

## **Gambotto v WCP Ltd (1995) 182 CLR 432**

<https://lawcasesummaries.com/knowledge-base/gambotto-v-wcp-ltd-1995-182-clr-432/>

### **Facts**

- The majority shareholders of WCP Ltd (**WCP**), wholly owned subsidiaries of Industrial Equity Ltd (**IEL**), held about 99.7% of WCP's shares.
- Giancarlo Gambotto and Eliandri Sandri, held approximately 0.094% of WCP's shares.
- IEL wanted all of WCP's shares so it could get taxation and administrative benefits, including income tax savings in excess of \$4 million and accounting fee savings of approximately \$3,000 per year.
- IEL was unable to acquire the Gambotto and Sandri's shares with alternative acquisition mechanisms.
- IEL wanted to amend the company constitution to let a shareholder with more than 90% shares forcibly acquire a minor shareholder's shares. IEL proposed to buy the shares for \$1.85 a share, which Gambotto and Sandri saw as reasonable, but they still did not want to sell their shares.
- Gambotto and Sandri commenced proceedings.

### **Issues**

- Should IEL's actions to amend the articles to compulsorily acquire the Gambotto and Sandri's shares be held invalid on the basis that it is oppressive?

### **Held**

- The High Court held that the proposed amendment was invalid as it was not made for a proper purpose.
- Mason CJ, Brennan, Deane and Dawson JJ rejected the classical "bona fide benefit test" found in *Allen v Gold Reefs of West Africa Ltd* as inadequate.
- The majority laid down a two-limbed test that must be satisfied when wanting to amend a constitution to permit expropriation:
  - the power is exercisable for a permissible purpose; and

- its exercise will not operate oppressively in relation to minority shareholders.
- McHugh J held that a company can only amend its constitution to force acquisition of shares only when the acquisition is necessary to protect or promote the interests of the company and is oppressive to those shareholders.

## Quotes

"The exercise of a power conferred by a company's constitution enabling the majority shareholders to expropriate the minority's shareholding for the purpose of aggrandizing the majority is valid if and only to the extent that the relevant provisions of the company's constitution so provide. The inclusion of such a power in a company's constitution at its incorporation is one thing. **But it is another thing when a company's constitution is sought to be amended by an alteration of articles of association so as to confer upon the majority power to expropriate the shares of a minority.** Such a power could not be taken or exercised simply for the purpose of aggrandizing the majority.

In our view, such a power can be taken only **if (i) it is exercisable for a proper purpose and (ii) its exercise will not operate oppressively in relation to minority shareholders.** In other words, an expropriation may be justified where it is reasonably apprehended that the continued shareholding of the minority is detrimental to the company, its undertaking or the conduct of its affairs - resulting in detriment to the interests of the existing shareholders generally - and expropriation is a reasonable means of eliminating or mitigating that detriment."

(Mason CJ, Brennan, Deane and Dawson JJ at page 445)

## Full Text

The full text is available here: <https://jade.io/summary/mnc/1995/HCA/12>

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