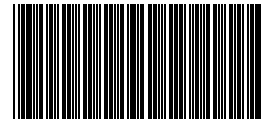




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Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00076545

TITLE OF PROCEEDINGS

First Appellant	Grapple Pay Pty Ltd ACN 655721618
First Respondent	Ingrid Doris Conroy in her capacity as trustee of The Bungabee Frist Light Trust
Second Respondent	Manuel Hanna as the Trustee of the bankrupt Estate of Jarrod Arthur Conroy

FILING DETAILS

Filed for	Grapple Pay Pty Ltd, Appellant 1
Legal representative	DANIELLE FUNSTON
Legal representative reference	
Telephone	02 9291 6102

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (25.06.30 Appellant's Submissions.pdf)

[attach.]

SUPREME COURT OF NEW SOUTH WALES

No. 2025/00076545

COURT OF APPEAL

REGISTRY: SYDNEY

Grapple Pay Pty Ltd

Appellant

Ingrid Doris Conroy & Anor

Respondents

APPELLANT'S OUTLINE OF SUBMISSIONS

A. INTRODUCTION

1. Jarrod Conroy was the trustee of the Bungabbee First Light Trust (**Trust**), established on 21 June 2021,¹ whose sole asset was a property at 897 O'Neill Road, Bentley NSW 2480 (**Property**), purchased by contract dated 9 June 2021 for \$770,000.²
2. Mr Conroy was also the director and secretary of Prana Energy Co Pty Ltd (**Prana**).³ On 2 May 2022, the Appellant entered into a facility agreement pursuant to which it agreed to provide Prana with financing services (**Facility Agreement**).⁴ Mr Conroy, as trustee of the Trust and in his own capacity, provided a guarantee and indemnity in respect of Prana's obligations.⁵
3. Prana defaulted under the Facility Agreement. Faced with the likelihood of the Appellant seeking to enforce the guarantee and indemnity against the Property, Mr Conroy transferred the Property to the First Respondent, his mother. The transfer occurred on 1 September 2022 and was recorded as being for nil consideration and registered as being "without monetary consideration".⁶ On the same day, Prana entered voluntary administration.⁷

¹ Blue 1/123.

² Blue 1/71-72.

³ Blue 2/969.

⁴ Blue 1/259.

⁵ Blue 1/285.

⁶ Blue 1/497, 515.

⁷ Blue 1/518.

4. The Appellant commenced proceedings against Mr Conroy for the amount outstanding under the Facility Agreement. It obtained default judgment and Mr Conroy subsequently became bankrupt. His trustee is the Second Respondent.
5. The Appellant sought to have the transfer of the Property to Ms Conroy set aside on the basis that it was voidable pursuant to section 37A of the *Conveyancing Act* 1919. The primary judge dismissed the proceedings on the basis that the transfer was not “made with intent to defraud creditors” (section 37A(1)) and that had it been necessary to consider, Ms Conroy was “a purchaser in good faith not having, at the time of the alienation, notice of the intent to defraud creditors” (section 37A(3)). The Appellant challenges both of those findings.

B. FINDINGS THAT ARE NOT CHALLENGED

6. The primary judge made adverse findings as to the credibility and reliability of Mr Conroy and Ms Conroy:

- a. in relation to Mr Conroy at J[96]:

Given this conduct, given Mr Conroy’s close relationship with his mother, and given the relief sought by Grapple against his mother, it is difficult to place any substantial weight on his evidence in this proceeding regarding the transfer of the Property, including his evidence regarding the events leading up to the transfer and regarding his knowledge and intentions at the time of the transfer.

- b. and in relation to Ms Conroy at [105]:

I have formed the view that I should exercise caution in placing any significant weight on Ms Conroy’s oral evidence in relation to the events at issue in this proceeding, particularly where the evidence concerns conversations which are not referred to in any contemporaneous document, or concerns her knowledge and intentions at the relevant time. I have not disregarded such evidence, but have instead assessed such evidence in light of the contemporaneous documents, the objectively established facts, the apparent logic of events, the existence and nature of corroborative evidence, and the effect of the evidence as a whole.

7. The primary judge also found at J[165], against the evidence of Mr Conroy:

It is far more likely that the reason for Mr Conroy’s sense of urgency in August 2022 was that he was aware of Prana’s parlous financial state and was aware that Prana would likely be placed under external administration in the near future. Further, he was aware that, when this occurred, Grapple would likely

take steps to enforce its rights under the Conroy-Grapple Guarantee against the assets of the Trust (that is, the Property). Significantly, the transfer of the Property to Ms Conroy ultimately took place on the same day that Prana entered voluntary administration.

While I accept that Mr Conroy was motivated to complete the transfer as swiftly as possible because of the looming insolvency of Prana...

C. THE INTENT TO DEFRAUD CREDITORS

8. Section 37A(1) of the Conveyancing Act 1919 (NSW) provides as follows:

...every alienation of property ... with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.
9. "Creditors" for the purpose of section 37A does not refer to any one or more particular (let alone all) creditors (*Commissioner of Taxation v Oswal (No 6)* [2016 FCA 762 at [68]-[70]) and includes future, contingent or prospective creditors, whether individually or collectively (see: *Trustees of Cummins v Cummins* [2006] HCA 6; (2006) 227 CLR 278 at 291; *Ingram v Y Twelve Pty Ltd* [2013] NSWSC 1777 at [107]).
10. In *Commissioner of Taxation v Oswal and Anor (No 6)* (2016) 339 ALR 560; [2016] FCA 762 at [66] Gilmour J set out the "various circumstances in which it is recognised that the Court will move readily to infer the existence of the requisite intention" as follows:
 - a. the 'natural and probable consequence' of the disposition is the defeat or delay of creditors;
 - b. the alienation is made voluntarily;
 - c. the alienation is made, relevantly, for no consideration by a person in financial difficulties;
 - d. the alienation is made in favour of a family member; and
 - e. the alienation is made in haste or proximately to one or more events indicating financial stress on the part of the disponor.
11. Section 37A is also capable of applying to a transaction which involves an intention to hinder or delay creditors or and where it is established that the party to the transaction knew of its adverse effect on the ability of its creditors to recover, without showing an actual intent to cause loss to those creditors (see *Marcolongo v Chen* [2011] HCA 3; (2011) 242 CLR 546 at [31] to [32]).

12. Whilst a debtor may discharge his creditors in any order he pleases up until a sequestration order is made with respect to his property (or a winding up order is made in the case of a corporate entity), he may prefer one creditor only on the basis that he does not do so with the intent to defraud his other creditors.⁸ The payment of one creditor in preference to another will not affect the net position of the debtor, although it may be liable to be set aside under the provisions of the insolvency legislation.
13. The preference exception requires the presence of the following:⁹
 - a. there must exist a creditor/debtor relationship between the transferor and transferee;
 - b. the preference must be mere and nothing more;
 - c. the consideration received (at the time of the transfer) must be *equal* to the value of the creditor's entitlement;
 - d. the transaction must not reserve any benefit to the debtor.
14. In *Marcolongo v Chen* [2011] HCA 3; (2011) 242 CLR 546 (at [12], [22] – [24], [25] per French CJ, Gummow, Crennan and Bell JJ), the High Court considered the question of an intent to defraud and noted that evidence of consideration or that the transferee was a creditor will be only one factor of many as to whether the transaction was undertaken with the necessary intent for the purposes of the statute. As observed by the Full Court of Supreme Court of South Australia in *Johnson v Leader Computers Pty Ltd*; *John v Synnex Australia Pty Ltd* [2014] SASCFC 14 at [110] in relation *Marcolongo*:

...[t]hat reasoning and that result is inconsistent with a fixed rule that the mere fact that a conveyance to a creditor means that there can never be an intent to defraud creditors.
15. As to the evidence as to Mr Conroy's intent, the primary judge made the following findings (or otherwise recorded what was not in dispute):
 - a. the Appellant was a creditor of the Trust (at J[129]);

⁸ *Abignano v Wenkart* (1998) 9 BPR 16,765, 16,776 - 16,778.

⁹ *Westpac Banking Corporation v The Bell Group Ltd (In Liq)* [No 3] [2012] WASCA 157 at [2636] - [2640]; *Abignano v Wenkart*; *Glegg v Bromley* [1912] 3 KB 474; *In the matter of FW Projects Pty Ltd (in liq)* [2019] NSWSC 892 at [76].

- b. Mr Conroy had knowledge of the Appellant's potential interest in the assets of the Trust if there was a relevant default by Prana on the Facility Agreement, which was based on Mr Conroy's entry into the personal guarantee and thereby understanding the legal effect of the personal guarantee if the Facility Agreement was breached (at J[130]);
 - c. the transfer of the Property took place on 1 September 2022, being the same day as the voluntary administration of Prana (at J[131]);
 - d. the transfer of the Property took place one month and 9 days prior to the liquidation of Prana (at J[131]);
 - e. the transfer was made to a family member, being the First Respondent who was Mr Conroy's mother (at J[131]);
 - f. the transfer was not supported by any written contract for sale (at J[131]);
 - g. the transfer was made in the context of financial stress being suffered by Mr Conroy and Prana where Mr Conroy had debts in excess of \$2.2 million as at September 2022 (at J[131]);
 - h. Mr Conroy was motivated to complete the transfer as swiftly as possible because of the looming insolvency of Prana (and the other matters at J[165]).
16. Although Ms Conroy gave evidence that she had a conversation with Mr Conroy in February/March 2022 in which she agreed to purchase the Property by paying out the mortgage and repaying the amount owing to Mr Conroy's former partner, Ms Lucas:
- a. this was said to be in the context of Ms Lucas wanting repayment,¹⁰ which the primary judge rejected (at J[164]);
 - b. there was no contract or any written documentation supporting such an agreement;
 - c. Mr Conroy engaged a solicitor to transfer the property into Ms Conroy's name and to discharge the mortgage (Blue 1/324, copied to Ms Conroy) with no suggestion of a sale let alone one for valuable consideration and let alone for market value;

¹⁰ Blue 1/12U.

- d. Ms Conroy sought exemption from stamp duty on the basis of it being a transfer of trust property to a beneficiary;¹¹ and a valuation was subsequently obtained for stamp duty purposes;¹²
- e. Ms Conroy was involved in the communications with the solicitor and completed a Client Authorisation for the transfer;¹³
- f. Ms Conroy completed a Revenue NSW declaration in which she declared:
 - i. the dutiable value as \$770,000 (being the previous purchase price);
 - ii. the date of the “agreement for sale or transfer” as being 31 August 2022 (which was inconsistent with her evidence that they had agreed in February/March 2022);
 - iii. that she intended to occupy the premises as her principal place of residence within 12 months of settlement;¹⁴
- g. although the funds to discharge the mortgage on the Property were provided by Ms Conroy,¹⁵ this was in the context of Mr Conroy discharging the loan of Prana and mortgage of the Trust in mid August rather than as part of the completion of a sale by the Trust to Ms Conroy;¹⁶
- h. the settlement statement recorded no payment beyond stamp duty and fees;¹⁷
- i. the transfer to Ms Conroy was recorded as being for no consideration and recorded as being “without monetary consideration”;¹⁸
- j. contrary to the finding of the primary judge (at J[135]), Ms Conroy was provided with a copy of transfer that recorded nil consideration;¹⁹
- k. the two payments of \$200,000 each that Ms Conroy said she made to Ms Lucas on 29 and 30 August 2022 as part of the purchase price were not recorded or

¹¹ Blue 1/449.

¹² Blue 1/490.

¹³ Blue 1/384-417.

¹⁴ Blue 1/418-428.

¹⁵ Blue 1/443.

¹⁶ Blue 1/475-483.

¹⁷ Blue 1/495-496.

¹⁸ Blue 1/497, 515.

¹⁹ Blue 1/495 at 497.

even referred to in the communications with the solicitor or the transfer that occurred only 2 days later;²⁰

- l. no remaining balance to Ms Lucas was recorded or even referred to in the communications with the solicitor or the transfer, even though Ms Conroy's evidence was that she paid a further \$70,000 to Mr Conroy on 2 December 2022 as a "substantial reduction" in her loan in respect of the property, which was allegedly on-paid by him to Ms Lucas as \$79,827.²¹

17. Further, although Ms Conroy's evidence was as to consideration under an agreement (in February/March 2022) for a transfer that occurred on 1 September 2022:

- a. the monies to discharge the mortgage of \$195,076.31 were paid by her on 11 August 2022 to the solicitors' trust account and applied on 16 August 2022²² and were paid in respect of a debt of Prana;
- b. Ms Conroy paid \$400,000 on 29 and 30 August 2022 in respect of a debt that had been estimated at \$550,000 in respect of a payment by Ms Lucas of \$551,790,²³ even though she was in a financial position at settlement to have paid the additional \$70,000 that she subsequently paid on 2 December 2022 or the additional \$150,000 (or \$151,790) that would then also have been owing on her own evidence;²⁴
- c. there was no evidence explaining why only \$400,000 had been paid to Ms Lucas at the time of settlement;
- d. there was no evidence, nor was it contended by Ms Conroy, that she was party to any agreement between Ms Lucas and Mr Conroy and she gave no evidence in relation to any such agreement;
- e. Ms Conroy's evidence was that she paid a further \$70,000 to Mr Conroy on 2 December 2022 pursuant to a request at that time and as a "substantial reduction" in her loan in respect of the property, even though this was allegedly on-paid by him to Ms Lucas as \$79,827 and on Ms Conroy's own evidence she

²⁰ Blue 1/306P,R.

²¹ Blue 1/14W-15M.

²² Blue 1/443,472.

²³ Blue 1/13F cf Blue 1/12Q,167.

²⁴ Blue 1/309 cf Blue 1/15W.

had already been repaid \$400,000 out of \$550,000 and this was subsequently said to be the final payment;²⁵

- f. in spite of Ms Conroy's affidavit evidence that she still owed \$81,790 to Ms Lucas (which was a surprisingly precise figure and which she could have paid at any earlier time and in particular at settlement), in cross examination she stated that no more money had been paid to Ms Lucas, but it had been brought to her knowledge a couple of months before that Ms Lucas "was happy with what she had been paid" (which was not credible);²⁶
 - g. the suggestion of there ever having been an outstanding amount was also inconsistent with an email from Mr Chislett to Mr Conroy's bankruptcy trustee on 12 July 2023 (quoted by the primary judge at J[77]) recorded that Ms Conroy had only been able to secure \$479,827, which was agreed to be in full and final settlement of the amounts Ms Lucas had paid and then paid in instalments;²⁷
 - h. that email and other objective circumstances were inconsistent with the primary judge's finding that in addition to repaying the mortgage, Ms Conroy paid \$470,000 (or even \$400,000) as consideration for the purchase of the Property (at J[151]).
18. The primary judge rejected the Appellant's claim on the basis that the transfer to Ms Conroy was within the preference exception.
19. However, first the relevant alienation was the transfer to Ms Conroy, but she was not on any view a creditor of the Trust. As the Property was the only asset of the Trust (as found at J[2], [154], [155]) and it was transferred to a non-creditor, the preference exception has no application. The transaction, even on Ms Conroy's version of events, was no more than a sale to her as a purchaser,²⁸ where the focus ought to have been solely on the good faith exception in section 37A(3).
20. Secondly, even if the Court was required to consider the position of Ms Lucas, there was insufficient evidence to conclude that she was a creditor of the Trust (as opposed

²⁵ Blue 1/14V-15M.

²⁶ Black 241E, 244P-S.

²⁷ Blue 2/958.

²⁸ Black 240T.

to any claims that she may have had arising out of her personal relationship with Mr Conroy).

21. Although the Court's findings at J[168] and J[169] disclosed an analysis that proceeded on the basis that Ms Lucas was a creditor of the Trust (without making that specific finding):
 - a. there was an absence of any evidence to demonstrate that Ms Lucas had paid any sum towards the Property in circumstances that gave rise to a creditor/debtor relationship with the Trust;
 - b. there was no loan agreement between Ms Lucas and the Trust;
 - c. there was no record of the Trust (and no demands from Ms Lucas) supporting any claim of indebtedness towards Ms Lucas;
 - d. there was no evidence of any payments by Ms Conroy to Ms Lucas (which were made directly rather than through the Trust) being repayment of any such indebtedness;
 - e. Mr Chislett's email recorded a desire to finalise a financial connection between Ms Lucas and Mr Conroy rather than with the Trust; and
 - f. this ignores the fact that the payment to discharge the mortgage was in respect of a debt owed by Prana.
22. The evidence supported rather a conclusion that any payments to Ms Lucas arose out of the personal relationship between Ms Lucas and Mr Conroy, rather than being referable to any debt owed by the Trust to Ms Lucas or indeed to the purchase of the Property.
23. Thirdly, and assuming that Ms Lucas was a creditor, the surrounding and objective circumstances demonstrated that this was more than the mere preference of one creditor over another. On any view, Ms Conroy paid less than what she believed the Property to be worth (\$770,000) and less than the valuation that was subsequently obtained (\$700,000).
24. As at 1 September 2022, Ms Conroy had paid \$195,554.18 to allow the Trust to discharge the mortgage (in respect of a debt owed by Prana) and \$400,000 to Ms Lucas, being less than what was estimated to be the value of the Property (\$770,000) and less than the valuation that was obtained (\$700,000); and this analysis does not change even

if one includes as consideration the \$70,000 that was subsequently paid in December 2022. The transfer was at an undervalue.

25. Fourthly, regardless of what was actually paid, it is clear that neither Mr Conroy nor Ms Conroy gave any thought to the value of the Property in deciding to make, and then making, the transfer. Mr Conroy's intent remained at all times to defraud creditors, namely the Appellant.
26. The primary judge's finding at J[167] that Mr Conroy's motivation was to ensure Ms Lucas received the full amount that she was owed was inconsistent with the evidence generally (including the fact that their relationship had ended six to twelve months before the purchase of the Property),²⁹ but in particular with the fact that she had only been paid \$400,000 at the time of the transfer and that she never was repaid to the full amount said to be owing (although Ms Conroy could have paid her that amount in full at the time of transfer). However, it does not detract from the absence of any discussion or thought (let alone calculation of the consideration) by reference to the value of the Property.
27. Fifthly, any compromise on the amount allegedly owing to Ms Lucas represented the reservation of a benefit to the Trust that resulted in the subtraction of the Trust's only asset, namely the Property for an undervalue (contrary to J[174]). Similarly, the intention behind the transfer of the Property to Ms Conroy, at least according to her affidavit evidence, was to reserve a benefit for Mr Conroy in that she was then able to live closer to him.
28. The primary judge's findings in relation to the intent of Mr Conroy being other than in breach of section 37A(1) were:
 - a. infected with error, in particular on the important issue of whether there was any evidence of Ms Conroy being aware of the transfer form, which recorded the transfer being without consideration (at J[135]);
 - b. incorrect and impermissible inferences from the primary facts objective facts and all the evidence, where the appellate court is in as good a position as a trial court to consider for itself;³⁰

²⁹ Black 32K, although Ms Conroy described Ms Lucas as being his partner and girlfriend as at August 2022 (Blue 1/11T).

³⁰ *Bauer Media Pty Ltd v Wilson* (No 2) (2018) 56 VR 674 at [264] to [288].

- c. not affected by his impressions about the credibility and reliability of witnesses, not least given his adverse findings in relation to both aspects of Ms Conroy and Mr Conroy's evidence, such that again the appellate court is in as good a position to consider for itself;
- d. insofar as is necessary, glaringly improbable and contrary to compelling inferences.

D. THE GOOD FAITH EXCEPTION

- 29. The onus rests on the person seeking to rely upon the provisions of section 37A(3) to prove that they come within its operation.³¹ That is, Ms Conroy was required to establish that she was a purchaser in good faith without notice of the fraudulent intention of Mr Conroy.³² The term "*purchaser*" is defined in section 7 of the *Conveyancing Act 1919* (NSW) as "*a purchaser for valuable consideration*", including an "*other person who for valuable consideration acquires an interest in property*". Although the concepts of "good faith" and "notice" are separately referred to in the subsection, there will typically be a factual overlap between findings in respect to those matters,³³ as was the case here.
- 30. Notice of the fraudulent intent is proven by way of actual knowledge, which may also include a failure to inquire or otherwise be satisfied by knowledge that is inferred.³⁴ According to *Marcolongo*, that also includes where the transferee was party to or "privity" to the fraudulent intent of the transferor.³⁵
- 31. As discussed above, the payments that Ms Conroy made were not referable to a purchase of the Property, which was recorded as being for nil consideration. She was therefore not a purchaser for the purpose of the defence.
- 32. In any event, Ms Conroy did not make out the elements of being a purchaser in good faith without notice of Mr Conroy's intent.
- 33. First, although not disclosed in her affidavit:

³¹ See *Super Vision Resources BVI Registered No 1,810,534 v AC Holdings Co Pty Ltd* [2020] NSWCA 319 (Supervision) at [95]; also see [67] and [68] of *Wentworth v Rogers & Anor* [2004] NSWCA 430.

³² Ibid [95].

³³ *Saba v Plumb & Anor* [2017] NSWSC 622 at [88].

³⁴ Supervision at [97].

³⁵ Supervision at [99].

- a. Ms Conroy was initially the bookkeeper of Prana and then later the accounts and finance manager or finance and special projects;³⁶
 - b. Ms Conroy was aware that the Appellant had advanced money to Prana and had liaised with representatives of the Appellant in relation to the Facility Agreement;³⁷
 - c. Ms Conroy was aware of the parlous financial position of Mr Conroy personally and Prana during August 2022;³⁸ he had told her that the business was not doing well and there was a likelihood of it going into liquidation;³⁹ and she understood that Mr Conroy wanted to transfer the Property before Prana went into voluntary administration.⁴⁰ The primary judge's findings to the contrary cannot be accepted (J[181]).
34. Insofar as the primary judge suggested that the defence was made out on the basis that Ms Conroy was not aware of the specific liability of Prana and the Trust to the Appellant (J[185]), this was in error.
35. Section 37A(1) does not require proof of a specific creditor being affected by the fraudulent intention but rather proof of the intention in relation to creditors more generally. It therefore follows that the notice requirement under subsection 37A(3) must also be viewed at the same level of generality without requiring a higher level of specificity as to the identity of the creditor in question and the source of the indebtedness, whether generated by the debtor in their personal capacity or some other capacity.
36. Further, the implied distinction being made by the Court at J[185] and J[188] between the creditors of Mr Conroy in his personal capacity and that of the Trust, was an artificial one when considering the background of Mr Conroy's indebtedness and the interchangeability with which Mr Conroy would incur liabilities both in his personal capacity and in his capacity as a trustee (reinforced by the fact that a trust is not a separate legal personality and can only exist through the entity of the trustee). Added

³⁶ Black 226.43-227.1, 250D, 249P.

³⁷ Black 228F-M, 250D.

³⁸ Black 228P-Y.

³⁹ Black 99H-K, which was not challenged in cross examination.

⁴⁰ Black 257P-S.

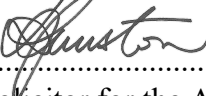
to this was Mr Conroy's accepted general lack of understanding in relation to the law of trusts.

37. Secondly in relation to Ms Conroy's knowledge, there is Ms Conroy's evidence considered in the previous section in relation to:
 - a. Ms Conroy's involvement in the communications with the solicitor acting on the transfer;
 - b. the deficiencies in the evidence as to:
 - i. the alleged agreement between Mr Conroy and Ms Conroy;
 - ii. the alleged agreement between Mr Conroy and Ms Lucas;
 - iii. any connection between the payments and any alleged agreement.
38. Thirdly, there is the primary judge's finding at J[104] that Ms Conroy was party to a subsequent fraudulent attempt to avoid stamp duty by suggesting that the Property had been transferred to her upon replacing Mr Conroy as trustee, which was not truthful.
39. Finally, the determination of Ms Conroy's knowledge or absence of the intention to defraud creditors required a review of the evidence as a whole, something which did not occur within the analysis at J[181] to J[188].
40. A review of the whole evidence before the Court invited the compelling conclusion that Ms Conroy had not made out the defence under section 37A(3).
41. As with the findings in relation to section 37A(1), the primary judge's findings in relation to Ms Conroy's defence under section 37A(3) were:
 - a. infected with error;
 - b. incorrect and impermissible inferences from the primary facts objective facts and all the evidence;
 - c. not affected by his impressions about the credibility and reliability of witnesses; and
 - d. insofar as is necessary, glaringly improbable and contrary to compelling inferences.

E. CONCLUSION

42. The primary judge ought to have held that the alienation of the Property by Mr Conroy was done with the necessary intent to defraud creditors within the meaning of section 37A(1) and that Ms Conroy had not made out the defence under section 37A(3). As such, the transfer was, as the Appellant claimed, voidable.

I certify that this document is suitable publication

Signed: 
Solicitor for the Appellant

Dated: 30 June 2025



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**APPELLANT’S STATEMENT OF FINDINGS OF FACTS CHALLENGED AND
CONTENDED FOR**

1. In accordance with r. 51.36(2) of the *Uniform Civil Procedure Rules 2005* (NSW), the Appellant challenges the following findings of fact:
 - a. there was no evidence that the First Respondent was aware of or agreed with the contents of the transfer document (at J[135]).
 - b. the payments by the First Respondent to Ms Lucas in August 2022 were made in consideration for the Purchase of the Property from the Trust and were made at the request of the trustee, Mr Conroy, either for the purpose of repaying Ms Lucas’ loan to the Trust or for the purpose of paying out Ms Lucas’ equitable interest in the Property (at J[150]).
 - c. the Property was not transferred for an undervalue (at J[160] and J[161]).
 - d. Mr Conroy’s motivation was to prefer Ms Lucas’ interests over those of the Appellant’s (at J[167]).
 - e. There was no indication or evidence that the transaction in question reserved any benefit for Mr Conroy as trustee of the Trust and there was no indication of any intent to defraud creditors beyond the advantage of the transaction to Ms Lucas (at J[174]).
 - f. there was no evidence that the First Respondent was aware of the financial position of Prana Energy Co Ltd and that it was nearing insolvency in August 2022 (at [181]).
 - g. there was no evidence that the First Respondent was aware of Prana’s liability to the Appellant (at J[185]).
 - h. the First Respondent was motivated by a desire to help Mr Conroy in finalising the financial position between himself and Ms Lucas by providing the Trust, through the transaction, the funds necessary to pay back what was owing to Ms Lucas in relation to the Property (at J[186] and J[188]).
2. In turn, the Appellant contends for the following findings of fact:
 - a. the First Respondent was aware of the contents of the transfer document.⁴¹

⁴¹ Blue 1/495–497.

- b. the payments by the First Respondent were not made for the purpose of purchasing the Property from the Trust and were not made at the request of the trustee for any purpose connected with the Trust.⁴²
- c. the payment to Ms Lucas was unconnected to the Trust but rather arose out of the personal relationship between Ms Lucas and Mr Conroy.⁴³
- d. there was no loan agreement between Ms Lucas and the Trust.
- e. Ms Lucas was not a creditor of the Trust.
- f. to the extent necessary, the First Respondent was not a creditor of the Trust.
- g. the Property was transferred for no consideration.⁴⁴
- h. alternatively, the Property was transferred for an undervalue.⁴⁵
- i. the First Respondent was aware of the financial position of Prana Energy Co Ltd and that it was nearing insolvency in August 2022.⁴⁶
- j. the First Respondent was aware of Prana's liability to the Appellant.⁴⁷
- k. the First Respondent had knowledge of or was on notice of Mr Conroy's Intention.⁴⁸

⁴² Blue 2/958; Black 31 at T; Black 32 at T.

⁴³ Blue 2/958.

⁴⁴ Blue 1/515–516.

⁴⁵ See valuation at Blue 1/490–492; also see Blue 1/435 at H.

⁴⁶ Black 99 at H to L.

⁴⁷ Black 227 at L to N; Black 228 at F to L

⁴⁸ Black 226.43–227.1, 250D, 249P; Black 228F–M, 250D; Black 228P–Y; T99H–K; Black 257P–S