

Northside Developments Pty Ltd v Registrar-General (1990) 93 ALR 385

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Facts

- The Registrar General registered a mortgage in favour of Barclays Credit Corporations Holdings (**Barclays**) over some land.
- Northside Developments Pty Ltd (**Northside**) was the registered proprietor of the land.
- The mortgage purported to have been executed by Northside under common seal.
- Robert Sturgess, a director of Northside, attested to affixing this common seal. His son, Gerard Sturgess, also signed as "company secretary".
- The articles of association required either two directors present when affixing the seal, or a director and company secretary. Gerard Sturgess was not the company secretary.
- The mortgage secured a loan to companies which were owned by Sturgess. Northside had no interest in these companies.
- Following default of the mortgage, Barclays sold the land at auction to a third party. Northside sued the Registrar General for damages under section 127 of the *Real Property Act 1900* (NSW) for having registered its land to another entity.
- Young J held that the nature of the mortgage should have put the Registrar General on inquiry and no inquiry was made. The Registrar General appealed.

Issues

- Should Barclays have been put on inquiry or could it have relied upon the common seal as evidence of Northside's agreement?

Held

- The High Court held that a third party dealing with a company is not entitled to relying on the affixing of a common seal as evidence of the validity of an instrument if the very nature of the transaction is enough to put him on inquiry.
- A person dealing with a company is put on inquiry when the nature of the transaction appears unrelated to the purpose and business of the company and the company seems to gain no benefit.
- There was no representation from the directors that the seal was affixed with their authority or approval.
- The transaction was completed without Northside's actual or apparent authority.

Quotes

"The affixing of the seal to an instrument makes the instrument that of the company itself; the affixing of the seal is in that sense a corporate act, having effect similar to a signature by an individual ...Thus it may be said that a contract executed under the common seal evidences the assent of the corporation itself and such a contract is to be distinguished from one made by a director or officer on behalf of the company, that being a contract made by an agent on behalf of the company as principal."

(Mason J at page 392)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1990/HCA/32>

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