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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

In the matter of Shire Lind Developments (NSW) Pty Ltd (in liq) (NSWSC) - liquidator of insolvent property development special purpose vehicle was entitled to recover against its director and its holding company for insolvent trading, and to recover amounts paid to a related company as unfair preferences

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Summaries With Link (Five Minute Read)

In the matter of Shire Lind Developments (NSW) Pty Ltd (in liq) [2024] NSWSC 1454

Supreme Court of New South Wales

Nixon J

Corporations law - SLD was a special purpose vehicle established for the development of apartments - it was wholly owned by SLI, which was wholly Quantum Management - Gribble was the sole director of all three companies, as well as another company, Quantum Development - SLI engaged SLD to manage the development, and SLD engaged a builder - SLD entered into a contract with Quantum Development to provide services such as staff - SLD went into liquidation, and its liquidator sued Gribble and Quantum Management for insolvent trading and Quantum Development for unfair preferences - held: the Court determined the date on which SLD was definitely insolvent - 'debt' is not defined in the Act, but its meaning is well understood as a matter of ordinary language - SLD had incurred debts after its insolvency, as the builder had served payment claims under the *Building and Construction Industry Security of Payment Act 1999* (NSW) after that date, and SLD had responded with payment schedules stating that certain amounts were payable - as at the date of insolvency, and at all times thereafter, there were reasonable grounds for suspecting SLD was insolvent - Gribble had actual knowledge of each of the matters establishing such reasonable grounds - Gribble had contravened s588G(2) - he had not established defences under s558H or s1318 - Quantum Management was also liable as SLD's holding company, under s588V(1) - the liquidator was entitled from Gribble and Quantum Management the loss the builder had suffered from the insolvent trading, plus interest, plus a small amount other creditors had lost - Quantum Development was a related entity of SLD, and SLD had made four payments to it during the relation-back period - Quantum Development was a creditor of SLD, and the payments in issue were in respect of amounts due to it - each of the payments resulted in Quantum Development receiving more than it would have received in respect of its debt if it had to prove in SLD's winding up - when SLD went into administration, Quantum Development was not a creditor - in contrast, SLD had paid no dividend to unsecured creditors and there were no funds to pay any such dividend - the payments were unfair preferences within the meaning of s588FA - given the date of insolvency the Court had found, the liquidator had not established the first two payments were made when SLD was insolvent, or that SLD became insolvent as a result of those payments - the liquidator had established the last two payments were made when SLD was insolvent - the last two payments were voidable transactions - the liquidator was entitled to recover the amount of those transactions from Quantum Development.

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