

Re Universal Distributing Co Ltd (in Liq) (1933) 48 CLR 171

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Facts

- The assets of Universal Distributing Co Ltd, a company in compulsory liquidation, were insufficient to satisfy the liability secured by its debentures which charged its whole under taking and its uncalled capital.
- The liquidator had incurred cost and expenses in realising the liquidated company's assets.

Issues

- Was the liquidator entitled to recover costs and expenses related to the realisation of assets in priority to the interests of a secured creditor in the same assets?

Held

- Dixon J of the High Court held that a liquidator is entitled to recover costs and expenses related to the realisation of assets in priority to the interest of a secured creditor in the same assets.
- A liquidator also has an equitable lien in respect of such costs and expenses over the assets recovered.
- The debenture holders were creditors who had a specific right to the property for the purpose of paying their debts.
- However, if those assets are realised in the winding up, a proceeding to which they are parties, the proceeds must bear the cost of the realisation just as if they had begun a suit for its realisation or had themselves realised it without suit.

Quotes

"...a secured creditor may not have the benefit of a fund created by a liquidator's efforts in the winding up without the liquidator's costs and expenses, including remuneration, of creating that fund being first met. To that end, equity will create a charge over the fund in priority to that of the secured creditor."

"If a creditor whose debt is secured over the assets of the company come in and have his rights decided in the winding up, he is entitled to be paid principal and interest out of the fund produced by the assets encumbered by his debt after the deduction of the costs, charges and expenses incidental to the realisation of such assets."

(Dixon J)

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1933/2.html>

Law case summary from www.lawcasesummaries.com