

Whitehouse v Carlton Hotel Pty Ltd (1987) 70 ALR 251

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Facts

- The Whitehouse family owned the Carlton Hotel. Mr Whitehouse was the managing director.
- Control over the voting in the company was managed by three classes of shares.
- These share classes were:
 - Class A - Mr Whitehouse held these shares and had unrestricted voting rights;
 - Class B - Mrs Whitehouse held these shares and could only vote after Mr Whitehouse died; and
 - Class C - the Whitehouse children held these shares but had no voting rights at all. They still had profit sharing rights.
- When Mr and Mrs Whitehouse divorced, Mr Whitehouse issued Class B shares to his two sons. This was to ensure that his sons maintained control over the company instead of his daughters who had sided with Mrs Whitehouse during the divorce.
- Mr Whitehouse subsequently had a dispute with his sons and directed that the company challenge the share issue as being for an improper purpose.

Issues

- Was the share issue invalid as being for an improper purpose?

Held

- The High Court held that the share issue was invalid because Mr Whitehouse's purpose was to dilute control of the company away from Mrs Whitehouse and daughters.
- The power to issue shares may not be used to manipulate control of the company's voting rights.

Quotes

"The reason why ...it is impermissible for the directors of a company to exercise a fiduciary power to allot shares for the purpose of destroying or creating a majority of voting power ... [lies in the fact that] it is simply no part of the function of the directors as such to favour one shareholder or group of shareholders by exercising a fiduciary power to allot shares for the purpose of diluting the voting power attaching to the issued shares held by some other shareholder or group of shareholders."

(Mason, Deane and Dawson JJ at page 254)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1987/HCA/11>

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