HIGH COURT OF AUSTRALIA

11 March 2015

GRANT SAMUEL CORPORATE FINANCE PTY LIMITED v FLETCHER & ORS
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION & ANOR v FLETCHER & ORS

[2015] HCA 8

Today the High Court unanimously held that the rules of courts of the States and Territories cannot apply so as to vary the time dictated by s 588FF(3) of the *Corporations Act* 2001 (Cth) for the bringing of proceedings for orders with respect to voidable transactions.

The first respondents in these appeals are the liquidators of the second and third respondents. Section 588FF(1) of the *Corporations Act* provides that a court, on the application of a company's liquidator, may make certain orders where the court is satisfied that a transaction of the company is voidable because of s 588FE. Section 588FF(3) provides that an application under s 588FF(1) "may only be made" during a period of limitation set out in par (a) ("the par (a) period") or "within such longer period as the Court orders" on an application made by the liquidator during the par (a) period. The effect of s 588FF(3) was to require an application under s 588FF(1) to be made by the liquidators of the second respondents by 4 June 2011, unless the court ordered that an application could be made within a longer period under s 588FF(3)(b).

On 10 May 2011, the liquidators applied for an order extending the period within which they might bring proceedings under s 588FF(1). On 30 May 2011, the Supreme Court of New South Wales extended that period to 3 October 2011 ("the extension order"). A further application was made to the Supreme Court within the period of that extension, but after the par (a) period had expired. On 19 September 2011, the Supreme Court made an order on that application, under r 36.16(2)(b) of the Uniform Civil Procedure Rules 2005 (NSW) ("the UCPR"), varying the extension order by changing the date by which the liquidators could make an application under s 588FF(1) to 3 April 2012 ("the variation order"). Under s 79(1) of the *Judiciary Act* 1903 (Cth), the UCPR is binding on all courts exercising federal jurisdiction in New South Wales, "except as otherwise provided by the Constitution or the laws of the Commonwealth". The appellants' applications to set aside the variation order were dismissed by the Supreme Court and appeals from that decision were dismissed by a majority of the Court of Appeal. By grant of special leave, the appellants appealed to the High Court.

The High Court unanimously allowed the appeals. The Court held that the bringing of an application within the time required by s 588FF(3) is a precondition to the court's jurisdiction under s 588FF(1), and that the only power given to a court to vary the par (a) period is that given by s 588FF(3)(b). The Court concluded that, once the par (a) period had elapsed, the UCPR could not be utilised to further extend the time within which proceedings under s 588FF(1) could be brought, because s 588FF(3) "otherwise provided".

- *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.*

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