



## HIGH COURT OF AUSTRALIA

Public Information Officer

15 December 2006

CHARLES STUART GORDON v RAYMOND GORDON TOLCHER in his capacity as liquidator of Senafield Pty Ltd (in liquidation) AND SENAFIELD PTY LTD (in liquidation)

The New South Wales District Court Rules allowing for orders for extensions of time in a lawsuit had not been displaced by the Commonwealth *Corporations Act*, the High Court of Australia held today.

Charles Stuart Gordon is the father of Hugh Charles Gordon, the sole director and shareholder of Senafield, a rural landholding company. Senafield gave Charles Gordon, for no consideration, mortgages over various properties it owned. Mr Tolcher and Senafield now seek the recovery of money Mr Gordon received from the sale of those properties. On 3 May 2003 they filed a claim in the District Court seeking various declarations and orders, including an order that, pursuant to section 588FF of the *Corporations Act*, Mr Gordon pay them \$522,504.07. Section 588FF provides for the making of court orders in respect of voidable transactions on the application of a company's liquidator. The statement of claim was never filed on Mr Gordon so no defence was filed.

Under the District Court Rules, dormant actions are taken to be dismissed after six months and 28 days and this was the case with the action by Mr Tolcher and Senafield on 1 December 2003. However in January 2004 they sought orders to revive the action, claiming to have had difficulties and delays in obtaining funding for the substantive proceedings. The District Court held that prejudice to Mr Gordon, given his health, in now being called upon to defend the original proceeding, outweighed the relief sought. On 3 May 2005, the Court of Appeal ordered that the time for service of the claim be extended for 60 days to 2 July, 18 months after the matter was taken to have been dismissed. It based its orders on the District Court Rule which states that the Court may extend or abridge any time fixed by the rules or by a judgment or order.

Section 79 of the Commonwealth *Judiciary Act* provides that the laws of each State or Territory shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all courts exercising federal jurisdiction in that State or Territory. Mr Gordon was granted special leave to appeal to the High Court on the issue of whether the *Corporations Act* "otherwise provides" within the meaning of section 79.

The High Court unanimously dismissed the appeal. It held that section 588FF sets a three-year period in which the liquidator's application may be made to a court vested with federal jurisdiction. Thereafter, the conduct of the litigation is left to the procedures of that court. Section 588FF is not a law of the Commonwealth which "otherwise provides" so as to deny the operation of section 79 to pick up so much of the Rules as supported the orders made by the Court of Appeal.

- *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.*