



Queensland University of Technology
Brisbane Australia

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ACPNS Legal Case Notes Series: 2021-18 Fitzgerald v The Valley Centre for Environmental Education & Research Inc.

[Working Paper]

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<http://www.austlii.edu.au/au/cases/nsw/NSWSC/2021/217.html>

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.



FITZGERALD V THE VALLEY CENTRE FOR ENVIRONMENTAL EDUCATION & RESEARCH INC [2021] NSWSC 217

Supreme Court Of New South Wales, Parker J, 8 March 2021

Unsuccessful recovery of a loan debt to an incorporated association by the estate of the founder/lender

Key words: Incorporated Associations, New South Wales, Loan Agreement, Promissory Estoppel, Limitation Period

1. The Valley Centre for Environmental Education and Research Incorporated (the Association) was incorporated under the *Associations Incorporation Act 2009* (NSW) and involved in environmental conservation.
2. P was one of the founders of the Association and continuously an office bearer until her death in 2013.
3. Initially, the Association owned a house that operated as a type of commune of like-minded conservationists, where P lived for a period. This house was sold, and in 1998 a property on the Hawkesbury River containing pristine rainforest was purchased by the Association where Association members other than P lived. P was involved in various property transaction and financing arrangements with others who were connected with the Association or lived initially at the Association property.
4. F was P's daughter and administrator of the estate of P. F claimed that P had lent money to the Association during her lifetime to fund its activities and the Hawkesbury River property. It was claimed the sum involved was \$600,000.
5. F claimed that:
 - a. There was an agreement between P and the Association, reflected in the financial statements of the Association, to give P security for part of her pre-existing debt; and
 - b. That the financial statements of the Association gave rise to an equitable estoppel.
6. The Association disputed both claims and contended that if it failed, the debt claim was statute barred.
7. The evidence presented was a combination of scant Association AGM minutes, financial statements, Association audit reports (some years and pages were missing), P's personal papers and recollections of conversations and meetings. It was clear that P had significant control of the affairs of the Association. There were references to a security in some Association balance sheets and other documents.

8. There was also evidence that in 2011 P caused the incorporation of a company limited by guarantee to be an alternative vehicle for her environmental interests, and a clause detailed that a mortgage secured a loan of funds in respect of the Hawkesbury River property. However, there were no steps to transfer any assets from the Association to this company, and there was no further activity involving the company.
9. The Court found that the underlying transaction for the security to be granted was not proved. There was no mention of the loan agreement in the Association’s minutes. Any security notation did not identify the nature of the security, nor was the existence of a security reflected in the declarations to the Department of Fair Trading completed by P. The Association’s accounts were never properly approved by resolution of the committee members and other “documents in evidence show all the hallmarks of having been created by [P] without reference to actual events” (at [85]).
10. The Court found that the alleged agreement was not proved. Even if it had been made, it was not signed by the Association and thus unenforceable at law under the statute of frauds (*Conveyancing Act 1919 (NSW), s 54A*). Further, the statements in the accounts did not amount to a representation on behalf of the Association which was capable of founding an estoppel against it. The Committee did not approve the accounts and it was difficult to see how P could have acted to her own detriment.
11. The Court found that the proceedings were commenced just less than six years after the accounts were signed, but more than six years after the end of the financial year with which the accounts dealt. The Court noted that there was no need to go into this issue for present purposes (at [101]). Even if available, any extension of the limitation period would only postpone it until six years “after the date on which the accounts speak, namely 30 June 2017” (at [101]). The limitation defence to the debt action succeeded.
12. The Court dismissed the claims.

IMPLICATIONS



This case stands for the importance, even in closely governed associations, for the association’s records to be in order. There was evidence given of the founder using electronic copies of her signature on association documents without recorded consent to use the same. Meetings were conducted without formal voting or resolutions and documents were rarely, if ever, tabled during the meetings. The treasurer of the Association during the period when the financial statements were prepared, gave evidence that “he had no knowledge of the Association’s financial affairs and this was all handled by [P]” (at [71]).

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2021/217.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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