

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.



Naegeli v Dalton and Schaeffer as Executors of the Estate of the late John Herman Schaeffer [2023] NSWSC 466

Supreme Court of New South Wales, Stevenson J, 4 May 2023

An unincorporated association sought to enforce a guarantee in relation to a lending transaction.

Key words: Unincorporated Association, New South Wales, Guarantee, Authority, Unconscionable, Unfair

1. The Human Enhancement Project was established by Mr Naegeli and his mother in 2013 as a humanitarian, philanthropic, non-profit, non-government organisation.
2. The prime intent of the Human Enhancement Project was to improve the quality and quantity of life for all humankind through lifestyle, nutrition, exercise, supplementation, or implementing scientific breakthroughs.
3. The Human Enhancement Project was an unincorporated association and resolved to establish a bank account with authority for either member able to sign.
4. Mr Naegeli was involved in a vitamin and supplements business after selling his interests in a prestige car dealership and mechanic business.
5. In 2018, Mr Naegeli brought together a group of individuals with high net worth who were interested in combining their resources to make investments in philanthropic ventures. It appears that the focus was on regenerative medicine and health.
6. Mr Charles Blinkworth (Blinkworth) was a director of CRB, and Mr John Schaeffer (Schaeffer), although not a director, was promoted as the honorary chair of CRB.
7. Blinkworth represented CRB to Mr Naegeli as a company focused on providing finance for economic development projects and charitable humanitarian works. It financed this work by buying and selling 'bank financial instruments', which included Standby Letters of Credit, Medium Term Notes and Bank Guarantees.
8. Eventually, the Human Enhancement Project, as lender, advanced \$500,000 to CRB Investment Holdings Pty Ltd (CRB) pursuant to a Cash Funding Agreement.

9. It was a term of the Cash Funding Agreement that CRB would make 12 monthly payments each of \$500,000, commencing in April 2019, plus a final 13th payment of the original amount of the cash transfer.
10. The total amount payable by the borrower, CRB, in respect of the \$500,000 advance was \$6.5 million, a return to the lender, the Human Enhancement Project, equivalent to interest at the rate of 1,200% per annum.
11. CRB made no payments under the Cash Funding Agreement. It was wound up on 14 October 2020.
12. Guarantees were given by Schaeffer and two of his associated companies as well as by Blinkworth.
13. Both Schaeffer and Blinkworth died in 2020 in unrelated circumstances.
14. CRB was placed into liquidation, showing no signs of ever recently trading in financial instruments.
15. Mr Naegeli brought proceedings against Mr Schaeffer's estate and his two companies seeking to recover \$6.5 million under the guarantee.
16. The claim was disputed on the basis that:
 - The guarantee was not executed by all members of the Human Enhancement Project and was of no contractual effect;
 - Obtaining the guarantee amounted to conduct that was unconscionable for the purposes of s 12CB of the [Australian Securities and Investments Commission Act 2001](#) (Cth) (the ASIC Act);
 - The guarantee was unfair for the purposes of s 12BF of the ASIC Act;
 - The guarantee should not be enforced pursuant to s 12GM of the ASIC Act; and
 - The guarantee was an unjust contract for the purposes of the [Contracts Review Act 1980](#) (NSW).
17. The Court found that the guarantee did have contractual effect as it was shown to the Court that Mr Naegeli had authority to execute documents on behalf of the unincorporated association, as evidenced by minutes of a meeting of the association.
18. The Court found that Mr Naegeli did not engage in unconscionable conduct for the purposes of s 12CB of the ASIC Act. While the Court found that Mr Naegeli issued a financial service by issuing the guarantee in trade or commerce, it was not unconscionable as Schaeffer entered the guarantee freely, voluntarily and unhesitatingly. The Court summed up its findings (at [343]):

Overall, my conclusion is nothing that Mr Naegeli did was "outside societal norms of acceptable commercial behaviour", nor conduct that warrants condemnation as being "offensive to conscience".
19. The Court found that no term of the guarantee was unfair for the purposes of 12CB of the ASIC Act. The Court classified the guarantee as a small business contract, but it was not a standard form contract as required by the section because it was a bespoke document prepared by Mr Naegeli, who is not a lawyer, and at the request of the parties who were to execute it. Obtaining the guarantee was reasonably necessary to protect the legitimate interests of the Human Enhancement Project.
20. The Court found that the guarantee was, in part, an unjust contract for the purposes of the Contracts Review Act. The Court found that Schaeffer understood that he was guaranteeing the return to Naegeli of at least the initial advance of \$500,000, not the CRB's other obligations under the Cash Funding Agreement, which at the time of signing the guarantee amounted to over \$3.5m.

21. The Court found that the liability of Schaeffer’s estate, but not that of the corporate defendants, should be confined to the repayment of the \$500,000 advanced by the Human Enhancement Project together with interest thereon at the rate specified in the guarantee.

COMMENT



Merely because an undertaking has philanthropic or altruistic aspirations does not allow participants to suspend their diligence in establishing the integrity of the means of raising funds for the purposes. The Court noted that human agents of the unincorporated association were “unworldly and commercially naïve” and dazzled by outward signs of wealth that had no substance.

VIEW THE CASE



This case may be viewed at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2023/466.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

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

Email: acpns@qut.edu.au

Date of creation: May 2023

Number of case: 2023-61

Disclaimer: The material included in this document is produced by QUT’s [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: The Creative Commons Attribution 4.0 International licence logo, showing the CC symbol and the BY symbol.

[This work is licenced under a Creative Attribution 4.0 International licence \(CC BY 4.0\).](#)

ACPNS acknowledges the funding assistance of Our Community to produce the ACPNS Legal Case Notes Series.