

5.5 Standard of reasonable care and skill expected of an accountant

(By Glen Wright, Freehills)

Metzke v Sali [2010] VSCA 267, Supreme Court of Victoria, Court of Appeal, Warren CJ, Neave JA, Beach AJA, 15 October 2010

The full text of this judgment is available at:

<http://www.austlii.edu.au/au/cases/vic/VSCA/2010/267.html>

(a) Summary

The case concerns the standard of reasonable care and skill expected of an accountant, and the tests for causation, contributory negligence, and concurrent wrongdoing.

The accountant in this case advised a company to advance money to another company without first reaching an informed opinion as to its present financial health, and failed to warn of the risks and circumstances of which it was or ought to have been aware.

The trial Judge held that the accountant had been negligent in firstly not reaching an informed opinion, and secondly not taking appropriate steps, consisting of requesting detailed information from the company, advising the cessation of the advancement of money, and resignation. This was upheld by the appellate Judges.

The appellate Judges found contributory negligence on the part of the company, noting that the parties were knowledgeable businessmen who had attended the board meetings and therefore would have understood the risk of advancing money.

It was also held that it was open to the trial Judge to find concurrent wrongdoing with regards to a director of the company, finding a Hedley Byrne duty even though such a duty was not pleaded. It was also held that there is no requirement under the [Wrongs Act 1958](#) section 24AH that there must be a causal relationship between the loss caused by one wrongdoer and the loss caused by the other.

(b) Facts

The Sali parties acquired a small freight forwarding company in Melbourne, Universal Logistics (Universal). The Sali parties were non-executive directors of Universal and appointed Matthew Blizzard (Blizzard) as a director.

Metzke & Allen, a firm of chartered accountants, was engaged by the Sali parties for many years. Universal's offices were the offices of Metzke & Allen and its board meetings were conducted there. In early 1999, Russell Allen (Allen), a partner in the firm, began attending Universal's board meetings at the Sali parties' request.

Universal suffered financial difficulties and an administrator was appointed on 9 March 2001. On 5 April 2001 the company went into liquidation. Unsecured creditors totalled \$2,641,692; the Sali parties were owed \$900,000.

The Sali parties claimed that these losses were suffered due to breaches by Metzke & Allen of duties owed to them. These alleged breaches occurred in two periods:

- Firstly it was alleged that between September-October 1999, the board of Universal, acting upon advice from Allen decided to expand the business. Two of the Sali parties advanced \$200,000 to provide cash flow for this purpose (Period One); and
- Secondly it was alleged that between September 1999-March 2001 there was a continuous failure to properly advise and warn the Sali parties of the risks and circumstances of which Allen was or ought to have been

aware. The Sali parties entered into a forbearance agreement with Universal, with only occasional payments being made. (Period Two).

(c) Decision

(i) Period one

The appellate Judges upheld the findings of the trial Judge that Allen should not have advised the Sali parties on the issue of whether the \$200,000 should be advanced without first reaching an informed opinion as to the outcome of the 1998/1999 financial year; however, the money would have been advanced in any case.

(ii) Period two

The trial Judge held that Metzke & Allen were negligent in not taking appropriate steps, consisting of requesting detailed information from Universal, advising the Sali parties to bring their forbearance agreement with Universal to an end, and resigning, which would have brought to an end the Sali parties forbearance by the end of August 2000. The appellate Judges rejected Metzke & Allen's argument that these steps were illegitimate as they did not accord with the way the case was pleaded. The Judges stated that while resignation was never raised, it was relevant to the central claim of the Sali parties that failure by Allen to advise them not to enter into the forbearance agreement caused them financial loss.

(iii) Causation

The appellate Judges upheld the test for causation used by the trial Judge: "the question of whether a particular loss was caused by a particular breach is to be answered by reference to commonsense and experience. The 'but for' test is a useful aid, but it must be applied in a practical commonsense way".

(iv) Contributory negligence

The appellate Judges overturned the trial Judge's decision finding no contributory negligence, holding that the Sali Parties were knowledgeable businessman who had attended Universal's board meetings and seen Allen pressing for detailed accounts. As such, the Sali parties would have understood the risk of permitting the escalation of Universal's forbearance debt.

(v) Concurrent wrongdoing

The appellate Judges upheld the trial Judge's finding that Blizzard was a concurrent wrongdoer with Metzke & Allen. It was open to the trial Judge to find a Hedley Byrne duty in relation to Blizzard, even though such a duty was not pleaded. There is no requirement under the Wrongs Act 1958 section 24AH, that there must be a causal relationship between the loss caused by one wrongdoer and the loss caused by the other.