



NEWS WITH CLOUT

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WHEN IS A SHAREHOLDER NOT A SHAREHOLDER?

Simple! When he is a creditor! What, I hear you say. That is right, whilst this phenomenon is likely to be subject to an appeal to the High Court, Mr Margaretic has made history.

The brief facts are Mr Margaretic invested in shares in Sons of Gwalia Limited by buying 20,000 shares through the stock market for \$26,000. This was only 11 days before the appointment of Administrators.

Mr Margaretic then lodged a Proof of Debt in the Administration based on Section 674 of the *Corporations Act, 2001*.

Section 674 is the provision which puts the onus on listed entities to disclose to the market, any and all information of which a reasonable person would expect, if it were generally available to have a material effect on the share price. Obviously the proximity to the appointment of Administrators to his purchase was an issue.

No way, many have said. This flies totally in the face of law and commercial reality that has existed for centuries.

The Administrator obviously agreed with the many, clearly fearing the opening of floodgates and given the trail blazing nature of the claim sought a declaration from court that it was not a claim provable in a proposed Deed of Company Arrangement.

The court found that this was not the case and that Margaretic had all rights of a creditor

including attending and voting at creditors meetings.

In addition, the court also stated that Section 563A did not apply, which postpones debts owed to a person in the persons capacity as a member of the company, whether by way of dividends, profit or whatever until all debts owed to the creditors are paid.

Commentators have contrasted this type of share purchase to that of purchasing shares through an IPO, however the need to disclose via a prospectus in our view could make the concept valid in this situation but place the claim under a different provision.

The decision has been appealed to the Full Bench of the Federal Court, who have dismissed the Administrator's appeal.

Clearly many are incensed by this apparent departure from long held understandings as to relationships between company, its creditors and shareholders.

It is felt this is unlikely to ever become relevant in the private company arena however the big end of town in terms of insolvencies is reeling under this development.

As can be appreciated, it is understood that the Administrator's plan to appeal this decision to the High Court.

As ever we welcome your insolvency and related enquiries.



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