Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337

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Facts

- This case was actually two appeals heard together.
- The first regarded a case where the appellant's husband was bankrupt. He had transferred her approximately $400,000 in property, and proceedings were underway to try to claim it back for creditors, including ANZ Bank. The Trial judge held shares in ANZ Bank.
- The second regarded a foreign currency transfer with another bank, who the appellant (the customer) alleged was negligent. At the time of the trial, the Judge had no interest in the bank, however while he was waiting to deliver a judgment, he inherited some 2,400 shares in the bank.
- In both instances, the judges' interests were small, and there was no allegation that the outcome of the case would influence the share price.
- Bias was alleged against the presiding judge on both occasions.

Issue

- Did the judges' pecuniary interests in the bank give rise to the apprehension of bias?

Held

- Gleeson CJ, McHugh, Gummow and Hayne JJ each acknowledge that the test for apprehension of bias in Australia is: whether "a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide" [6]
- In determining this, they said there are two parts to deciding. The first is to identify what might lead the judge to be biased (e.g. owning shares in the company). The second part is to then determine the connection between that interest and the matter; so, for example, that the decision could impact on the price of those shares.
- Their Honours explained that there is a difference between an interest in a party and an interest in an outcome. A Judge may have an interest in the party (e.g. shares) but that does not mean that they will automatically have an interest in the outcome, unless the decision was likely to influence the price of those shares.
- In these instances, the Judge's decision was not going to influence the price of the shares either way.
- They noted this was an important consideration, but not the only consideration (i.e. cases will turn on their facts, it is not a black and white rule that no pecuniary interest in the outcome will *always* mean a judge is not disqualified).
- Their Honours also urged caution in disqualifying judges too easily, as you do not want to allow parties to pick and choose the makeup of the bench with flimsy allegations of bias.

- Appeals dismissed.

Quotes

- "A judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. That principle gives effect to the requirement that justice should both be done and be seen to be done, a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial. It is convenient to refer to it as the apprehension of bias principle" [6], citations omitted
- "Its application requires two steps. First, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits." [8]

Full Text

Full text is available: http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2000/63.html

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