

## Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6

<https://lawcasesummaries.com/knowledge-base/grimaldi-v-chameleon-mining-nl-no-2-2012-fcafc-6/>

### Facts

- Murchison Metals Ltd (**Murchison**) acquired mining tenements in Western Australia (Iron Jacks) through Crosslands Resources Ltd, previously known as Winterfall Pty Ltd (**Winterfall**).
  - Winterfall had an agreement with the vendors of Iron Jacks to buy the mining tenements for \$1 million in instalments and royalties for any ore extracted.
  - Winterfall could not pay the second instalment.
  - Murchison paid \$350,000 towards the second instalment and Winterfall was to allow a "reverse take over" by Murchison.
  - Grimaldi was a director of Murchison and a de facto director of Chameleon Mining NL (**Chameleon**). Barnes was a director of Chameleon.
  - Both Grimaldi and Barnes were going to receive commissions if Iron Jacks was acquired.
  - Grimaldi and Barnes used Chameleon's share capital to raise funds to acquire the tenements. Five million shares were issued to Murchison.
  - Murchison's Chameleon shares were sold by Grimaldi to provide the funds that Murchison had committed to assist Winterfall's purchase of Iron Jacks.
  - Barnes also drew cheques on Chameleon payable to Iron Jacks' vendor. This also contributed to Murchison's commitment to Winterfall.
  - This diversion of funds was dishonest; it was done for Murchison's benefit and also for Grimaldi and Barnes' personal gain.
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- The reverse takeover of Winterfall occurred; 10 million Murchison shares and 12 million options were also provided to Barnes and Grimaldi as their spotters' fee. Iron Jacks was estimated to be worth \$1 billion. Chameleon gained no benefit throughout this ordeal.

## Issues

- Was Grimaldi in a fiduciary relationship with Chameleon and, if so, did he breach his fiduciary duties?

## Held

- Grimaldi was held to be in a fiduciary relationship with Chameleon - he breached his fiduciary and *Corporations Act* statutory duties.
- Grimaldi and Barnes acted together and misused their fiduciary positions to divert Chameleon's funds.
- Grimaldi and Barnes also had an undisclosed interest in the spotters' fee in conflict with their fiduciary duties to Chameleon.
- Grimaldi and Barnes' conduct violated both the conflict of interest and secret profit duties.
- They were jointly and severally liable with Barnes's nominee for the spotter's fee in the form of Winterfall shares and Murchison shares; they received these shares as a reward. This was a breach of the fiduciary relationship and occurred without Chameleon's consent.
- Grimaldi was also liable to account for Chameleon's shares, issued without consent to Murchison.

## Quotes

"The requirement under s 9b(i) that a person makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, does not mean that the person does so as being "in ultimate control" or that the decision-maker is not subject to the direction and control of the board. Likewise, the sub-paragraph (b)(ii) requirement that a person has the capacity to affect significantly the corporation's financial standing refers to the character properly to be attributed to that person's capacity in the circumstances. It may arise from the extent of that person's participation in investment decisions, from the dimensions of a decision, or from the nature of that person's participation in the control and direction of the affairs of the corporation. The question is one of fact."

(Finn, Stone and Perram JJ at page 325)

## Full Text

The full text is available here:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2012/6.html>

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