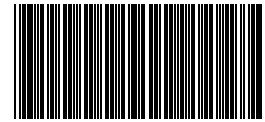




Filed: 25 July 2025 11:22 AM



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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' Submissions in Reply - 25 July 2025.pdf)

[attach.]

APPELLANTS' OUTLINE IN REPLY

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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EFFECT OF ADMISSION – RS [16], [35]–[40]

1 Dracoma mischaracterises an admission in the Commercial List Response as a settled intention by the Company to purchase the entirety of Dracoma’s 2017 chickpea crop:

- (a) *“to purchase a second crop of chickpeas”* (RS [16]);
- (b) *“an intention to purchase Dracoma’s 2017 crop”* (RS [35]); and
- (c) *“to purchase the 2017 crop of chickpeas”* (RS [35]).

2 Paragraph 16 of the Commercial List Statement contended **{Red 18F-H}**:

By no later than 22 July 2017, the Company had the intention of purchasing, and/or it was within its then contemplation and in the contemplation of each of Prashant, Vijay and Rajan for the Company to purchase, at least 1,000 acres of chickpeas from Dracoma in connection with the upcoming season’s chickpea harvest ...

3 Paragraph 7 of the Commercial List Response admitted only that the Company had an intention to purchase chickpeas, and that a purchase was within the contemplation of Prashant and Vijay. Otherwise the appellants denied the allegations **{Red 49L-N}**.

4 Accordingly, there was a denial of the alleged intention to purchase *“at least 1,000 acres of chickpeas”*, or any other quantity of chickpeas. Dracoma’s contention at RS [39] that the pleading point is *“decisive of the issue”* is based on an incorrect view as to the effect of the admission and ignores the denial at paragraph 7(c).

5 Contrary to RS [16], Prashant did not say in cross-examination that there was a *“plan to acquire a further crop”*. The question put to him at T352.20 was *“You were planning to do some buying...”* in general and not about Dracoma **{Black 241K}**.

6 Prashant’s evidence at T 351.32–35 **{Black 240Q}** quoted at RS [38] that there was *“no plan”* for a particular purchase was consistent with concerns which had later emerged regarding the likelihood of an import tariff being imposed.

7 As Counsel for the respondent accept at RS [39], this evidence is consistent with no arrangement being in place in September 2017 to acquire chickpeas, whether from Dracoma or any other source. The email exchange between Prashant and Dr Pandya referred to at RS [40] did no more than raise potential future strategies **{Blue 119}**.

8 More relevant is the email sent by Prashant on 20 September 2017, the day on which the impugned payments were made, quoted at AS [35], that there was “*nothing outstanding*” and that they were “*completely done with*” the season {Blue 58G-J}.

9 The payments were made when there were no outstanding creditors {Blue 91M}.

LOAN FUNDING NOT CONSIDERED – RS [41]-[45]

10 The submission at RS [42] conflates the finding at J [236] with the issue of the reasonableness of the impugned payments. That finding was in error because it failed to consider the funding of the 2016 crop and the actual funding of the 2017 crop by the Changela family and Dr Pandya’s company.

11 Dracoma complains at RS [43] that the objective evidence of funding identified at AS [20]-[26] should have been supplemented by subjective evidence from the Changelas or Dr Pandya to the effect that they loaned monies to the Company.

12 Such evidence was in fact adduced from the Changela family but was rejected on Dracoma’s objections.¹ Evidence was allowed from Dr Pandya that he loaned money to the Company following telephone requests from Prashant {Blue 53P-R}.

13 Contrary to RS [44], the primary judge did not purport to draw an adverse inference (which was not open since the witnesses were called) but reaching a factual finding without regard to relevant, material and objective evidence before him.

14 Further as to RS [44], the payments did not affect the balance sheet position, because the payments discharged liabilities in equal amount and, as acknowledged by the respondent, the payments left a positive cash position which did not affect the interests of any other creditors: *Featherstone* at [124] (Morrison JA).

15 As to RS [45], s 588FDA(2)(b) requires the reasonableness test to “*take into account*” circumstances at the time of the transaction, rather than as they existed when the obligation was entered into. Again, the respondent’s submission wrongly conflates the erroneous finding at J [236] with the test of reasonableness.

¹ Blue 30O-T, Blue 40E, Blue 43J-M, Blue 46S. Also relevant was Prashant’s oral evidence at T 354.47-50 {Black 243W-X}, quoted at RS [14].

LOAN REPAYABLE ON DEMAND – RS [46]-[49].

- 16 The submission at RS [47] contends for a different finding than made by the primary judge at J [116], namely that the advanced funds were repayable only “*when they were not ‘required’ by the Company*”.
- 17 No notice of contention has been filed to support that submission, which was an element of the case for Dracoma which failed: J [110] {Red 83G}. The primary judge rejected the same submission at J [112] {Red 83L}.
- 18 Otherwise the assertions at RS [48]-[49] are based on the erroneous premise that there was a formal admission to the effect that the Company intended to purchase the entirety of Dracoma’s 2017 chickpea crop, which is addressed above.

SUBJECTIVE CONSIDERATIONS – RS [29], [50]-[53]

- 19 At RS [50] Dracoma does not dispute that it was an error for the primary judge to consider whether Prashant or Dr Pandya had subjectively assessed the impact of the loan repayments, as relevant to the test s 588FDA(1)(c).
- 20 As to the argument at RS [29] that the appellants had some evidentiary onus to explain the transaction, the authorities indicate that this might arise in circumstances for transactions where “*the surrounding circumstances show it to be a departure from normal commercial practice*”: *Crowe-Maxwell* at 432 [89], quoted in *CEG* at 102 [154], or appears to be detrimental to the company: *Re Aviation 3030* at [314].
- 21 This was a case of repayment of director loans, made at a time when the payments had no adverse effect on creditors and where there were no commitments by the Company to any future purchases of chickpeas for the 2017 season.
- 22 Accordingly, there was no evidentiary onus on the appellants to explain the commercial rationale for the payments.
- 23 In any event, the rationale was explained by the email sent by Prashant on 20 September 2017 {Blue 58G-J} and the context of the objective evidence that there were no outstanding creditors {Blue 91M} at that time.
- 24 As to RS [51], to the extent the primary judge engaged in an objective inquiry, that inquiry miscarried due to the errors identified at AS [13]-[17], AS [18]-[28] and

AS [29]-[31]. These key findings of the primary judge were wrong, so that the overall assessment of whether the payments were ‘*unreasonable*’ was in error.

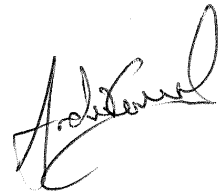
- 25 The submission at RS [52] is (again) wrongly premised on an admission that the Company intended to purchase the entirety of Dracoma’s 2017 chickpea crop at the time of the payments made on 20 September 2017. No such intention was admitted or otherwise established by the evidence.

BACKGROUND FACTS – RS [4]-[22]

- 26 Much of this factual background is irrelevant to the issues for this appeal.
- 27 The opening assertion at RS [4] that the Company “*was on the verge of embarking upon a significant and risky stock purchase in volatile market conditions and the funds were critically necessary for that purpose*” is hyperbole unsupported by the findings of the primary judge or the evidence.
- 28 As to RS [12], the finding was that the Company was insolvent from shortly after the delivery by Dracoma of the 2017 crop: J [198] {**Red 95U**}, which took place between 14 and 19 December: J [194] {**Red 95J**}, hence by “*no later than 31 December 2017*”.
- 29 As to RS [13], the Company paid Dracoma in full for the purchases of the chickpeas for the 2016 crop: J [140] {**Red 86W**}.
- 30 The finding at J [27]-[28] {**Red 67–68**} that the Changela family and Dr Pandya’s company advanced funds to the Company supports the appellants’ contention that the primary judge was wrong to find that the effect of the payments was the only means available to the Company for the 2017 crop would be the proceeds of sale.
- 31 Similarly, the evidence of Prashant Changela at T354.47–50 {**Black 243W–X**}, quoted at RS [14], that three people (Prashant, Rajan and Dr Pandya) put money into the Company when required supports the appellants’ challenge to that finding.
- 32 As to RS [18], the market volatility that increased during 2017 runs against the assertion that the Company intended to engage heavily with that season’s crop.
- 33 The primary judge’s findings quoted at RS [19]-[20] were wrong to the extent identified in the appellants’ primary submissions.

- 34 As to RS [21]-[22], the matters occurring from October 2017 onwards, after the impugned payments had been made, are irrelevant to the question of whether the payments were reasonable on 20 September 2017, at a time when there was no commitment to the purchase of any chickpea crop from Dracoma or anyone else.

25 July 2025



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