

## **Bendigo and Adelaide Bank Limited v Pickard [2019] SASC 123**

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### **Facts**

- Bendigo and Adelaide Bank Ltd and others ("**the Plaintiffs**") commenced proceedings against Kenneth Pickard and others ("**the Defendants**").
- The Plaintiffs claimed that the Defendants were guarantors under a loan deed, and that moneys were payable to it by the Defendants under that guarantee.
- The Defendants were directors of Kenrop Pty Ltd (in liq) ("**Kenrop**"). Kenrop was the trustee of the K & A Pickard Family Trust, which had investments in Great Southern Group ("**Great Southern**") projects.
- Great Southern had facilitated multiple agribusiness managed investment schemes. Great Southern Finance Pty Ltd ("**GSF**") and ABL Nominees Pty Ltd ("**ABL**") offered finance to potential investors. All the GSG investment schemes failed.
- The Plaintiffs claimed moneys from the Defendants as guarantors.
- The Plaintiffs claimed that the Defendants had appointed Great Southern as their attorney to execute a loan deed by signing a loan application. After the moneys had been advanced to Kenrop, GSF then executed a loan deed on the Defendants' behalf that guaranteed Kenrop's liability to ABL and GSF.
- The Plaintiffs argued that the loan application was a deed executed pursuant to s 127 of the *Corporations Act 2001* (Cth).

### **Issues**

- Was the loan application a deed?

### **Held**

- The Supreme Court (Stanley J) held that the Plaintiffs could not rely on section 127 to reason that the loan application had been validly executed as a deed.
- The Court held that section 127's purpose was to allow a natural person to act for a company through a specific manner of signing. Section 127's purpose was not to permit a company to execute a document which would not amount to a deed if a natural person had signed it.
- Section 127(1) requires a document to be executed by two officers signing it. This means that there needs to be a single document that both officers sign, rather than two electronic signatures being sequentially applied to an electronic document.
- The document was not properly executed as a deed and could not be enforced as one.

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