

# HIGH COURT OF AUSTRALIA

GLEESON CJ  
GUMMOW, HAYNE, CALLINAN AND HEYDON JJ

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CHARLES STUART GORDON

APPELLANT

AND

RAYMOND GEORGE TOLCHER IN HIS  
CAPACITY AS LIQUIDATOR OF SENAFIELD  
PTY LTD (IN LIQUIDATION) & ANOR

RESPONDENTS

*Gordon v Tolcher in his capacity as liquidator of  
Senafield Pty Ltd (In liquidation) [2006] HCA 62  
15 December 2006  
S62/2006*

## ORDER

*Appeal dismissed with costs.*

On appeal from the Supreme Court of New South Wales

### Representation

B A J Coles QC with C R C Newlinds SC and D A Allen for the appellant  
(instructed by Linde Business Law)

G O'L Reynolds SC with R C Scruby and P Kulevski for the respondents  
(instructed by Kemp Strang)

H C Burmester QC with G A Hill for the Attorney-General of the  
Commonwealth intervening (instructed by Australian Government Solicitor)

P J Hanks QC with S G E McLeish for the Attorney-General for the State of  
Victoria intervening (instructed by Victorian Government Solicitor)

Notice: This copy of the Court's Reasons for Judgment is subject to  
formal revision prior to publication in the Commonwealth Law Reports.



## CATCHWORDS

### **Gordon v Tolcher in his Capacity as Liquidator of Senafield Pty Ltd (in liq)**

Courts – Federal jurisdiction in State courts – Proceedings brought in New South Wales District Court – Section 1337E of the *Corporations Act* 2001 (Cth) ("Corporations Act") conferred federal jurisdiction on "lower courts" in "matters" under the Corporations Act – Section 588FF(3) of the Corporations Act provided for time limits on commencement of actions – Part 3 r 2 of the District Court Rules 1973 (NSW) ("the Rules") authorised extension of time – Whether s 79 of the *Judiciary Act* 1903 (Cth) "picked up" the provisions of the Rules relating to extension of time – Whether the Corporations Act was a Commonwealth law that "otherwise provided" to prevent the provisions of the Rules relating to extension of time being "picked up".

Limitation of Actions – Proceedings brought under the Corporations Act – Proceedings deemed to be dismissed by Pt 18 r 9 of the Rules – Whether extension of time under Pt 3 r 2 of the Rules valid.

Words and phrases – "otherwise provided", "dismissal", "picked up".

*Corporations Act* 2001 (Cth), ss 9, 1337E, 588FF.

*District Court Act* 1973 (NSW), ss 8, 161.

District Court Rules 1973 (NSW), Pt 3 r 2(2), Pt 18 r 9.

*Judiciary Act* 1903 (Cth), s 79.



1 GLEESON CJ, GUMMOW, HAYNE, CALLINAN AND HEYDON JJ. The appellant, the defendant in the proceedings in the District Court of New South Wales where this litigation commenced, is the father of the sole director and shareholder of the second respondent. The first respondent is the liquidator of the second respondent. It is alleged that the second respondent was a rural landholding company and that the second respondent gave to the appellant for no consideration mortgages over various properties owned by the second respondent and a fixed and floating charge over all of its assets. The mortgages and charges are said to have conferred no benefit on the second respondent. The respondents seek the recovery of moneys which represent the funds received by the appellant from the sale of the mortgaged properties.

2 The litigation has reached this Court on an issue respecting the scope of the federal jurisdiction exercised by the District Court and, in that regard, the interaction of provisions of the *Corporations Act* 2001 (Cth) ("the Corporations Act") and s 79 of the *Judiciary Act* 1903 (Cth) ("the Judiciary Act"). An understanding of the issues must proceed from a consideration of the terms of that legislation.

#### The Corporations Act and the Judiciary Act

3 The Corporations Act deals distinctly with the creation of rights and liabilities, and with the conferral of federal jurisdiction to adjudicate matters arising thereunder. As to the creation of relevant rights and liabilities, the statute provides in Ch 5 (Pts 5.1-5.9) for matters of "External administration". Part 5.7B contains provisions respecting recovery of property or compensation for the benefit of creditors of an insolvent company. Division 2 thereof (ss 588FA-F88FJ) deals with "Voidable transactions". These include "Unfair preferences" (s 588FA), "Uncommercial transactions" (s 588FB), "Insolvent transactions" (s 588FC) and "Unfair loans to a company" (s 588FD)<sup>1</sup>.

4 Section 588FE renders voidable certain of the transactions described in these earlier provisions. Section 588FF then provides for the making of court

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1 Division 2 of Pt 5.7B was amended by the *Corporations Amendment (Repayment of Directors' Bonuses) Act* 2003 (Cth) to provide for what were identified as "unreasonable director-related transactions". This litigation concerns the legislation in its earlier form and references to the Corporations Act in these reasons are to be read accordingly.

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orders in respect of transactions which are voidable because of s 588FE. It is convenient to refer more fully to that section later in these reasons.

5 It is necessary now to turn to the provisions respecting adjudication of matters arising under these provisions of Pt 5.7B.

6 Section 58AA(2) states:

"Except where there is a clear expression of a contrary intention (for example, by use of the expression 'the Court'), proceedings in relation to a matter under this Act may, subject to Part 9.7, be brought in any court.

Note: The matters dealt with in Part 9.7 include the applicability of limits on the jurisdictional competence of courts."

7 Part 9.7 deals with unclaimed property. It is apparent that the above references to "9.7" in s 58AA should be to "9.6A"<sup>2</sup>.

8 The expression "superior court matter" is defined in s 9 as follows:

"**superior court matter** means a civil matter that this Act clearly intends (for example, by use of the expression **the Court**) to be dealt with only by a superior court".

A "superior court" is the Federal Court, the Supreme Court of a State or Territory, the Family Court and a State Family Court (s 9).

9 Part 9.6A of Ch 9 is headed "Jurisdiction and procedure of Courts". Division 1 (ss 1337A-1337U) is headed "Civil jurisdiction". The District Court of New South Wales is constituted by s 8 of the *District Court Act* 1973 (NSW) ("the District Court Act"). Section 1337E of the Corporations Act confers jurisdiction on "the lower courts" of New South Wales with respect to "matters" arising under the Corporations Act, not being "superior court matters". Jurisdiction is conferred with respect to Corporations Act "matters", subject to the general jurisdictional limits of the court in question relating to amounts and value of property but is not made subject to other jurisdictional limits (s 1337E(2)).

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2 cf the discrepancy revealed in *WACB v Minister for Immigration and Multicultural and Indigenous Affairs* (2004) 79 ALJR 94 at 101-102 [38]-[40]; 210 ALR 190 at 200.

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10 Although the parties did not place any particular reliance upon other parts of Ch 9, some reference should be made to Pt 9.4B (ss 1317DA-1317S) and to Pt 9.5 (ss 1318-1327). The former deals with the civil consequences of contravening civil penalty provisions and the latter confers on courts invested with jurisdiction in matters arising under the legislation a range of powers and remedies. However, neither Pt 9.4B nor Pt 9.5 encompasses the provisions for the conduct of litigation which generally are left to Rules of Court.

11 Section 79 of the *Judiciary Act* 1903 (Cth) ("the Judiciary Act") states:

"The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable."

The laws of New South Wales relating to procedure included the District Court Rules 1973 (NSW) ("the Rules") made under the powers conferred by s 161 of the District Court Act<sup>3</sup>.

12 The controversy in this Court concerns the operation of s 79 of the Judiciary Act. In short form, the issue is whether in the District Court proceedings certain provisions of the Rules were not "picked up" by s 79 because, within the meaning of that section, there was a law of the Commonwealth, namely s 588FF of the Corporations Law, which "otherwise provided".

Section 588FF of the Corporations Act

13 Section 588FF(1) states that "a court" may make one or more of the orders identified in pars (a)-(j) of that sub-section:

"Where, on the application of a company's liquidator, a court is satisfied that a transaction of the company is voidable because of section 588FE ...".

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3 The Rules have been replaced by the Uniform Civil Procedure Rules 2005 (NSW) made pursuant to the *Civil Procedure Act* 2005 (NSW) but the provisions of the Rules with which this appeal is concerned have substantially been replicated by the new provisions.

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Paragraphs (a)-(j) list a range of orders in terms which might be thought to involve some overlapping. It is in that setting that s 588FF(2) provides that nothing in sub-s (1) limits the generality of anything else in that sub-section.

14           Section 588FF(3) is of particular significance for this appeal. It states:

"An application under subsection (1) may only be made:

- (a)     within 3 years after the relation-back day; or
- (b)     within such longer period as the Court orders on an application under this paragraph made by the liquidator within those 3 years."

15           The use in sub-s (1) of the term "a court" and in sub-s (3) of the term "the Court" should be noted. When used in s 588FF(1), "court" means any court (s 58AA(1)), upon which federal jurisdiction in the matter has been conferred. The jurisdiction of the District Court in the matter was invested under s 1337E of the Corporations Act, referred to above, the District Court being one of "the lower courts" of New South Wales. The term "lower court" is defined in s 9 as meaning a court of a State or Territory that is not a superior court. However, the District Court would not have had the federal jurisdiction vested in it to entertain any application for the setting of a longer period under sub-s (3)(b) of s 588FF within which the substantive application might be made. That absence of jurisdiction would have resulted from the use of the expression "the Court" in par (b) of sub-s (3) as identifying only a superior court.

16           The expression "the relation-back day" within three years after which an application under sub-s (1) may only be made (sub-s (3)(a)) is defined in s 9 in terms which it is unnecessary to set out. By order of the Supreme Court of New South Wales on 5 June 2000, the predecessor of the first respondent (who also will be identified in these reasons as the first respondent) was appointed liquidator of the second respondent. The definition of "the relation-back day" so operated in those circumstances as to fix that day as 5 May 2000.

17           On 2 May 2003, that is to say shortly before the end of the three year period fixed by par (a) of s 588FF(3), the respondents instituted by statement of liquidated claim filed in the District Court a proceeding against the appellant claiming the sum of \$522,504.07 in respect of certain alleged uncommercial transactions and insolvent transactions. All of these were said to be voidable transactions within the meaning of s 588FE of the Corporations Act. Orders were sought pursuant to s 588FF(1).



The steps taken in the District Court

18 As matters stood on 1 December 2003, the statement of liquidated claim had not been served on the appellant and, accordingly, no notice of grounds of defence had been filed. Nor had the occasion arisen for the entry of any default judgment or the making of any other order disposing of the proceeding. Part 18 r 9 of the Rules provided that certain "dormant" actions are "taken to be dismissed". It stated:

"If an action is commenced by the lodging of a statement of liquidated claim and, on the expiry of the period of 6 months and 28 days from the date of the commencement of the action:

- (a) a notice of grounds of defence has not been filed, and
- (b) default judgment has not been entered or the action otherwise disposed of by judgment or final order,

the action is taken to be dismissed on the day following the day on which that period expires."

19 The result was that on 1 December 2003 the action against the appellant was "taken to be dismissed". The appellant does not challenge the operation of s 79 of the Judiciary Act to pick up Pt 18 r 9 to achieve that result. It is with the steps subsequently taken under the Rules to maintain the proceedings against the appellant that he takes issue.

20 By notice of motion dated 19 January 2004, the respondents sought from the District Court orders which would have the effect of rescinding the deemed dismissal which had been effected by Pt 18 r 9. The date of 19 January 2004 was, of course, well after the end of the three year period identified in s 588FF of the Corporations Act. In his reasons, Armitage DCJ concluded that the prejudice to the appellant, given his state of health, in now being called upon to defend the substantive proceeding, outweighed the case for granting the relief sought on the motion by the respondents. In support of that motion, the respondents relied upon evidence of difficulties and delays in obtaining and retaining funding for the substantive proceedings.

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### The Court of Appeal

21       The Court of Appeal (Hodgson, Ipp and Tobias JJA) granted an application by the respondents for leave to appeal and on 3 May 2005 ordered that the time for service of the statement of liquidated claim be extended up to, and that service be deemed to have been effected on, that day; the Court also ordered that the time specified in Pt 18 r 9 of the Rules be extended "nunc pro tunc up to and including a date being 60 days after the date of these orders"<sup>4</sup>.

22       An application by the appellant to this Court for special leave was dismissed in so far as he disputed the manner and exercise by the Court of Appeal of the relevant powers under the Rules. However, leave was granted upon the issue of whether the Court of Appeal had erred in failing to hold that the provisions of the Rules authorising extension of time within which the respondents' application might be maintained, notwithstanding their earlier dismissal under those Rules, were not applied by s 79 of the Judiciary Act because s 588FF(3) of the Corporations Act was a Commonwealth law which "otherwise provided".

23       The Court of Appeal expressed its orders as based on Pt 3 r 2(2) of the Rules. Sub-rules (1) and (2) of Pt 3 r 2 stated:

"(1) The Court may by order extend or abridge any time fixed by the rules or by any judgment or order.

(2) The Court may extend time under subrule (1) *as well after as before* the time expires, whether or not an application for the extension is made before the time expires or at all." (emphasis added)

24       It will be recalled that Pt 18 r 9 uses the phrase "the action is taken to be dismissed". That form of words suggests that the outcome is to be deemed to be that which would have obtained had there been a dismissal by Court order. The term "dismiss" is defined in Pt 1 r 4(1) as follows:

"*dismiss*, in relation to any proceedings, means finally dispose of the proceedings, but (except where the proceedings consist of an appeal to the

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4   *Tolcher v Gordon* (2005) 53 ACSR 442; 23 ACLC 798.

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Court) without prejudice to any right to commence fresh proceedings seeking the same, or substantially the same, relief".

25 The reference to "any right to commence fresh proceedings" would not have availed the respondents in this litigation; given the lapse of time, that "right" could not exist in the face of s 588FF(3) and s 79 of the Judiciary Act would not have picked up so much of the Rules as conferred such a "right".

26 Special provision is made by Pt 1 r 7A where there has been a "preliminary dismissal order". This means "an order made by the Court dismissing proceedings other than an order dismissing proceedings after there has been a trial or hearing on the merits of the case or an application to dismiss the proceedings". Rule 7A empowers the Court, on application, to set aside a preliminary dismissal order.

27 On their motion which was dismissed by Armitage DCJ, the respondents had relied upon r 7A, in the alternative to any other applicable provision. However, as indicated, the Court of Appeal made its orders *nunc pro tunc* on a different footing, that provided by the general power of extension of time provided by Pt 3 r 2.

28 Given the limited grant of special leave by this Court, it is inappropriate to venture further into any questions of construction of the Rules. It is sufficient for the purposes of the present appeal that the orders of the Court of Appeal were made after the end of the three year period spoken of in s 588FF(3) and that, had the Court of Appeal not made those orders, the position would have remained that the application was taken to have been dismissed by operation of Pt 18 r 9 as a dormant action.

#### The interrelation between the Judiciary Act and the Corporations Act

29 Section 1337A of the Corporations Act is included in Div 1 of Pt 9.6A, which deals with civil jurisdiction. The section excludes the operation of s 39B of the Judiciary Act which confers certain jurisdiction on the Federal Court (s 1337A(2)). However, Div 1 does not limit the operation of the other provisions of the Judiciary Act (s 1337A(3)). The Division thus recognises the concurrent operation of s 79 of the Judiciary Act. Further, the Division does not limit the operation of s 39(2) of the Judiciary Act with respect to civil matters arising under the Corporations Act (s 1337A(4)). Section 39(2) is the general provision for the investment of federal jurisdiction in the several courts of the

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States. This included the appellate jurisdiction exercised in this case by the New South Wales Court of Appeal<sup>5</sup>.

30       Section 5E of the Corporations Act states an intention not to exclude or limit the concurrent operation of any State law provided there is no direct inconsistency. However, that provision has no significance in the present case. Of their own force the Rules had no application to the exercise of federal jurisdiction by the District Court; hence the occasion for the operation of s 79<sup>6</sup>.

31       The appellant submits that, were there to be "picked up" the Rules which supported the orders made by the Court of Appeal, s 588FF of the Corporations Act would so reduce their ambit that s 588FF would be irreconcilable with them; accordingly, the Corporations Act "otherwise provides" within the meaning of s 79 as construed in accordance with the decisions of this Court, and the relevant Rules are not "picked up"<sup>7</sup>.

32       Section 588FF does not deal with the investment of federal jurisdiction in any court or with the manner of exercise of that jurisdiction. The section is found in Pt 5.7B, whilst the jurisdiction of courts is provided for in Pt 9.6A. Section 588FF is silent respecting the procedures to be adopted by the court exercising federal jurisdiction in the present matter; this jurisdiction is conferred by s 1337E upon the District Court. Section 588FF evinces a two-fold legislative intention. First, conferral of federal jurisdiction is left to Pt 9.6A of the Corporations Act. Secondly, subject to any operation of other provisions of the Corporations Act, after the institution of an application the procedural regulation of the conduct of a matter is left for that particular State or territorial procedural law which is to be picked up by s 79 of the Judiciary Act.

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5    See *R v Whitfield; Ex parte Quon Tat* (1913) 15 CLR 689.

6    *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334 at 352 [35]; *APLA Ltd v Legal Services Commissioner* (2005) 79 ALJR 1620 at 1663-1664 [230]; 219 ALR 403 at 459; Hill and Beech, "'Picking up' State and Territory laws under s 79 of the Judiciary Act – three questions", (2005) 27 *Australian Bar Review* 25 at 27-28.

7    *Northern Territory v GPAO* (1999) 196 CLR 553 at 587-589 [78]-[83], 606 [135], 650 [254]; *Austral Pacific Group Ltd (In liq) v Airservices Australia* (2000) 203 CLR 136 at 144 [17], 155 [53], 169 [106].

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33 That conclusion is sufficient to dispose of the appeal, but something more should be said respecting the construction of s 588FF, its presence in Pt 5.7B and its relationship with the conferral of civil jurisdiction made by Div 1 of Pt 9.6A of the Corporations Act.

Does s 588FF "otherwise provide"?

34 Section 588FF postulates the operation of s 588FE to render certain transactions voidable. The section deals with the consequences of that state of affairs by the making of court orders upon satisfaction that the transaction in question is voidable by operation of s 588FE. Section 588FF is enlivened only upon application by the liquidator of the company in question. Further, that application may only be made within three years after the relation-back day or thereafter within the longer period fixed on a separate and anterior application by the liquidator made within those three years (s 588FF(3)).

35 That an application for the fixing of that longer period is a "matter" distinct from that seeking an order with respect to the voidable transaction is apparent from the identification in s 588FF of the courts to deal with the applications. As indicated earlier in these reasons, "the Court" to make an order for a longer period under par (b) of s 588FF(3) could not have been the District Court because it would not have answered the term "the Court", the District Court being a lower court rather than a superior court. On the other hand, as was the case, the application under s 588FF(1) was made to the District Court, it answering the description "a court".

36 Two stipulations for the competent institution of the application under s 588FF(1) which the respondents made to the District Court were that it be made by the liquidator of the second respondent and that it be made, as was the case, within three years after the relation-back day. These stipulations were elements of the right of the respondents to have that Court consider the making of the order for payment sought by them.

37 The provision in sub-s (3) of s 588FF as to the time of the making of the application is of the essence of the provision made by s 588FF; it is not to be characterised merely as a time stipulation of a procedural nature<sup>8</sup>. The

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8 See *Rudolphy v Lightfoot* (1999) 197 CLR 500 at 507-508 [11]-[12]; *Agtrack (NT) Pty Ltd (t/a Spring Air) v Hatfield* (2005) 79 ALJR 1389 at 1398 [51], 1399 [54]; 218 ALR 677 at 689, 690.

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significance of sub-s (3) in the statutory scheme was considered by Spigelman CJ, who gave the leading judgment in *BP Australia Ltd v Brown*<sup>9</sup>. His Honour referred to the *General Insolvency Inquiry* ("the Harmer Report")<sup>10</sup>, published in 1988.

38 Paragraph 688 of the Harmer Report had stated:

"Actions by a liquidator to recover the proceeds of a void execution, a preference, a transaction at an undervalue or a transaction with intent to defeat should be commenced within a reasonable time. The Commission proposed in [Discussion Paper 32 (par 454)] that a liquidator should have three years to commence such an action, although the court might extend that time. Under the existing law the time period would be six years (for example, [the *Bankruptcy Act* 1966 (Cth), s 127]). Many submissions to the Commission complained about the sometimes inordinate delay in commencing proceedings in respect of voidable transactions. In addition, there have been recent judicial observations critical of the general delays associated with the winding up of insolvent companies. It is therefore considered desirable to place liquidators under a more rigorous but, nonetheless, reasonable time limitation for taking action under these provisions. The Commission recommends accordingly."

39 In *BP*, Spigelman CJ said of s 588FF<sup>11</sup>:

"Prior to Pt 5.7B, the practice was for the court to declare a disposition to be void with the consequences left to the general law, together with some statutory powers of limited scope such as s 567 of the *Corporations Law*. Section 588FF(1) identifies a range of specific orders that can be made and which are more focused and more comprehensive than the orders that were hitherto available by way of relief under the general law or statute."

His Honour further remarked that the original proposal in the Harmer Report had significantly been strengthened by the inclusion both by the introductory phrase "may only be made" in s 588FF(3) and also by the stipulation that an application

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9 (2003) 58 NSWLR 322.

10 Australia, The Law Reform Commission, Report No 45.

11 (2003) 58 NSWLR 322 at 344.

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for extension beyond the three year period had to be made within the original stipulation period<sup>12</sup>. Spigelman CJ added<sup>13</sup>:

"The time limit in s 588FF(3) has the effect that at the end of the period of three years, such a person will know whether [that person] remains at risk<sup>14</sup>. In a legislative scheme which seeks to balance conflicting commercial interests of this character, that appears to me to be a perfectly reasonable requirement. Those who have an interest, or who represent those who have an interest, to disturb transactions must indicate, within three years, whether they wish to keep open the option of doing so. In this, as in other areas, legal policy favours certainty.

...

Section 588FF(3) does not have the effect of requiring all applications to be brought within a short period of time. It does, however, have the effect of requiring those who wish to keep open the option to do so, to determine that they do wish to do so within the three year period and to seek a determinate extension of the period. One thing that must be decided within the three year period is how long the process of deciding whether to pursue voidable transactions will take. Eventually, investigations to overcome deficiencies of information or the pursuit of funding must cease. Parliament has identified a reasonable time for such matters to occur, subject to a single determinate extension of time."

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Accordingly, s 588FF is dealing, as an essential aspect of the regime it creates, with the period within which the application must be made. An application may be made only to a court invested with federal jurisdiction by one or other of the provisions of Pt 9.6A. Thereafter, and subject to any other

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**12** (2003) 58 NSWLR 322 at 344.

**13** (2003) 58 NSWLR 322 at 345-346.

**14** This observation by Spigelman CJ is not universally true, because an application can be made against, without being served on, the person at risk: but it is generally true.

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relevant provision of the Corporations Act, the conduct of the litigation is left for the operation of the procedures of that court. These procedures will vary from one State or Territory to another and within the court structures of those States and Territories. The scheme of the Corporations Act is not to impose a direct federal and universal procedural regime. Rather, s 79 of the Judiciary Act is left to operate according to its terms in the particular State or Territory concerned.

41           Thus the relationship between s 588FF and s 79 (and between Pt 9.6A and s 79) is not one of which it may be said that the former provision is a law of the Commonwealth which "otherwise provides" so as to deny the operation of s 79 in this case to pick up so much of the Rules as supported the orders made by the Court of Appeal.

42           There may be questions which arise respecting the relationship between s 79 and other provisions of the Corporations Act, including Pt 9.4B and Pt 9.5, to which reference is made earlier in these reasons. No issue of this nature arises in this appeal and no more should be said here on that possibility.

#### Remaining question

43           There remains a further but subsidiary point. It was suggested in the submissions for the appellant that by reason of the operation of Pt 18 r 9 of the Rules on 1 December 2003 the exercise of federal jurisdiction thereafter was spent. The application under s 588FF of the Corporations Act was taken to be dismissed by the operation of Pt 18 r 9 and the orders eventually made by the Court of Appeal under other provisions of the Rules were said to be beyond the exercise of any federal jurisdiction vested in the District Court.

44           The answer was provided in the submissions for the Attorney-General for Victoria who intervened in support of the respondents. The circumstance that the Rules provided in the terms of Pt 18 r 9 for dismissal of that proceeding does not provide a basis for the conclusion that the federal jurisdiction was exhausted on 1 December 2003, unless it be assumed that the "dismissal" was final in all respects. The Rules, as was emphasised in the course of argument in this Court,



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are to be read as a whole. At all times in the District Court and in the Court of Appeal there was a proceeding in the exercise of federal jurisdiction because those Courts were seized of a "matter" arising under a law of the Parliament, namely s 588FF, in respect of which jurisdiction had been conferred on the District Court under Pt 9.6A of the same statute.

Order

45           The appeal should be dismissed with costs.