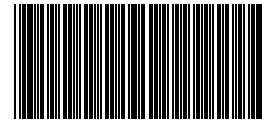




Filed: 24 June 2025 10:01 AM



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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	2025/00129860

TITLE OF PROCEEDINGS

First Appellant	Sweta Prashant Changela
Second Appellant	Prashant Girishbai Changela
Number of Appellants	3
First Respondent	Dracoma Pty Ltd

FILING DETAILS

Filed for	Sweta Prashant Changela,Appellant 1 Prashant Girishbai Changela,Appellant 2 VIJAY PANDYA PTY LTD,Appellant 3
Legal representative	AKASH LODHIA
Legal representative reference	
Telephone	02 9233 7000
Your reference	2503019

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 (Appellants' - Written Submissions - 24 June 2025.pdf)

[attach.]

APPELLANTS' OUTLINE OF SUBMISSIONS

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00129860

TITLE OF PROCEEDINGS

First appellant	SWETA PRASHANT CHANGELA
Number of appellants	3
Respondent	DRACOMA PTY LTD

FILING DETAILS

Filed for	Sweta Changela & Ors – Appellants
Legal representative	Akash Lodhia – Lodhia Lawyers
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ISSUE FOR DETERMINATION

- 1 The proceedings below were brought by the respondent (**Dracoma**), a creditor of Changela Exports Pty Ltd (in liquidation) (**Company**), who had purchased rights to recover monies in respect of voidable transactions and other causes of action from the Company's liquidator: J [20]–[21] {**Red 65S–66D**}.
- 2 Dracoma was successful in obtaining judgment for several payments made to the directors of the Company as voidable transactions.
- 3 The sole issue on appeal is whether two payments of \$250,000 made by the Company were unreasonable director-related transactions within the meaning of s 588FDA of the *Corporations Act 2001* (Cth) {**Red 116F**}.
- 4 The Company made these payments on 20 September 2017 to the first and second appellants, Sweta and Prashant Changela (**Sweta/Prashant**), and to the third appellant, Vijay Pandya Pty Ltd (**Pandya**), a company controlled by Dr Vijay Pandya.
- 5 The primary judge found that these payments, along with other payments, were the repayment of funds earlier advanced to the Company: J [26] {**Red 67I**}.
- 6 Subsequent repayments were impugned as voidable transactions on the basis that the Company was insolvent from 31 December 2017: J [198] {**Red 95V**}. Accordingly, the payments the subject of this appeal were made when the company was solvent.
- 7 The primary judge concluded, however, that these payments were unreasonable director-related transactions: J [240] {**Red 103H**}. He erred in so finding.
- 8 Prashant Changela and Dr Vijay Pandya were admittedly directors, while not appointed as such: J [39] {**Red 70V**}, J [43] {**Red 71N**}, so that the payments were director-related transactions.
- 9 The issue for determination is whether these payments were *unreasonable* within the meaning of s 588FDA(1)(c) of the *Corporations Act 2001* (Cth).

ARGUMENT

- 10 The reasoning of the primary judge is at J [226]–[240] {**Red 100H–103H**}.

11 The key conclusion of the primary judge was at J [239] **{Red 103C-G}**:

In those circumstances, I am persuaded that it might be expected that a reasonable person in the Company's circumstances, and in the circumstances in which Prashant and Dr Pandya found themselves, would not have caused these payments to be made but would, rather, have left those funds in the Company in preparation for its purchase of the 2017 Crop.

12 The three circumstances relied on by the primary judge were that:

- (a) on 22 July 2017 the Company had an intention to purchase chickpeas from Dracoma for the 2017 crop: J [231] **{Red 101J}**;
- (b) the loan repayments diminished the liquid funds available to devote to the purchase of the 2017 crop: J [235] **{Red 101T}**; and
- (c) there was no evidence that Prashant and Dr Pandya had given consideration as to whether the payments would have a negative impact on creditors of the Company or the financial ramifications: J [236] **{Red 102C-F}**.

Admitted intention irrelevant

13 The admission by way of the 'pleadings' (the Commercial List Response) at J [231] **{Red 101J}** was limited to a general intention or contemplation in the abstract but denying any specific intention to purchase a particular quantity amount of grain: Further Amended Commercial List Statement at [16] **{Red 18F-K}**; Further Amended Commercial List Response at [7] **{Red 49L-N}**.

14 This admission goes no further than the mere contemplation by the Company of a purchase of chickpeas from Dracoma during the 2017 season. This admitted state of mind of Prashant and Dr Pandya was held as at 22 July 2017, months before the 2017 harvest, which admits nothing about the Company's intentions after that date.

15 Contrary to the primary judge's finding at J [238] **{Red 102V}**, this limited admission as at 22 July 2017 did not displace Prashant's evidence that subsequently there was 'no plan' for the Company to purchase given the likelihood of the imposition of an Indian tariff **{Red 102P}**. His evidence was that there had been rumours in the market from September and October 2017 (T 327.46-48) **{Black 216W}**.

16 There was no evidence of any negotiations to purchase any particular quantity of chickpeas from Dracoma until Dr Pandya made contact in October 2017 **{Blue 6E}**.

- 17 For these reasons, the abstract contemplation of the Company as at 22 July 2017 was irrelevant to the reasonableness of the loan repayments made on 20 September 2017.

Loan funding not considered

- 18 At J [236] {Red 102F} the primary judge found that:

The effect of the payments was that the only means that would be available for the Company to pay for the likely cost of purchase of the 2017 Crop would be the proceeds of its on sale.

- 19 This factual finding was erroneous for two reasons. Firstly, no evidence identified what the *“likely cost of purchase of the 2017 Crop”* might be. Secondly, and more critically, the Company had other means to raise funds, namely by cash advanced from the Changela families (Sweta/Prashant and Radhika/Rajan and their parents) as well as from Dr Pandya’s company.
- 20 The history of the operations of the Company demonstrated that it was financed by loans made by Changela family members and Dr Pandya’s company.
- 21 In November 2016, for the 2016 crop, they collectively advanced \$1,099,063 to the Company {Blue 63G}. These advances were repaid toward the end of the season, following receipt of the proceeds of grain sales, in May and June 2017 {Blue 66P–S}.
- 22 As to the impugned transactions, Sweta/Prashant and Pandya each advanced \$250,000 to the Company on 19 July 2017: J [223] {Red 99S}. These loans were repaid on 20 September 2017 {Blue 85I}. At the time of the impugned loan repayments, there were no trade creditors {Blue 91M}.
- 23 Accordingly, the loan repayments made on 20 September 2017 did not adversely affect the ability of the Company to pay trade creditors, hence were not to the detriment of the Company, having regard to s 588FDA(1)(c)(ii).
- 24 The next significant trade creditor did not emerge until a purchase from Dalgrains on 10 November 2017 for the 2017 crop {Blue 91P}. Just before that purchase, on 7 November 2017, Sweta/Prashant and Pandya together advanced \$600,000 to the Company: J [27](f) {Red 67U–68C}.

- 25 This further advance, made after the impugned repayments on 20 September 2017, contradicts the primary judge’s central assumption that the Company would otherwise have no sources of funds to participate in the 2017 season.
- 26 This advance was followed by further advances by Pandya of \$200,000 on 29 December 2017 and \$125,000 on 19 February 2018: J [27](g)/(h) {Red 68E–G}.
- 27 In assessing the circumstances of the Company, the primary judge failed to consider this pattern of advancing very substantial cash funds from the Changela families and Dr Pandya’s company as and when needed and repaying those loans after creditors.
- 28 For these reasons, the factual finding at J [236] {Red 102F} was wrong, which was the cornerstone of the primary judge’s conclusion at J [239] {Red 103C–G}: that a reasonable person in the Company’s circumstances would have needed to retain all those funds to make purchases in the 2017 harvest season.

Loan repayable on demand

- 29 The primary judge found that the advances made by the Changela families and Dr Pandya’s company were not some form of equity investment: J [110] {Red 83G} but, as recorded on the Company’s general ledger, were “loans” which were repayable, in effect, on demand: J [116] {Red 84D}.
- 30 It followed that there was no proper legal or commercial basis to withhold the repayment of the loans made by Sweta/Prashant and Pandya at that time, even accepting that giving effect to a prior obligation might nonetheless be unreasonable.
- 31 A transaction that gives effect to a prior existing obligation the Company has incurred, such as a loan, can be unreasonable, notwithstanding that existing obligation, with the reasonableness to be assessed at the time of the transaction rather than the time the obligation was incurred: s 588FDA(2).

Subjective considerations irrelevant

- 32 The inquiry for s 588FDA(1)(c) is concerned with the reasonableness of the Company’s conduct, **objectively assessed**: *Crowe-Maxwell v Frost* [2016] NSWCA 46; (2016) 91 NSWLR 414 at 427 [70], quoting *Smith in his capacity as liquidator of Action Paintball Games Pty Ltd (in liq) v Starke (No 2)* [2015] FCA 1119; (2015) 109 ACSR 145 at 162 [104]–[105].

- 33 Impropropriety or other breach of a director's duty is not a required element of s 588FDA(1)(c). The inquiry is not about the directors' conduct but the reasonableness of the company's conduct, objectively assessed: *Weaver v Harburn* [2014] WASCA 227; (2014) 103 ACSR 416 at 427 [79].
- 34 Accordingly, whether or not Prashant and/or Dr Pandya had engaged in a subjective consideration of the financial ramifications of the loan repayments, which the primary judge considered at J [236] {Red 102C-F}, was irrelevant to s 588FDA(1)(c).
- 35 The **objective** position was that the loan repayments were made at the end of the 2016 season after payment of outstanding trade creditors. On 20 September 2017, Prashant sent an email to Dr Vijay and to Rajan Changela referring to repayment of the \$250,000 and stating {Blue 58G-J}:
- By end of this week I will pay everyone including if any GST etc, we have received all the payments now from our buyers nothing outstanding ... So by end of this week we will have clear picture on final \$\$\$ (profit) for the last season as we are completely done with it.
- 36 That is, the repayments were made at the conclusion of the 2016 season and were made after all other trade creditors had been paid {Blue 91M}.
- 37 The Company had no other ongoing costs to meet such as rental of premises or payments to employees that might require the retention of funds. And objectively the funding of the Company had been, and would continue to be, funded by advances from the Changela family and Dr Pandya as and when required.
- 38 The objective circumstances at 20 September 2017, the time the loan repayments were made, did not support a finding that the transactions were unreasonable.

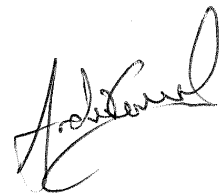
CONCLUSIONS

- 39 For the above reasons, the primary judge was wrong to find that the transactions were unreasonable for s 588FDA(1)(c), because that conclusion was premised on erroneous factual findings, relied on irrelevant considerations and failed to consider the relevant objective circumstances, in particular that:
- (a) the Company had access to funding for the 2017 crop through advances from the Changela families and Dr Pandya; and
 - (b) at the time of the loan repayments, all trade creditors had been paid.

DISPOSITION

- 40 The appeal should be allowed and the amounts in the judgment made on 14 March 2025 be varied:
- (a) in paragraph 1, by substituting "\$119,738.15, including interest of \$13,120.15" for "\$400,502.53, including interest of \$43,884.53"; and
 - (b) in paragraph 4, by substituting "\$870,369.59, including interest of \$95,369.59" for "\$1,151,133.97, including interest of \$126,133.97".
- 41 The appellants paid the full amount of the judgment on 11 April 2025. Pursuant to rule 51.19, orders should be made that the respondent pay restitution:
- (a) of \$280,764.38 to the first and second appellants, plus interest at the rates prescribed by rule 36.7, from 11 April 2025 until the date of repayment.
 - (b) of \$280,764.38 to the third appellant, plus interest at the rates prescribed by rule 36.7, from 11 April 2025 until the date of repayment.
- 42 Costs should follow the event, so the respondent should pay the appellant's costs of the appeal. The appellants do not seek any variation to the costs orders made below.

24 June 2025



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