



HIGH COURT OF AUSTRALIA

Public Information Officer

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EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v GLENGALLAN
INVESTMENTS PTY LTD
EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v EDWIN THOMAS CODD
EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v CYRIL WILLIAM
ANDERSON
EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v BRIAN THOMAS
PRENDERGAST
EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v BARRY THORNTON
EQUUSCORP AND RURAL FINANCE PTY LTD (in liquidation) v HGT INVESTMENTS PTY
LTD

A written agreement for participation in a tax-effective investment scheme for farming crayfish overrode an inconsistent prior oral agreement that the investors claimed limited their liability, the High Court of Australia held today.

Investors associated with GWA Pty Ltd (now GWA International Ltd) and its chairman Mr Thornton acquired units in the Red Claw crayfish project in north Queensland in June 1989 by borrowing \$3.2 million. The project was managed by its promoter Tony Johnson's company Johnson Farm Management.

Terms of the partnership were recorded in a partnership deed between Eagle Star Trustees Ltd, the unit holders' representative, and Forestell Securities (Australia) Ltd, the partnership managers. On 30 June 1989 Mr Thornton and the other respondents each executed a written loan agreement to borrow the whole purchase price from Rural Finance. (Equuscorp later became assignee of the loans.) The transactions appeared to be total payment from Rural Finance to Eagle Star to Forestell, which distributed sums to JFM and FJA, which then deposited them with Rural Finance as an interest-bearing deposit. The respondents claimed there was no loan, at least not of "real money". The venture failed due to stock losses and expensive repairs to leaking ponds.

Rural Finance and Equuscorp sued the respondents in the Queensland Supreme Court, claiming each defaulted on their repayments, but the respondents said they were not indebted as no money was lent. Justice John Helman concluded the transactions were merely book entries made to create an audit trail. Equuscorp and Rural Finance unsuccessfully appealed to the Court of Appeal.

The respondents also alleged an oral agreement by which the liability of each was limited to one payment on 30 June 1989 and two more payments on 30 September and 31 December, then the income generated would extinguish the balance of the loan. They alleged they signed the written loan agreement relying on limited liability and on Rural Finance having sufficient funds to lend.

The High Court held that the loan transaction was legally effective. It held that the allegation that liability was limited was at odds with the prospectus and a circular about the scheme. Neither the prospectus nor the written loan agreement suggested any limitation on borrowers' liability and neither suggested any warranty about the project's returns, instead warning the investment should be considered speculative. The Court held the respondents were bound by the written agreement. It unanimously allowed the appeal and ordered that matters be remitted to the Supreme Court for consideration of further issues not decided at trial.

- *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.*