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*ACPNS Legal Case Notes Series: 2020-08 Grain Technology Australia Limited & Ors v Rosewood Research Pty Ltd & Ors.*

[Working Paper]  
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# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## GRAIN TECHNOLOGY AUSTRALIA LIMITED & ORS V ROSEWOOD RESEARCH PTY LTD & ORS [2019] NSWSC 1111

**New South Wales Supreme Court, Slattery J, 30 August 2019**

Corporate restructure of a research institute with alleged misconduct and breach of trust.

**Key words: Charitable Trust, New South Wales, Company Conversion, Restructure, Constructive Trust, Misconduct, Trustees, Directors, Settlement**

1. This case is one of a series of cases involving the Bread Research Institute. The main grievances were never fully litigated as a settlement was eventually reached between the parties. The issues litigated in the several cases concerned matters relating to costs, directions to receivers and managers of the property and requests for advice of the court to trustees. These issues are not reported in this case note. The case citations are:
  - *Rosewood Research Pty Limited* [2014] NSWSC 449;
  - *Re Rosewood Research Pty Ltd (No.2)* [2014] NSWSC 1226; and
  - *Grain Technology Australia Ltd v Rosewood Research Pty Ltd (No 2)* [2019] NSWSC 1744
2. The undertaking and operations of the three defendant companies in this case arose to facilitate research into the quality and production of bread in New South Wales after World War II. Following a Royal Commission, the Bread Research Institute was established in Sydney to promote research into improving the quality of wheat and the efficiency of milling flour for bread in NSW. The Bread Research Institute later changed its name to Rosewood Research Pty Limited (Rosewood), the first defendant in these proceedings. The other two defendant companies, Pathway Properties Pty Limited (Pathway Properties) and Asia-Pacific Technology Pty Limited (Asia-Pacific Technology), subsidiaries of Rosewood, hold physical assets and intellectual property of the Bread Research Institute and its successor, Rosewood. There were three other defendants who were the directors of defendant companies.
3. Pathway Properties holds certain real property in northern Sydney (the subject property) in its capacity as the trustee of the New Horizons Property Trust. The subject property contains infrastructure used for the research operations of Rosewood, including a Pilot Mill (the Pilot Mill), a facility which can be used experimentally to simulate the commercial milling of varieties of wheat. The subject property is said to be worth in excess of \$62 million and

Pathway Properties is a borrower under a \$29 million facility. The lender holds security over the subject property for which Rosewood and Asia-Pacific Technologies have provided guarantees and other security.

4. The plaintiffs, Grain Technology Australia Ltd, Mr Raymond Schwartz, Manildra Flour Mills Pty Ltd and Bakers Delight Holdings Ltd, are companies and individuals involved in the growing of wheat, the milling of flour and the production of bread in New South Wales, or are otherwise associated with Rosewood.
5. The origins of these proceedings can be traced back to Rosewood's corporate restructuring. The plaintiffs alleged that since the time of its incorporation in 1948, Rosewood and the other defendants held their assets upon an express, or alternatively a constructive, charitable trust. This charitable trust was for the specified purposes of benefiting a section of the public, comprising participants in the grain food industries, being charitable purposes for the advancement of education or other purposes beneficial to the community, including research. Alternatively, it was claimed that the Pilot Mill was held upon an express, or alternatively a constructive charitable trust, for specified purposes of research, training, problem-solving and wheat variety evaluation, being charitable purposes (the Pilot Mill charitable trust).
6. The immediate trigger for these proceedings seems to have been a decision in the early 2000s by Rosewood to convert it from being a company limited by guarantee to a proprietary company. That conversion gave the company a significant tax liability. As a company limited by guarantee, Rosewood had a tax exemption for educational and research purposes. The incurring of this tax liability led parts of the wheat, milling and bread industry, represented by the plaintiffs, to commence these proceedings. The overt purpose of the proceedings was to have a trust declared over Rosewood's assets and for the re-constitution or restructure of the trust, to ensure that these valuable assets were always used for the original charitable purposes.
7. The plaintiffs' statement of claim alleged particular acts of misconduct against Rosewood and Pathway Properties, contrary to the alleged charitable trust or contrary to the alleged Pilot Mill charitable trust. Rosewood and Pathway Properties were alleged to have engaged in the planning for, and expenditure of funds in planning for, the demolition of buildings on the subject property containing the research facility, including the demolition of the Pilot Mill and related buildings, and further subdivision of the subject property.
8. In a cross-claim, the defendant companies sought declarations that the undertaking of the companies was held on certain charitable trusts and sought the appointment of new trustees of those trusts. The companies also sought orders for the approval of an administrative scheme, which would include authority for the receiver to transfer the trust property to a not-for-profit corporate entity. The objects of the cross-claim were generally consistent with the objects of the charitable trusts claimed by the plaintiffs.
9. On 24 May 2013, the companies gave undertakings that, upon the plaintiffs' giving the usual undertaking as to damages, the companies would refrain from selling, disposing or diminishing the value of any of their assets. On 16 September 2015, Hallen J authorised the receiver to "investigate the retention or sale" of the subject property and he released the receiver from his 24 May 2013 undertaking to the extent necessary to permit the receiver to act in accordance with that release. Hallen J's authorisation of the receiver went no further than to "investigate" potential sales of the subject property, not actually to sell the property.

10. The aim of the plaintiffs' application in this instance was to preserve the assets, including the Pilot Mill and research facilities, for the benefit of the grain food industry, and to ensure the original purposes of the Bread Research Institute continued to be realised. Voluminous evidence was tendered, particularly in relation to the Pilot Mill, but the court did not have to decide any issues relating to the uniqueness of the Pilot Mill, the history of Rosewood or the Bread Research Institute, or any of the other more specific evidence which was relevant to the establishment of the charitable trust or the Pilot Mill charitable trust.
11. Shortly after this application was called on for hearing, the court was told that the parties to the main proceedings had resolved their differences in a Deed of Settlement. However, a hearing is still required at a future date to declare the claimed charitable trusts and for the approval of schemes to fulfil their charitable purposes.

## IMPLICATIONS



This case appears to have involved the issue of:

- whether the charitable corporation holds its assets beneficially or as trustee;
- whether the charitable corporation is amenable to the court's supervisory jurisdiction exercised in respect of charities.

This is an unsettled area of the law in Australia, New Zealand, Hong Kong, Canada and the United Kingdom, which will continue to perplex charity lawyers around the world until a case on the issue is squarely decided by the courts.

Refer further: *The Sydney Homeopathic Hospital v Turner* (1959) 102 CLR 188; *Sir Moses Montefiore Jewish Home v Howell and Co (No. 7) Pty Ltd* [1984] 2 NSWLR 406.

## VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2019/1111.html>

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