

Connective Services Pty Ltd v Slea Pty Ltd [2019] HCA 33

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Facts

- Connective Services Pty Ltd and Connective OSN Pty Ltd (together, "**Connective**") were incorporated in 2003 in order to conduct a mortgage business. Slea was a shareholder of Connective.
- In 2009, Slea's director and shareholder entered into an agreement to sell his shares in Connective to Minerva Financial Group Pty Ltd ("**Minerva**").
- The constitutions of both entities in Connective contained a pre-emption clause relating to the transfer or sale of shares in Connective. It required shareholders of Connective to offer their shares to fellow shareholders of Connective first.
- Connective commenced proceedings against Slea and Minerva on the basis that there had been a breach of the pre-emptive rights. It wanted to compel Slea to offer its shares to other Connective shareholders.
- The Defendants sought an injunction under section 1324 of the *Corporations Act 2001* (Cth) ("**the Act**") to restrain Connective from continuing with the proceedings because by doing so it was in contravention of section 260A(1) of the Act in respect of financial assistance.

Legislation

Section 260A states:

"A company may financially assist a person to acquire shares (or units of shares) in the company or a holding company of the company only if:

- (a) giving the assistance does not materially prejudice:*
- (i) the interests of the company or its shareholders; or*
 - (ii) the company's ability to pay its creditors."*

Issues

- Had Connective contravened s 260A by providing financial assistance to its other shareholders in the form of commencing proceedings against Slea?

Held

- The High Court unanimously held that the legal proceedings brought by Connective against Slea to enforce the pre-emptive rights for the benefit of the other Connective shareholders at Connective's expense, did constitute "*financial assistance*" and issued the injunction.

Quotes

"...if a company wishes to bring proceedings to enforce pre-emptive rights in its constitution, for the benefit of some of its shareholders but at the company's expense, then the company is liable to be enjoined from doing so unless the assistance is approved by shareholders under s 260B, or unless the company can satisfy the court that bringing the proceedings at its own expense does not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors."

"Financial assistance need not involve a money payment by the company to the person acquiring the shares. Any action by the company can be financial assistance if it eases the financial burden that would be involved in the process of acquisition or if it improves the person's "net balance of financial advantage" in relation to the acquisition. For instance, the assistance might involve the company paying a dividend by means other than by payment of cash, issuing a debenture, granting security, or agreeing to pay consultancy fees"

Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2019/HCA/33>

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