

## **Sandell v Porter (1966) 115 CLR 666**

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### **Facts**

- Frederick Porter and Arthur Butterell Jnr, as trustees of the bankrupt estates of Hubert Sandell and Athol Traynor, who had carried on business as builders in partnership, made an application to the Federal Court against Dorothy Downer Sandell.
- The application sought a declaration that certain repayments made by the partners to the respondent from 15 October 1963 to 14 February 1964 were void as preferential payments within the meaning of section 95 of the *Bankruptcy Act 1924-1960* (Cth).
- The application sought an order for the payment by the respondent of the sum of £3,650, being the total of these repayments. They also sought a declaration that the delivery of certain promissory notes made by the partners to the respondent were also void and an order for the payment to them of the moneys received by the respondent from the maker of the notes and that the respondent deliver the outstanding promissory notes.
- Sandell appealed to the High Court

### **Issues**

- Was the building partnership insolvent at the time of the disputed payments?

### **Held**

- The High Court found that the inability to pay a certain debt does not of itself prove insolvency, but can demonstrate a ‘temporal lack of liquidity.’
- If you are able to obtain the required funds to meet your debt when they fall due by other means, then you may not be insolvent. Your ability to repay a debt is not limited to cash but to other resources such as the sale or mortgage of any security you may have or a pledge of your assets.

### **Quotes**

**"An inability to pay debts as they fall due out of the debtor's own moneys.** But the debtor's own moneys are not limited to his cash resources immediately available. They extend to moneys which he can procure by realization by sale or by mortgage or pledge of his assets within a relatively short time relative to the nature and amount of the debts and to the circumstances, including the nature of the business, of the debtor. The conclusion of insolvency ought to be clear from a consideration of the debtor's financial position in its entirety and generally speaking ought not to be drawn simply from evidence of a temporary lack of liquidity. It is the debtor's inability, utilizing such cash resources as he has or can command through the use of his assets, to meet his debts as they fall due which indicates insolvency. Whether that state of his affairs has arrived is a question for the Court and not one as to which expert evidence may be given in terms, though no doubt experts may speak as to the likelihood of any of the debtor's assets or capacities yielding ready cash in sufficient time to meet the debts as they fall due."

(Barwick CJ at page 670)

### **Full Text**

**The full text is available here:** <https://jade.io/summary/mnc/1966/HCA/28>

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