No. 37 of 1929.

In the High Court of Australia.

1929 . No. 37

BYRON HALL LIMITED
(Plaintiff) Appellant.

v.

HAMILTON & ORS.
(Defendants) Respondents.

No.	Nature of Document.
1	Order fixing date of hearing.
2	Affidavit of service of notice and grounds of appeal.
3	Reasons for Judgment.
4	Order
5	Costs of Respondent.
6	Certificate of Taxation.
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No. 37/1929

Original Reasons for Judgment High Court.

B Y R O N   H A L L   L T D

v.

H A M I L T O N

J U D G M E N T

GAVAN DUFFY J.
RICH J.
STARKE J.
DIXON J.

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BYRON HALL LTD v HAMILTON

This is an appeal from a decree of Harvey C.J. in Equity dismissing a suit by a Company against an architect named Claud Hamilton with whom two other persons were joined as defendants, named Wiliam Henry James and Irene Beatrice Gibson.

According to the evidence of the defendant, Hamilton, whom the trial Judge believed, the terms upon which he and the defendants James and Miss Gibson became co-adventurers appear to have been, in effect these :--- They were to sell a parcel of land upon which a building stood called Tennyson Hall or House and which they owned as tenants in common in unequal shares. The purchase money of which the defendant Hamilton's share amounted, in the event, to £8,500, was to be applied in the new enterprise.

They were to purchase a piece of land for £II,250 and upon it erect a building to be called Byron Hall. This building was to

be designed by the defendant Hamilton for an estimated cost of £42,000 or £45,000 and erected by day labour under his supervision.

The balance of the expenditure required was to be met by borrowing upon the security of the land as large a sum as possible and the defendant James was to supply the rest as a contribution of capital.

The parties were to share in capital and profits in the fixed proportion of two fifths for Hamilton and three fifths for James and Miss Gibson jointly.

If the building had cost no more than £45,000, and £30,000 had been borrowed as was anticipated the result would have been that

James and Miss Gibson would have acquired their three fifths by a contribution of £17,750 and Hamilton, his two fifths by a contribution of £8,500 cash and of his services the value of which he estimated at current rates to be ten per cent of £45,000 or £4,500. But whilst the amount of the contribution of Hamilton was fixed, the amount which James and Miss Gibson would be required to contribute would vary directly with the cost of the building and inversely with the amount borrowed.

After Tennyson Hall was sold and the site of Byron Hall was bought, James, Miss Gibson and Hamilton agreed to register a Company for the purpose of carrying through the joint adventure.

The capital was to be 50,000 shares of £I-0-0 each, and

James and Miss Gibson were to take 30,000 shares fully paid , and Hamilton 20,000 fully paid. The Company was registered accordingly on 12th January 1927. Seven perons signed the Memorandum of Association in respect of one share each. Three or four of these were nominees of James and the remaining three were the defendants - James, Miss Gibson and Hamilton. James and Hamilton were named in the Articles as the first Directors , but were required to obtain a share qualification within one month, which they failed to do.

Nevertheless they opened a bank account in the Company's name, obtained an overdraft by giving their personal guarantee and undertaking to give and later giving a mortgage of the land which in the meantime had been transferred to

them, and paid for the erection of the building by overdrawing this account by means of the Company's cheques.

The work of constructing the building was done under the Company's name, and in that name all insurances were effected, and the building was generally described as the Company's. But no formal contract was entered into between the Company and the three defendants, nor was the land transferred to it, nor, before suit, were any shares allotted to the defendants . No formal meetings of Directors took place, and among the co-adventurers themselves the Company was ignored. Unfortunately for the peaceable fulfilment of the vague, ill considered and unexpressed, but doubtless good intentions of the parties, the building cost a great deal more than the estimated £42,000 or £45,000,

and according to the assertion of James, his and Miss Gibson's contribution amounted in the end to some £32,000. This led him to deny that Hamilton was entitled to a two fifths interest in the venture and to contrive that this suit should be brought in order to compel a transfer to the Company of the land with the building upon it, on terms much less favourable to Hamilton.

With the aid of his three or four nominee shareholders of one share each, he constituted a Board of Directors, allotted 10,000 shares to himself and 10,000 to each of two nominees, and caused the Company to file a statement of claim in this suit in Equity against Hamilton, himself and Miss Gibson. He and she submitted to a decree and the

suit proceeded against Hamilton.

The statement of claim sought to fix Hamilton with an agreement between himself, James and Miss Gibson on the one side and the Company on the other in effect to transfer land and buildings in exchange for shares to the extent of their actual cash contributions paid to the vendors of the land or the Company direct, not exceeding £20,000 and £30,000 respectively.

Alternatively the pleading alleged that the Company was induced to build Byron Hall upon the land by representations that the three defendants would transfer the land to it upon the Company recouping them what they had expended in purchasing the land and towards erecting the building. A third cause of action alleged

in the alternative was that the Company had been induced and encouraged to build Byron Hall upon the faith of the three defendants carrying out a contract inter se to transfer to the Company upon the terms set up in the first alternative.

Harvey C.J. in Eq dismissed the suit. He considered that the three defendants had made no contract with the Company and that the arrangement between the three defendants did not consist of the terms that Hamilton was to receive shares commensurate only with his money contribution. The learned Judge found that Hamilton was to receive an interest of two fifths in consideration of £8,500 cash and of his services. Such an interest consisted of 20,000 £I shares in the Company.

We agree with these conclusions. The arrangement between the three defendants was the subject of conflicting oral testimony upon which Harvey C.J. was in a better position than we are to form a judgment, but apart from THIS the probabilities as disclosed by the printed evidence are strongly in favour of his view.

But, in any case, the three defendants who beneficially owned the land and controlled the Company occupied a position in which they were entitled to deal as they chose in relation to the Company and while they of course intended to invest the Company with property in the undertaking, they took no step to do so. Their mutual INTENTION to clothe the Company with title and to put all the assets of the venture in its ownership, creates no legal relationship with the Company as

an independant legal person and the fact that they caused the Company as their automaton to act as if their intention had already been carried out cannot advance the matter. The truth is that the actual establishment of proprietary and legal relations with the Company was and continued to be a matter in fieri.

The other causes of action set up in the alternative by the statement of claim assert equities which do not arise from the facts.

The Company was not misled by representations or otherwise into making and acting upon any assumption which Hamilton must make good in its favour or from which he may not depart.

The defendants as co-adventurers owned the land and such of the

capital of the Company as was issued. They were at liberty to deal as they chose with the credit of the Company, if it had any, and to use its name for their own purposes. In doing so they were not adopting any false assumption upon its behalf. They intended in future to transfer the undertaking to the Company and, in erecting the building, they simply used the Company's name and independent personality in the manner which they found convenient.

The Company was their creature and they could and did make it act as they desired. The attempt, in the absence of contract, to find some other obligation or relationship requiring the fulfilment of intentions de futuro must fail as most attempts of that nature do.

By its notice of appeal the plaintiff Company sought a decree

compelling the transfer of the land upon the terms which Harvey C.J. in Eq. thought had in fact been arranged. This entirely deserts the plaintiff's pleading and such a case cannot now be entertained both for this reason and because the question whether the Company has disabled itself from performance of such a contract or has otherwise disentitled itself to relief, was never investigated or considered. But, apart from this, if the question were open, it is plain that the reasons we have already given for the conclusion that the defendants made no contract with the Company and incurred no equitable duty to the Company to transfer the land to it apply whether the terms be those stated in the pleadings or those in the notice of appeal.

The appeal will be dismissed with costs.