

Lion Nathan Aust Pty Ltd v Coopers Brewery Ltd (2006) 236 ALR 561

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Facts

- Coopers Brewery Ltd (**Coopers**) attempted to conduct a share buy back under Div 2 Part 2J of the *Corporations Act 2001* (Cth).
- Lion Nathan Australia Pty Ltd (**Lion Nathan**) challenged Cooper's right to do so without first complying with the pre-emptive rights regime contained in Coopers' Articles of Association.
- Coopers was obliged to attempt to find another member or member's relative willing to purchase the shares, failing which they were to be offered to AMP. If AMP declined, then they would be offered to Lion Nathan.
- Lion Nathan argued that the buyback was actually a share transfer and Coopers had breached the pre-emptive rights regime.
- Primary judge found that the buyback was not a share transfer for the purposes of the articles, and took into account circumstances surrounding the implementation of the regime.
- Lion Nathan appealed, arguing that the primary judge should not have relied on surrounding circumstances when construing the the articles.

Issues

- Did the primary judge err in considering previous negotiations when construing Coopers' Articles of Association in respect of the pre-emptive rights regime and buyback?

Held

- Weinberg, Kenny and Lander JJ held that Coopers was not required to comply with the pre-emptive rights regime before proceeding to buy back shares.
- The relevant articles were to be read in the context of Coopers' articles as a whole. It was clear that the articles were specific to the pre-emptive rights regime and did not consider a buyback.
- General principles for construction of commercial contracts are applicable to corporate constitutions, but should be applied cautiously when construing a company's constitution.
- The need for an ambiguity before previous negotiations can be used in the construction of a company's constitution is no longer the law.
- The primary judge was permitted to consider the explanatory materials when interpreting the constitution. The explanatory materials were known to current shareholders and easily ascertainable by Lion Nathan,

Full Text

The full text is available here: <https://jade.io/summary/mnc/2006/FCAFC/144>

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