



HIGH COURT OF AUSTRALIA

Public Information Officer

27 April 2005

ANGAS LAW SERVICES PTY LTD (in liquidation) AND ALAN SCOTT v GEORGE
CARABELAS AND VIRGINIA CARABELAS

The liquidator of an insolvent company formerly controlled by Mr Carabelas, a South Australian legal practitioner, failed in an attempt to have the High Court of Australia overturn a decision of the Full Court of the SA Supreme Court, which rejected his claim to recover damages from Mr and Mrs Carabelas.

Angas Law Services (ALS), of which Mr and Mrs Carabelas were the directors and shareholders, was wound up for insolvency by order of the Supreme Court in April 1994. The petitioning creditor was the Australian Tax Office, owed \$25,408 for capital gains tax incurred upon the October 1989 sale of premises in Angas Street, Adelaide, the company's main asset. Mr Scott, the liquidator of ALS, and ALS brought claims against the Carabelases in the Supreme Court. ALS sought compensation for alleged contraventions of provisions in the *Companies (South Australia) Code* relating to directors' duties. The loss allegedly suffered was \$474,950, due to two particular transactions, with the second of these directly causing the loss.

In July 1988, the Commonwealth Bank advanced Mr Carabelas \$1.75 million. The manager estimated that properties owned by Mr Carabelas and his companies were worth \$3.6 million. The Angas Street property was subject to a mortgage to the Hindmarsh Building Society to secure a debt of \$435,040. Mr Carabelas lent this amount to ALS to discharge the mortgage. ALS then gave a mortgage over the property to the bank as consideration for its advance to him. This arrangement was the first transaction.

In October 1989, when the fortunes of Mr Carabelas and his companies declined, the Angas Street property was sold for \$910,000, which was used to reduce his debt to the bank. After the sale he then owed ALS \$446,710.31 – the difference between the sale price and the \$435,040 that ALS owed him, adjusted for agent's fees and other items. A journal entry showed that the \$446,710.31 was all owed by five of his companies, all by then insolvent. This purported to correct a previous entry showing Mr Carabelas himself owed ALS. Mr Scott sought to show that the journal entries reflected an unlawful transaction in the form of a novation, in which the debt owed to ALS by Mr Carabelas was discharged and in its place there was a series of debts owed to ALS by the insolvent companies. These constituted the second alleged transaction.

In the Supreme Court, Mr Carabelas sought to establish that his companies were engaged in a joint venture and that in borrowing money from the bank he was merely acting as agent for each one, not as a principal. The Court held that he was borrowing as a principal and then lending to his companies, a finding upheld by the Full Court. The Supreme Court found in favour of ALS and held the Carabelases liable for compensation of \$474,950, plus interest of \$731,423, totalling \$1,206,373 plus costs. The Full Court allowed an appeal by Mr and Mrs Carabelas and reversed the decision of the Supreme Court.

In a unanimous decision, the High Court held that if there had been a novation, by which a series of debts owed by insolvent companies to ALS were substituted for Mr Carabelas's debt, the transaction would have contravened section 229 of the Companies Code and resulted in loss to ALS. However, the Court held there was no evidence of any contract of novation beyond erroneous journal entries which reflected Mr Carabelas's contention that he merely acted as an agent. Rejection of the agency theory did not necessarily lead to a conclusion that there had been a novation resulting in a discharge of Mr Carabelas's liability to ALS. ALS may also have owed him money. The Court remitted the matter to the Full Court to consider a proposed amendment to the statement of claim aimed at sorting out the state of the accounts between ALS and Mr Carabelas. Beyond that, the appeal by ALS and Mr Scott was dismissed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*