



HIGH COURT OF AUSTRALIA

Public Information Officer

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MICHAEL JOHN COVENTRY AND LYNETTE HELEN COVENTRY (AS TRUSTEES OF
THE MIKE AND LYN COVENTRY FAMILY TRUST) AND ANDREW COVENTRY v
CHARTER PACIFIC CORPORATION LIMITED AND BARRY TABE (AS TRUSTEE OF THE
TABE FAMILY TRUST)

A damages claim by Charter Pacific could be pursued against discharged bankrupts as the circumstances of the claim meant it was not a debt provable in bankruptcy, the High Court of Australia held today.

The Coventrys were directors of Evtech Pty Ltd. Michael and Andrew Coventry made certain representations to Charter Pacific about the viability of a computer technology project. These induced Charter Pacific to enter into a deed in March 1993. Parties to the deed were Charter Pacific, Evtech, Barry Tabe as trustee of the Tabe Trust, Michael and Lynette Coventry as trustees of their family trust, and Belrida Enterprises Pty Ltd as trustee of the Quinn Family Trust. Andrew Coventry was not a party. Under the deed, Charter Pacific agreed to buy Evtech shares from the other parties and to lend money to Evtech. The Coventry brothers' representations were found to have been misleading. The loan and some further money lent, totalling \$604,634, were not repaid and the Evtech shares proved to be worthless. The brothers were made bankrupt in 1994 and were discharged from bankruptcy in 1997.

In the Queensland Supreme Court, Charter Pacific brought proceedings for misleading and deceptive conduct contrary to the *Corporations Law* against the Coventrys and other parties. The Coventrys denied that any misrepresentation occurred or that Charter Pacific suffered loss but alleged that any claims were provable debts from which they had been discharged through bankruptcy. In August 2002, after a 157-day trial, the Court found that the Coventrys had contravened the *Corporations Law* and gave judgment in favour of Charter Pacific. It held that the claims were not invalidated by the Coventrys' bankruptcy so could be pursued after their discharge. The Coventrys appealed unsuccessfully to the Queensland Court of Appeal, then appealed to the High Court. They contended that the Court of Appeal erred in its construction of the *Bankruptcy Act*, as section 82(2) provides that demands in the nature of unspecified damages arising other than by way of a contract, promise or breach of trust are not provable in bankruptcy.

Just before the High Court appeal hearing in March 2005, Michael Coventry was again made bankrupt. Neither the Coventry trustees nor Michael Coventry's trustee in bankruptcy appeared and neither provided written submissions. The Court ordered that the appeal of the Coventry trustees be dismissed for want of prosecution. Andrew Coventry was effectively the sole appellant.

The High Court unanimously dismissed the appeal by Andrew Coventry with costs. It held that because the as yet unspecified damages claim arose through misleading conduct, rather than in breach of a promise in the deed, the damages are not provable debts in the Coventry brothers' bankruptcies pursuant to section 82(2) and therefore remain recoverable after discharge from bankruptcy.

- *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.*