

Sutherland (as Liquidator of Sydney Appliances Pty Ltd (In Liq)) v Eurolinx Pty Ltd [2001] NSWSC 230

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Facts

- Eurolinx Pty Ltd ("**Eurolinx**") sold imported kitchen appliances to Sydney Appliances Pty Ltd ("**Sydney Appliances**") from late 1994.
- On 12 May 1997, an administrator was appointed to Sydney Appliances, which was then placed into liquidation.
- The liquidator claimed that a number of payments made by Sydney Appliance to Eurolinx between 1 November 1996 to 12 May 1997 were voidable transactions.
- Eurolinx conceded that the payments in question were voidable transactions relied on the "*good faith*" defence in *Corporation Law* s 588FG because it had received the payments on reasonable grounds and had no reasonable grounds to suspect that Sydney Appliances was insolvent.
- Eurolinx further claimed that the payments were part of a "*continuing business relationship*" and should be considered as a single transaction when calculating the preference's amount, as per s588FA(3).

Issues

- Was there a "*good faith defence*"?
- Was there a "*continuing business relationship*"?

Held

- Santow J held that Eurolinx should have reasonably suspected that Sydney Appliances was insolvent. Sydney Appliances was requesting extensions of payment terms and sending undated/post dated cheques. His Honour stated that each of these factors do not in and of themselves indicate that Sydney Appliances was insolvent. However, when taken together these factors should have led Eurolinx to a reasonable suspicion of insolvency.
- After considering the High Court's majority judgment in *Airservices Australia v Ferrier* (1996) 185 CLR 483, Santow J held that whether or not a preference had been made depended on the payment's purpose. If the purpose of the payment was to discharge an existing debt, it would be a preference. If the debtor had the dual purposes of inducing the creditor to provide further goods and discharging an existing debt, it would not be a preference, unless those payments exceed the value of the goods supplied in the relevant period.
- Santow J also outlined the following prerequisites in order for the "*running account defence*" to be maintained:
 - There must be no cessation of the mutual assumption of payment and reciprocal supply

- throughout the relevant period;
- Those payments must continue to have at least one operative, mutual purpose, which was inducing further supply; and
 - The mutual purpose of continued supply must not be secondary to the predominant purpose of getting paid.
- There was a continuing business relationship between Eurolinx and Sydney Appliances and that subsisted uninterrupted throughout the relevant period despite actual suspicion of insolvency. The parties had not subordinated the purpose of inducing continued supply to that of recovery of past debt. As the relevant transactions for payment of goods supplied were "*an integral part*" of the relationship with section 588FA(3), they were not preferences.

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