

Re Dalkeith Investments Pty Ltd (1984) 9 ACLR 247

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Facts

- Mr and Mrs Smith acquired shares in Dalkeith Investments Pty Ltd (**Dalkeith**) and entered into an arrangement, which was implied rather than expressed that they constituted a partnership in corporate form.
- The arrangement was a family arrangement in which the expectation was that they co-operate in a friendly manner for their common benefit and not one which was governed by the strict application of company law.
- Mr and Mrs Smith's divorce, and the subsequent litigation, destroyed the family's relationship.
- It was no longer possible for them to work together. The other directors started making decisions intended to reduce Mr Smith's voting control over Dalkeith.
- Mr Smith brought a petition to have Dalkeith wound up on orders of shareholder oppression.

Issues

- Was Mr Smith entitled to have Dalkeith wound up?

Held

- Mr Smith's petition was granted.
- Under section 232 of the *Corporations Act 2001* (Cth) (and its predecessor legislation), a member of a company can bring action against a company on grounds of oppressive or unfairly prejudicial conduct.
- If the directors make a share issue with the main purpose of reducing a shareholder's voting control, especially when such a move damages some pre-existing mutual trust and cooperation in management, then such action can be unfairly prejudicial or discriminatory within the meaning of section 232.

Quote

"It is clear from the formulation of s 320(1)(a)(ii) that it is no longer necessary that the act complained of be a continuing act. It is enough that there is action, which if not "oppressive" is at least "unfairly prejudicial to" or "unfairly discriminatory against" a particular member. "Oppression" in this context means conduct that is burdensome, harsh or wrongful, or that is lacking in probity or fair dealing: see *Scottish Co-operative Wholesale Society Ltd v Meyer* [1959] AC 324."

(McPherson J at page 253)

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