) did not empower the orders made[19].

14 By special leave, the appellants now appeal against the orders dismissing their appeal to the Court of Appeal. The order granting special leave limited the grounds upon which the appellants could rely to grounds alleging that the Court of Appeal erred in holding that s 447A and s 1322 of the Law, on the true construction of those provisions, empowered the making of the orders which Santow J made. Other issues, which were debated before Santow J and in the Court of Appeal, do not arise in this Court. In particular, questions about what, if any, consequence for the litigation between the parties to the present proceedings followed from the determination of the differently constituted proceedings in the Federal Court are questions that were not debated here.

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15 *Australasian Memory Pty Ltd v Brien* (1998) 45 NSWLR 111.

16 (1998) 45 NSWLR 111 at 147-148, 161.

17 (1998) 45 NSWLR 111 at 151-152, 161-162.

18 (1998) 45 NSWLR 111 at 123.

19 (1998) 45 NSWLR 111 at 123.

15 The appellants contended that s 447A should not be construed as authorising the making of an order that would permit departure from the timetable for a second meeting that is prescribed by s 439A or, at least, should not be construed as permitting the making of any such order after the administration of a company had come to an end. These contentions had several distinct strands but, before identifying them, it is convenient to consider some more general questions about the construction of s 447A and sub-s (1) in particular.

16 The particular question that arises in the present appeal is whether an order can be made under s 447A(1) to alter the way in which s 439A(2) applies to the Company. Asserting that this question should be answered in the negative offers no reason for reaching the conclusion that is asserted. In particular, to say that s 447A(1) cannot be understood as permitting the "circumventing" of other "specific" provisions of Pt 5.3A amounts to no more than an assertion of the answer to the question that arises; it offers no reason for reaching the conclusion proffered. Reasons for reaching any conclusion about the construction of the provision must be sought, at least in the first instance, in the statutory language.

17 It is important to notice that the orders that may be made under s 447A(1) are described as orders about how Pt 5.3A is to operate "*in relation to a particular company*". The power is not cast in terms of a power to make orders to cure defects or to remedy the consequences of some departure from the scheme set out in the other provisions of Pt 5.3A. Its operation is not confined to such cases. Nor is there anything on the face of s 447A(1) that suggests that it should be read down. In particular, the words of the provision are wide enough to confer power to make orders which will have effect in the future but which are occasioned by something that has been done (or not done) under the other provisions of Pt 5.3A before application is made under s 447A(1). As was said in the judgment of the Court in *Owners of "Shin Kobe Maru" v Empire Shipping Co Inc*[20]:

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20 (1994) 181 CLR 404 at 421. See also *FAI General Insurance Co Ltd v Southern Cross Exploration NL* (1988) 165 CLR 268 at 283-284 per Wilson J, 290 per Gaudron J; *PMT Partners Pty Ltd (In Liq) v Australian National Parks and Wildlife Service* (1995) 184 CLR 301 at 313 per Brennan CJ, Gaudron and McHugh JJ; *David Grant & Co Pty Ltd v Westpac Banking Corporation* (1995) 184 CLR 265 at 275-276 per Gummow J; *Oshlack v Richmond River Council* (1998) 193 CLR 72 at 81 per Gaudron and Gummow JJ.

> "It is quite inappropriate to read provisions conferring jurisdiction or granting powers to a court by making implications or imposing limitations which are not found in the express words."

Cogent reasons must be advanced, then, if the power given by the general words of s 447A(1) is to be read down.

18 Section 447A(1) speaks of orders about how "this Part" is to operate. The reference to "this Part" cannot be read as referring only to the Part as a whole. That is, it cannot be read as referring, in some global way, to the total operation or effect of the Part. In its context, the reference to "this Part" is to be understood as a reference to each of the provisions in it, for it is the provisions of the Part which give it the operation which an order under s 447A(1) may affect. And although the examples given in s 447A(2) cannot be taken as exhaustive of the scope, or as controlling the meaning, of s 447A(1)[21], it is clear from those examples that they assume that orders under s 447A(1) may alter the operation of other provisions of the Part. That is, the orders contemplated in the examples go beyond a curial determination of what is the effect of existing provisions of the Part on a particular company in the circumstances that may be established in a proceeding; the orders contemplated are orders that alter how the Part *is to* operate in relation to a particular company, not how the Part *does* operate in relation to that company.

19 Next, the other provisions of Div 13 of Pt 5.3A give a court wide powers to protect creditors during the administration[22], to declare whether an administrator was validly appointed[23], to give directions to an administrator[24] and to supervise an administrator of a company or a deed of company arrangement[25]. And while full effect must be given to the provisions of s 447F (that "[n]othing in this Division *limits* the generality of anything else in it") it is clear, from the other provisions of Div 13 that we have mentioned, that s 447A was intended to permit a much wider class of orders than those which declare what is the effect of the

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21 s 109L.

22 s 447B.

23 s 447C.

24 s 447D.

25 s 447E.

Part or which protect the interests that creditors no doubt have in the administration of a company being carried out in accordance with law.

20 The considerations we have mentioned suggest that the powers under s 447A are wide but they do not compel the conclusion that they are entirely without limit. Some particular limitations, suggested in the course of argument, must be examined: first, that s 447A does not permit a court to make an order altering the times fixed by those provisions of Pt 5.3A which contain express provision for variation of the time so fixed; second, that it permits only orders having prospective effect; third, that it does not permit the making of orders affecting vested rights; and, fourth, that it does not apply unless there is a continuing administration (or, presumably, an extant deed of company arrangement).

21 The first of the contentions we have mentioned was founded in the proposition that s 439A(6) of the Law having made particular provision for the variation of the timetable for a second meeting of creditors, the otherwise general provisions of s 447A(1) should not be construed as permitting the making of orders for variation of the timetable in circumstances other than those provided for by s 439A(6) (namely, on application made within the convening period). The appellants referred to and relied on the well-known statements of Gavan Duffy CJ and Dixon J in *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia*[26] and of Dixon J in *R v Wallis*[27]. To adopt and adapt what was said in *Anthony Hordern*, the appellants submitted that the legislature had here given a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed and that it thus excluded the operation of general powers in the same statute which might otherwise have been relied upon.

22 The appellants placed particular reliance upon *David Grant & Co Pty Ltd v Westpac Banking Corporation*[28] where the Court considered the construction of

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26 (1932) 47 CLR 1 at 7.

27 (1949) 78 CLR 529 at 550. See also *Leon Fink Holdings Pty Ltd v Australian Film Commission* (1979) 141 CLR 672 at 678 per Mason J; *Downey v Trans Waste Pty Ltd* (1991) 172 CLR 167 at 171-172 per Mason CJ, Deane, Gaudron and McHugh JJ, 181 per Dawson J.

28 (1995) 184 CLR 265.

certain provisions of Pt 5.4 of the Law dealing with Winding Up in Insolvency, and the relationship between those provisions and s 1322. It was held that the requirement in s 459G of the Law that an application to set aside a statutory demand be made only within 21 days after service of the demand should not be treated as supplemented or qualified by the operation of s 1322[29]. But that conclusion followed from a number of considerations: not least, the fact that the express terms of s 459G(2) that "[a]n application may *only* be made within 21 days after the demand is … served" define the jurisdiction of the court by imposing a requirement as to time as an essential condition of the new right conferred by the section. In addition, particular reference was made[30] to the place occupied by s 459G in the scheme established by Pt 5.4 and the consequences that would follow if s 459G were to be treated as supplemented or qualified by the operation of s 1322. Similar considerations do not arise in relation to s 447A.

23 As it happens, the orders which were made in the present case were not orders of a kind which could have been made under s 439A(6). The orders that were made did not have the effect of *extending* the convening period; rather they altered the requirement imposed by s 439A(2) to hold the meeting *after* the end of the convening period. No question of the intersecting operation of s 447A(1) and s 439A(6) arises, and that would be reason enough to reject this contention of the appellants. But, apart from this, the contention is flawed in another, more fundamental, respect.

24 Whatever may be said of the relationship between s 1322 and the provisions of Pt 5.3A generally, or of the relationship between s 1322 and s 447A in particular, s 447A is not properly described as a general power standing apart from the scheme found in Pt 5.3A. Section 447A is an integral part of the legislative scheme provided for by Pt 5.3A. In its terms, it enables the making of orders which alter the way in which "this Part is to operate in relation to a particular company". That is, it permits the making of orders which would alter how s 439A is to apply. It is not right to seek to characterise s 447A as some general source of power to which resort cannot be had because to do so would "circumvent" the statutory limitations upon the exercise of the power that is given by s 439A(6) to extend the convening period. So to characterise s 447A is to give to all of the other provisions of Pt 5.3A a fixed and unchanging operation

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29 (1995) 184 CLR 265 at 278.

30 (1995) 184 CLR 265 at 277-278.

in relation to all companies. Yet the evident legislative intention of s 447A is to permit alterations to the way in which Pt 5.3A is to operate.

25 The second limitation suggested in argument was that s 447A(1) is limited to authorising the making of prospective rather than retrospective orders. The terms "prospective" and "retrospective" are terms that are sometimes used in different senses and we think it better not to use them here[31]. In the end, this suggested limitation may be no more than a general way of expressing what we have identified as the fourth limitation – that s 447A does not apply unless there is a continuing administration or extant deed of company arrangement. If the two contentions are separate, it is convenient to deal with them together.

26 The words of s 447A do not suggest that s 447A cannot be used if the subject company had been under administration but, by operation of other provisions of Pt 5.3A, that administration had come to an end. The subject matters with which the section deals are "a particular *company*" and the operation of Pt 5.3A in relation to that company. The subject is not a particular *administration*. It may be accepted that the expression "how this Part *is to* operate" is an expression that looks to the future, not the past. But this temporal requirement is satisfied if orders made under s 447A are orders that have effect only from the time of their making. It does not preclude the making of an order with future effect, but in respect of past matters or events[32]. Such an order would be an order about how Pt 5.3A "is to operate" (that is, is to operate thereafter) in relation to the subject company.

27 Upon closer examination, it can be seen that the second and third suggested limitations (only prospective effect, and no effect on vested rights) are also closely connected. The unstated premise which lies behind the asserted temporal limitation upon the operation of s 447A is that to make an order which would reinstate an administration which had ended would be to interfere with rights that had accrued because the administration had ended. Similarly, to appeal to general principles of statutory construction and argue that the section should not be interpreted as permitting the making of orders which would affect accrued or

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31 cf *Chang Jeeng v Nuffield (Australia) Pty Ltd* (1959) 101 CLR 629 at 637 per Dixon CJ.

32 cf *Coleman v Shell Co of Australia* (1943) 45 SR (NSW) 27 at 30-31 per Jordan CJ; *The Commonwealth v SCI Operations* (1998) 192 CLR 285 at 295 per Brennan CJ, 309 per McHugh and Gummow JJ.

vested rights invites attention not only to the breadth and content of the asserted principle of construction but also to the premise that reinstatement of an administration by an order under s 447A would affect accrued or vested rights.

28 Nothing in the Law suggests that a company can enter administration under Pt 5.3A only once. Administration may end with the execution of a deed of company arrangement[33], a creditors' resolution that the administration should end[34] or a creditors' resolution that the company be wound up[35]. Only the last of these would preclude a further administration (and then only if the winding up proceeded to dissolution in the ordinary way). If, as happened in this case, the administration ended because[36]

> "the convening period, as fixed by subsection 439A(5), for a meeting of the company's creditors end[ed]:
>
> (i) without the meeting being convened in accordance with section 439A; and
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> (ii) without an application being made for the Court to extend under subsection 439A(6) the convening period for the meeting"

the Law provides no greater consequence than that the administration ends. The suspension of the powers of officers of the company under s 437C comes to an end; the avoidance of transactions or dealings affecting the property of the company under s 437D no longer applies; the protection of the company's property under Div 6 ceases. But pointing to those consequences does no more than say that the special regime created by Pt 5.3A no longer applies to the company once it ceases to be under administration.

29 Reference to accrued or vested rights makes it necessary to distinguish between two kinds of case that may arise following termination of an administration. In particular, it is necessary to identify the circumstances in which rights may accrue in the period between the end of an administration and

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33 s 435C(2)(a).

34 s 435C(2)(b).

35 s 435C(2)(c).

36 s 435C(3)(b).

the making of an order varying the operation of Pt 5.3A in a way that would, in effect, reinstate the terminated administration.

30 In the first kind of case, steps are taken by members or officers of the company, or by third parties, which are predicated upon the termination of the administration other than by entering a deed of company arrangement or going into liquidation. For example, shares in the company are traded; directors resume the management of the company and deal with its assets or take other like steps on the assumption that the administration is at an end and there is neither a deed of company arrangement nor a winding up. In the second kind of case, steps are taken that are predicated upon the company having validly entered a deed of company arrangement or gone into liquidation.

31 The consequences of making an order, the effect of which would be to reinstate the administration, would be very different in the two kinds of case identified. In the first, to reinstate the administration may well be inconsistent with the rights which were created in the intervening period. Would a transfer of shares in that intervening period be affected by the prohibition on dealings contained in s 437F? Would a transfer of property of the company made in that period be affected by the prohibition contained in s 437D? In the second kind of case, however, there would be no inconsistency between the varied operation of Pt 5.3A and the rights that have accrued in the intervening period, if the order gave legal validity to the premise for the parties' conduct.

32 Whether there would be no power to make an order under s 447A(1) in the first of the two kinds of case we mention, or whether there would be an insuperable discretionary obstacle to its making, are points we need not examine. The present case is of the second type we have identified. The steps taken by officers of the Company and by third parties (such as those who bought the assets of the Company) were predicated upon the Company's creditors having validly resolved that the Company should go into liquidation. The orders of Santow J which are now impugned were orders which remedied the irregularities which affected the validity of the premise for those steps. No rights which may have accrued in the intervening period are adversely affected by that order. The making of the order might be said, in some cases, to operate to perfect the rights which the parties to the transaction intended to create but even if that is so, it is no reason to read down s 447A.

33 Three of the orders made by Santow J were expressed to be made under s 1322 of the Law: the order abridging the period for holding the second meeting of creditors, a declaration that the resolution by creditors for winding up the Company was not invalid and a declaration of the date upon which the winding

up commenced and that the administration of the Company continued until the passing of the resolution by the creditors. It may be that these orders are properly understood as being orders about how Pt 5.3A was to operate (after the date of their making) in relation to the Company. If that were so, there would be no occasion to consider any question of the relationship between s 1322 and s 447A. Section 447A would support them. If, on the other hand, they are not to be understood as orders about how Pt 5.3A was to operate, there is no reason to conclude that s 1322 did not supply power for their making. The appellant contended that s 1322 did not permit the making of these orders because Pt 5.3A should be understood as the exclusive source of any power to extend time, or to validate or invalidate what was done or attempted to be done in connection with administration under Pt 5.3A. But if the impugned orders were not about how Pt 5.3A was to operate, the premise for the appellant's contention about the permitted field of operation of s 1322 is not established. In these circumstances it is not necessary to give separate consideration to s 1322.

34 The appeal should be dismissed.

35 The respondents submitted that the costs order which would ordinarily follow that event should be made against the second appellant, Mr Amor, not against the Company. They pointed out that the burden of an order for costs against the Company would fall upon its creditors. That being so, and costs not being sought against the Company, there will be orders:

1. The appeal is dismissed.

2. The second appellant is to pay the respondents' costs.