EQUUSCORP PTY LTD v HAXTON (M128/2010);
EQUUSCORP PTY LTD v BASSAT (M129/2010);
EQUUSCORP PTY LTD v CUNNINGHAM'S WAREHOUSE SALES PTY LTD (M130/2010); (M131/2010); (M132/2010)

Court appealed from: Court of Appeal, Supreme Court of Victoria [2010] VSCA 001

Date of judgment: 29 January 2010

Date special leave granted: 3 September 2010

The respondents, through a series of schemes in the late 1980s, invested in a blueberry farm project at Corindi in New South Wales. The appellant ("Equuscorp") brought proceedings in the Supreme Court of Victoria, seeking to recover from the respondents as a debt, or alternatively in restitution, the outstanding principal and interest allegedly due under the loan agreements they had each entered with Rural Finance Pty Ltd ('Rural') in order to finance their participation in the schemes. In 1997, Equuscorp had acquired, for $500,000, Rural's rights to loans totalling approximately $50 million under numerous agreements with scheme investors.

The trial judge (Byrne J) held that the loan contracts were illegal and unenforceable against the investors, because they were not severable from scheme transactions which breached the prescribed interest provisions of the Companies Code due to the want of any or any proper prospectus. He nevertheless found that Equuscorp had a good claim in restitution against each of the respondents.

The Court of Appeal (Redlich and Dodds-Streeton JJA and Beach AJA) upheld the respondents' appeals. The Court found that Equuscorp did not establish that on the facts Rural (its assignor) had a prima facie entitlement to restitution by reason of total failure of consideration. If (contrary to that finding) the investors were prima facie obliged to restore the loan funds due to a total failure of consideration or otherwise, the obligation was displaced. The investors' retention of the loan funds was not unjust in circumstances where: the loans were, in substance, integral elements of investment schemes, in which an entity related to the lender offered interests to investors without any complying prospectus, in breach of the protective prescribed interest provisions of the Code; the loans funded the investors' acquisition of interests in the scheme; the loan agreements provided that following two initial payments of capital, the balance of the loans was to be paid with the guaranteed proceeds of the sale of blueberries over a five year term; it was neither pleaded nor established that the investors entered the schemes in order to obtain tax deductions; there was no evidence that any investor had obtained any benefit by way of a taxation benefit or advantage; and under the investment schemes, Rural's loans were secured by mortgages over the investors' scheme interests, typically licences or leases of the blueberry farm on which the blueberry crops (the proceeds of which were to be applied to the payment of their loans) were produced.

The grounds of appeal include:

- The Victorian Court of Appeal erred in finding that Rural Finance Pty Ltd did not have a prima facie entitlement to recover in restitution from the respondent the amounts advanced pursuant to the unenforceable loan agreement dated 31 May 1989.

- The Victorian Court of Appeal erred in finding that it was not unjust to allow the respondent to retain the balance of the amounts advanced by Rural Finance Pty Ltd pursuant to the unenforceable loan agreement dated 31 May 1989.