44/07; [2007] VSC 446

SUPREME COURT OF VICTORIA

GUSS v JACOTINE

Hargrave J

24 October, 19 November 2007 — (2007) 17 VR 401

EXECUTION OF COURT ORDER – WARRANT ISSUED – SHERIFF SEIZED PERSONAL PROPERTY – PROPERTY SUBJECT TO CHARGE – WHETHER CHARGED PROPERTY "PERSONAL PROPERTY" OF THE JUDGMENT DEBTOR – WHETHER SEIZURE VALID - SALE BY JUDGMENT DEBTOR OF THE PROPERTY SEIZED – WHETHER SALE SUBJECT TO SHERIFF'S INTEREST – CHARGES LAID AGAINST JUDGMENT DEBTOR – FINDING BY MAGISTRATE THAT CHARGES PROVED – WHETHER MAGISTRATE IN ERROR: *MAGISTRATES' COURT ACT* 1989 S111(3), (7A), (7B).

G. were associated with a company C. which was ordered by the Magistrates' Court to pay a certain amount to J. As the amount remained unpaid, a warrant was issued for property of C. to be seized and to sell that property if the judgment debt, interest and costs were not paid. In execution of the warrant, the sheriff seized property belonging to C. but due to their size, did not take personal possession of it but left a notice under s111(7A) of the *Magistrates' Court Act* 1989 ('Act') to the effect that the property had been seized. Sometime after this, G. without seeking the consent of or giving notice to the sheriff, entered into an agreement to sell C.s stock, plant and equipment to another company.

Subsequently, G. were charged, pursuant to s111(7B)(a) of the Act with the offence of disposing of property seized by the sheriff pursuant to a warrant to seize property. On the hearing the magistrate found the charge proved on the ground that G. knew that the property had been seized by the sheriff and were actively involved in the disposal of the property. Upon appeal—

HELD: Appeal dismissed.
1. The scheme of sub-sections 111(7A) and (7B) of the Act is to prevent any person, on notice of a seizure of property, from dealing with the seized property without the consent of the sheriff or other person executing the warrant. This prohibition serves to protect the interest of the judgment creditor in having the judgment debt satisfied out of the proceeds of a sale of the seized property.

2. Whether or not a fixed charge operates as an equitable assignment of the charged property, or merely creates a security interest over the charged property, the charged property constitutes personal property of a judgment debtor named in a warrant under s111(3)(a) of the Act which may be seized by the sheriff or other person to whom the warrant is directed under s111(2) of the Act. This is because, at the very least, the chargor remains the legal owner of the property. The validity of a fixed charge and the amount which may be secured by it are matters to be determined on an interpleader if the sheriff does not give consent under s111(7B) of the Act.

3. The words used in s111(7B) are unambiguous. The sub-section applies to: "A person who knows that the property has been seized under a warrant to seize property ...". These words focus upon the fact of seizure under a warrant; not whether that seizure was valid or unimpeachable. Further, the prohibition is not limited to the judgment debtor. It applies to any person who knows of the seizure.

4. S111(7B) of the Act should be construed to give effect to its underlying purpose or object. That purpose is evident from the provisions of s111(7A) and s111(7B) when read together, the existence of the interpleader procedure contained in r27.05 of the *Magistrates' Court Civil Procedure Rules* 1999 and commonsense. Parliament has unambiguously prohibited all dispositions of seized goods without the consent of the sheriff. The word "dispose" is of wide import and certainly includes a sale or transfer of the legal title to seized property.

5. By selling its legal interest in the property to the purchaser, C. disposed of the property within the meaning of s111(7B) of the Act. There is no dispute that each of the defendants aided, abetted, counselled or procured the disposition of the property which was effected by the sale agreement. In those circumstances, the appellants were rightly charged as principal offenders and convicted of a contravention of s111(7B) of the Act.

HARGRAVE J:
Introduction and background facts
1. This appeal is the latest chapter in the extraordinary and tortuous saga of proceedings

arising from a simple claim in the Magistrates' Court of Victoria for an unpaid debt of approximately $10,000. The saga commenced in 1997, when Pamela Knopp filed a complaint in the Magistrates' Court against Casualife Furniture Pty Ltd ("Casualife") claiming $10,632.80 in respect of an unpaid debt due for cartage services provided to Casualife, a company associated with the appellants, Joseph Guss and his son Antony Guss.

2. Ms Knopp's claim was heard and determined by the Magistrates' Court in November 1999. Judgment was entered in favour of Ms Knopp for a total, including interest and costs, of $18,852.50 ("the judgment debt").

3. In December 1999 Casualife appealed to this Court against the Magistrates' Court decision that it pay the judgment debt.

4. Also in December 1999, and before the appeal was heard, Ms Knopp's solicitors requested that a warrant be issued to seize and sell property of Casualife to recover the judgment debt. Subsequently, a warrant directed to the sheriff was issued by the Magistrates' Court under s111(2) of the *Magistrates' Court Act* 1989 ("the Act"). By s111(3) of the Act, the warrant authorised the sheriff to seize personal property of Casualife and to sell that property if the judgment debt, interest and costs were not paid. Section 111(3) provides:

> (3) A warrant to seize property directs and authorises the person to whom it is directed—
> (a) to seize the personal property of the person named or described in the warrant; and
>
> (b) if the sums named in the warrant together with all lawful costs of execution are not paid, to sell the personal property seized.

5. In May 2000, a sheriff's officer attended at the factory premises of Casualife and demanded payment of the judgment debt. That demand was not met. The sheriff's officer then seized two mechanical presses under the warrant ("the presses"). As the presses were large and heavy, the sheriff's officer did not take physical possession of them. Rather, he took what is known as "walking possession" of the presses. This involved the sheriff's officer leaving the presses at the factory premises and an officer of Casualife signing a seizure notice under s111(7A) of the Act. By signing that notice, the officer of Casualife agreed that he would hold possession of the presses, allow the sheriff and his officers to enter and depart from the factory premises at which the presses were located, be responsible for the presses, not allow the presses to be removed without the sheriff's authority, advise anyone attempting to seize or remove the presses of the seizure and give the sheriff notice of any such attempt.

6. Subsequently, in late May and early June 2000, the sheriff's officer attended at the Casualife factory premises for the purpose of taking physical possession of the presses. The sheriff's officer did not take possession, as he was advised by a Casualife officer that an appeal had been filed in the Supreme Court against the decision that Casualife pay the judgment debt.

7. In September 2000 the sheriff's officer again attempted to take possession of the presses. This attempt was met with a statement by Joseph Guss that the presses were the subject of a debenture charge. Later, a Hong Kong company apparently associated with the appellants, Casualife International Limited ("Casualife International" or "the chargee") lodged a claim with the sheriff, claiming that Casualife had charged the presses in its favour under a deed of charge granted in 1992. As a result, interpleader proceedings were commenced in the Magistrates' Court to resolve the claim by Casualife International to the presses.[1]

8. Before the hearing of the interpleader proceeding, this Court dismissed the appeal by Casualife against the decision that it pay the judgment debt to Ms Knopp.

9. The interpleader proceeding was heard and determined in the Magistrates' Court on 25 January 2001. The claim by Casualife International was dismissed. Casualife International then appealed to this Court against the decision to dismiss its claim and, pending the hearing of its appeal, obtained a stay of execution of the warrant pending the hearing and determination of its appeal.

10. On 28 February 2001, without seeking the consent of, or giving any notice to, the sheriff,

Casualife entered into an agreement (the "sale agreement") to sell its stock, plant and equipment to another company apparently associated with the appellants, Casualife Furniture International Pty Ltd ("the purchaser"). The sale agreement was prepared by Joseph Guss and signed by Antony Guss on behalf of Casualife in his capacity as a director.

11. In October 2001, a receiver and manager was appointed to Casualife, which by then had changed its name to Buckland Products Pty Ltd.

12. In October 2001, this Court dismissed the appeal by Casualife International against the decision of the Magistrates' Court in the interpleader proceeding to dismiss its claim to property in the presses.[2] Subsequently, the Court of Appeal dismissed an application for leave to appeal against that decision.

13. On 25 October 2001, Casualife was placed in liquidation by order of this Court.

14. On 9 November 2001, the sheriff's officer again attended at the factory premises of Casualife. He spoke with Joseph Guss. Mr Guss gave the sheriff's officer a copy of the sale agreement. This was the first notice to the sheriff of the existence of the sale agreement. Further, Joseph Guss stated to the sheriff's officer that, as a result of the liquidation and receivership of Casualife, s471B of the *Corporations Act* 2001 (Cth) applied and told the sheriff's officer about the operation of that provision. Section 471B provides that a person cannot proceed with an enforcement process in relation to the property of a company in liquidation except with the leave of the Court. In these circumstances, the sheriff's officer withdrew.

15. On 5 February 2002, the sheriff's officer again attended at the factory premises of Casualife. Joseph Guss told the officer that the deed of charge rendered the seizure of the presses "invalid", and said that: "Anyway the sheriff has no right now due to the appointment of a liquidator and receiver."[3] Later, Joseph Guss told the sheriff's officer that the sale to the purchaser was subject to the sheriff's rights, but that those rights were now subject to the appointment of the liquidator and receiver to Casualife.[4]

16. No attempt was made in argument to justify the legal basis of the statements by Mr Guss concerning s471B of the *Corporations Act*. In circumstances where the presses had been sold to the purchaser, who was not then in liquidation or receivership, s471B had no operation.

17. On 20 February 2002 the appellants were each charged with the offence of disposing of property seized by the sheriff pursuant to a warrant to seize property without the written consent of the sheriff. The charges were laid under s111(7B)(a) of the Act, which provides:

> (7B) A person who knows that the property has been seized under a warrant to seize property or is the subject of a notice served under subsection (7A) must not, except with the written consent of the person executing the warrant to seize property –
> (a) interfere or dispose of that property; or ...
>
> Penalty applying to this subsection: 25 penalty units or 6 months imprisonment, or both.

18. A Charge and Summons was served on each of the appellants and adjourned on two occasions. When the charges came on for hearing, Joseph Guss raised, for the first time, an objection as to service upon him. The further hearing of the charges was adjourned. Joseph Guss then applied to this Court and sought to have the charges against him set aside because he had not been properly served. This challenge was dismissed.[5]

19. In May 2004, this Court ordered that the purchaser be placed in liquidation.[6]

20. Eventually, the prosecutions against the appellants came on for hearing on 27 and 28 July 2004. At the conclusion of the prosecution case, the appellants made a no case submission. This submission was rejected by the magistrate. Counsel for the appellants indicated that they wished to challenge this decision. Accordingly, the magistrate adjourned the further hearing of the prosecutions to a date to be fixed.

21. The appellants then applied to this Court for a review of the magistrate's decision to reject their no case submission. Their application was dismissed.[7]

22. The further hearing of the prosecutions concluded in November 2005. On 1 December 2005, the magistrate found the charges proven and convicted the appellants. They were fined and ordered to pay costs. These appeals were then commenced.

23. There was much delay in the prosecution of these appeals. At a directions hearing on 12 April 2006, the appellants failed to appear. On that day, the Senior Master dismissed each appeal for want of prosecution. In December 2006, the appellants applied to set aside the orders made by the Senior Master in their absence. On 19 March 2007, Master Daly granted the application, set aside the orders of the Senior Master and granted the appellants leave to file and to serve amended notices of appeal.

The magistrate's decision

24. It is first necessary to note that the appellants were each charged as principal offenders because, in the words of the magistrate, they "were actively involved in the disposal of the presses" under the sale agreement. That course is expressly authorised by s52 of the Act, and no issue was taken about this on the hearing of the appeals.

25. The magistrate found that, prior to the sale agreement being entered into, the appellants both knew that the presses had been seized by the sheriff under the warrant. No challenge is made to this finding, which is a necessary element of the offence under s111(7B).

26. The magistrate noted in his reasons that there was evidence before him that the deed of charge was in place "well before the execution of the warrant". However, the magistrate made no finding as to the validity of the deed of charge, as to whether the charge was fixed or floating over the presses at the time they were seized under the warrant, or as to whether there was any debt secured by the deed of charge at the time of the seizure. The magistrate decided that it was unnecessary to resolve any of these issues in order to determine the criminal charges, because these charges were proved even if the presses were the subject of a fixed charge in favour of Casualife International at the time they were seized by the sheriff under the warrant.

27. The magistrate expressed his conclusion in the following way:

> On their face, the issues in this matter are very complex and require the unravelling of many levels of competing interests. The crux of the defendants' case is the decision of Ferris J, in *Re Els Ltd*[8] that an execution creditor cannot levy distress on goods encumbered by a charge. But the criminal charges before me are nothing to do with the type of competing interests discussed in those decisions referred to in the defendants' submissions and which are usually the subject of Interpleader actions in civil disputes. In reality the issues are simple.
>
> A. The Warrant was valid at the time of the seizure, and during the period relevant to these charges.
> B. The defendants both knew of the seizure.
>
> C. At the time of the seizure, neither of the defendants nor anyone on their behalf made any mention to the Sheriff about the existence of any encumbrance affecting the presses.
>
> D. Whatever the claims of right to the presses by any of the corporate entities in the labyrinth of companies referred to in the hearing, and whether the sheriff could or could not realise sufficient funds from the ultimate sale of the presses by 'levying distress' is not the point. Section 111(7) prohibits the disposal of seized goods. The section does not provide for any defence based on '*nemo dat quod non habet*', floating or fixed charges or competing claims ...
>
> D. [sic] The presses had been seized. Both the defendants were actively involved in the disposal of the presses to 'the new company'.
>
> The elements of the charges are complete. The charges are proven.

Grounds of appeal

28. The amended grounds of appeal raise a number of questions in an unsatisfactory way. In order to clarify the real issues on appeal, an application was made at the commencement of argument to add another question, in the following terms:

> Whether the execution of the sale agreement by Casualife and the acquisition of legal rights thereunder by the purchaser in respect to property of which the Sheriff is in walking possession (the purchaser

> having notice of the fact that the Sheriff was in walking possession), and which is subject to a pre-existing fixed charge, constitutes a contravention of section 111(7B) of the *Magistrates' Court Act*?

29. I allowed the amended notice of appeal to be further amended to include this question, so as to clarify the real basis of the appeal as articulated in the written outline of submissions filed on behalf of the appellants.

30. It was submitted on behalf of the appellants that the question posed by the added ground of appeal should be answered in the negative. Two grounds were relied upon in argument. First, it was submitted that s111(7B) of the Act has no application to the seizure of the presses, because the presses were not validly seized by the sheriff. Second, it was submitted that, if s111(7B) is engaged, the sale agreement did not effect a disposition of the presses to the purchaser within the meaning of s111(7B).

Did s111(7B) apply to the seizure of the presses?

31. The submission that s111(7B) has no application to the seizure of the presses raises two issues:

> (1) Did the charge created by the deed of charge operate to deprive Casualife of any interest in the presses as at the time of seizure, so that the presses were not at that time personal property of Casualife within the meaning of s111(3)(a) of the Act?
>
> (2) If the presses were not personal property of Casualife at the time of seizure, were the presses nevertheless "property ... seized under a warrant", within the meaning of s111(7B), so as to attract the operation of that sub-section?

32. It was submitted on behalf of the appellants that the charge was a fixed charge over the presses at the time of seizure because the presses were the subject of a fixed charge under cl3(2) of the deed of charge. It was submitted in the alternative that, if the presses were subject to a floating charge, the floating charge crystallised (and thus became fixed) under the terms of cl5(4) of the deed of charge when the judgment debt was not satisfied within seven days. On the assumption that there was money owing by Casualife to the chargee at the time of seizure of the presses, it would appear that, on one or other of these grounds, the chargee had a fixed charge over the presses at the time of seizure. However, the magistrate made no finding that there was any money due to the chargee, and this issue may be capable of being the subject of an issue estoppel arising out of the dismissal of the claim made by Casualife International in the interpleader proceeding. It is unnecessary to decide these issues, because the result of the appeal will not be altered by their resolution. For the reasons given hereafter the appeal must fail, even if it is established the presses were the subject of a fixed charge at the time of seizure by the sheriff. Accordingly, like the magistrate, I will determine the issues on the assumption that a fixed charge was in operation at the time of the seizure.

33. It was submitted on behalf of the appellants that the better view of the authorities is that a fixed charge operates to convey the chargor's beneficial interest in the charged property to the chargee, leaving the chargor with only a bare legal interest. It was submitted that the effect of the authorities was that the chargor, and the sheriff if he seizes the charged property, cannot sell the property because it remains subject to the equitable ownership of the chargee. Counsel for the appellants referred to a number of authorities to support this submission.[9] Counsel frankly acknowledged that these authorities do not settle the effect of a fixed charge, with some cases preferring the view that there is no assignment in equity but merely the creation of an equitable interest in the charged property as security for repayment of the amount secured.[10]

34. I accept that the existence of a fixed charge over personal property seized by the sheriff will take precedence over the sheriff's interest, and the seizure will be subject to the rights of the chargee. In *Re Standard Manufacturing Co*,[11] Lord Halsbury LC stated in the course of argument that:

> The sheriff cannot, by seizing, get rid of the rights of third persons to which the property was subject when in the hands of the debtor.[12]

That is obviously correct.

35. Counsel for the appellants placed heavy reliance upon *Re ELS Ltd.*[13] In that case, the relevant regulation gave local councils the power to recover unpaid non-domestic rates which were the subject of a Magistrates' Court order for payment. The recovery power was one of distress and sale, in the following terms:

> Where a liability order has been made, the authority which applied for the order may levy the appropriate amount by distress and sale of *the goods of the debtor* against whom the order was made.[14]

36. A local council obtained a liability order against ELS.[15] After the liability order was made, a bank holding a floating charge over the property of ELS appointed receivers and the floating charge then crystallised and became a fixed charge. After this, bailiffs appointed by the council endeavoured to levy a distress over property of ELS. However, the bailiffs were restrained by injunction from continuing the distraint. The parties then applied to the court for the determination of a point of law, as to whether the crystallisation of the floating charge had the effect that the goods of ELS ceased to be "goods of the debtor" within the meaning of the relevant statutory provision.[16]

37. Ferris J was of the view that crystallisation of the charge completed an equitable assignment of the goods to the chargee and that, accordingly, the goods ceased to be "goods of the debtor" within the meaning of the relevant statute authorising distress and sale. The form of the decision was heavily influenced by the way in which the question for determination was framed in the originating summons. The real dispute in the case was whether the local council could levy distress and sell goods to recover its debt in priority to the debt claimed by the bank. Unsurprisingly, it was held that the bank's rights prevailed.

38. It was submitted on behalf of the appellants that this Court should follow *Re ELS* and, as a result, hold that, because they were subject to a fixed charge, the presses ceased to be "personal property" of Casualife prior to the issue of the warrant. I do not accept this submission. In my view, the decision in *Re ELS* is distinguishable. It was not concerned with the validity of a seizure of personal property pursuant to a warrant (or statutory distraint). The case involved the determination of competing priorities; and whether "distress and sale" by the council could continue following the crystallisation of the instrument of charge. In effect, Ferris J was asked to determine an interpleading proceeding, which he determined by concluding that the crystallisation of the charge gave the bank's interests under the charge priority over the council's statutory power of distress and sale.

39. This case is not the appropriate vehicle to determine the legal or equitable effect of a fixed charge. In my view, whether or not a fixed charge operates as an equitable assignment of the charged property, or merely creates a security interest over the charged property, the charged property constitutes personal property of a judgment debtor named in a warrant under s111(3)(a) of the Act which may be seized by the sheriff or other person to whom the warrant is directed under s111(2) of the Act. This is because, at the very least and as conceded by counsel for the appellants, the chargor remains the legal owner of the property. The validity of a fixed charge and the amount which may be secured by it are matters to be determined on an interpleader if the sheriff does not give consent under s111(7B) of the Act.

40. If I am wrong, and the presses were not personal property of Casualife at the time of seizure, I am nevertheless of the opinion that s111(7B) applies to the seizure of the presses under the warrant.

41. It was submitted on behalf of the appellants that s111(7B) should be interpreted as applying only where the property which has been seized has been "validly seized", in the sense that the property is in fact personal property of the judgment debtor. It was submitted that, notwithstanding that property has been seized under s111(3)(a) of the Act and the owner either knows of the seizure or is the subject of a notice under s111(7A), parliament could not have intended to impose a criminal sanction when persons other than the judgment debtor deal with their own property. For the following reasons, I do not accept this submission.

42. First, the words used in s111(7B) are unambiguous. The sub-section applies to: "A person who knows that the property has been seized under a warrant to seize property ..." These

words focus upon the fact of seizure under a warrant; not whether that seizure was valid or unimpeachable. Further, the prohibition is not limited to the judgment debtor. It applies to any person who knows of the seizure.

43. Second, s111(7B) should be construed to give effect to its underlying purpose or object. [17] In my view, that purpose is evident from the provisions of s111(7A) and s 111(7B) when read together, the existence of the interpleader procedure contained in r27.05 of the *Magistrates' Court Civil Procedure Rules* 1999 and commonsense.

44. The scheme of sub-sections 111(7A) and (7B) is to prevent any person, on notice of a seizure of property, from dealing with the seized property without the consent of the sheriff or other person executing the warrant. This prohibition serves to protect the interest of the judgment creditor in having the judgment debt satisfied out of the proceeds of a sale of the seized property.

45. The ability to deal with seized property with the consent of the sheriff provides one way in which a person claiming an interest in the property may be relieved of the prohibition in s111(7B). For example, a person affected may satisfy the sheriff that he or she is the true owner of the property, or might persuade the judgment creditor that this is so and the judgment creditor might instruct the sheriff to withdraw. For example, as often occurs, a financier may produce evidence that seized property is the subject of a chattel mortgage or other security to secure an unpaid debt. In these circumstances, the sheriff will usually withdraw or, if there is doubt as to the validity of the financier's claim, ask the judgment creditor for instructions as to whether or not to interplead. Faced with the possibility of an adverse costs order in interpleader proceedings, a judgment creditor will often instruct the sheriff to withdraw, notwithstanding doubts as to the validity of the financier's claim – for example, where the financier is associated with the judgment debtor, as in this case.

46. The existence of the interpleader procedure in r27.05 provides another avenue for a person claiming an interest to be relieved of the prohibition contained in s111(7B). That is a procedure which has existed for many years and was well-established at the time sub-sections 111(7A) and (7B) were enacted. The obvious intention of the sheriff's interpleader procedure is to resolve disputes as to ownership of seized property in an orderly way which will be binding on all interested parties. The interested parties will usually be the judgment creditor and the claimant, although the judgment debtor may also have an interest in defeating the claimant's claim so as to allow the judgment debt to be satisfied from the seized property.

47. The well-established existence of the sheriff's interpleader procedure to deal with disputed ownership of seized property is inconsistent with permitting a claimant to utilise "self-help" by disposing of the property.

48. In light of the above matters, commonsense and practicality support a broad construction of sub-section 111(7B) and not one which is limited to circumstances where it is established that the seized property was personal property of the judgment debtor at the time of seizure. Such an interpretation would encourage third parties claiming ownership of seized property to engage in self-help measures instead of lodging a claim with the sheriff and, if the sheriff does not consent to the claimant dealing with the property, abiding the outcome of interpleader proceedings.

49. Moreover, this is not a case where Casualife International, as chargee, has purported to exercise the right of an equitable owner to sell the presses. Under the terms of the sale agreement, Casualife sold its interest in the presses to the purchaser. The only role of Casualife International, as chargee, was to consent to this sale.

Were the presses disposed of in contravention of s111(7B)?

50. It was submitted on behalf of the appellants that, if s111(7B) applies to the sheriff's seizure of the presses, Casualife did not dispose of the presses by selling its interest in them to the purchaser. The basis of this argument was the submission that the only purpose of s111(7B) is to prevent seized property from being taken out of the reach of the sheriff, so as to prevent the sheriff from selling the seized property and effecting execution under the warrant. It was submitted that a sale of seized property which is subject to the interest of the sheriff does not constitute a disposal of seized property within the meaning of s111(7B) because, whilst the warrant remains

in force, the sheriff retains the right to take possession of the property and sell it to satisfy the judgment debt.

51. It was submitted on behalf of the appellants that the sale by Casualife to the purchaser of its legal interest in the presses was a sale subject to the interests of the sheriff. I accept that this is correct: *McQuarrie v Jaques*,[18] *Ruby Wells NL v The Bailiff of the District Court & Anor.*[19]

52. Next, it was submitted that the effect of the sale subject to the sheriff's interest was that the sheriff could seize and sell the presses once the stay on execution, pending the determination of the appeal by Casualife International in the interpleader proceeding, was discharged. In these circumstances, it was submitted that Casualife, and thus the appellants, did not, within the meaning of s111(7B), "dispose" of the presses by selling them to the purchaser.

53. I reject the appellants' submissions in this regard. The clear words of s111(7B) should not be read down in the manner suggested. Parliament has unambiguously prohibited all dispositions of seized goods without consent of the sheriff. The word "dispose" is of wide import, and certainly includes a sale or transfer of the legal title to seized property, as occurred in this case.

54. Further, the interpretation contended for by the appellants might cause judgment debtors to engage in obfuscatory conduct such as that engaged in by the appellants in this case. In such circumstances, the sheriff may be dissuaded from selling the goods to satisfy the judgment debt underlying the warrant. Warrants are often issued for relatively small sums of money which, although important to the judgment creditor, make it uneconomical for the judgment creditor to risk interpleader proceedings with the possibility of adverse costs consequences.

55. In these circumstances, I am of the view that s111(7B) should be given its plain and unambiguous meaning.

Conclusion

56. The magistrate was correct in giving the words of s111(7B) their plain and unambiguous meaning. On any view of the effect of a fixed charge over the presses, the appellants concede that Casualife retained legal ownership of the presses at the time they were seized under the warrant. In these circumstances, the presses were personal property of Casualife which were capable of being lawfully seized by the sheriff under the warrant. Accordingly, sub-sections 111(7A) and (7B) applied to that seizure. By selling its legal interest in the presses to the purchaser, Casualife disposed of the presses within the meaning of s111(7B) of the Act. There is no dispute that each of the appellants aided, abetted, counselled or procured the disposition of the presses which was effected by the sale agreement. In these circumstances, the appellants were rightly charged as principal offenders and convicted of a contravention of s111(7B) of the Act.

57. The appeals will be dismissed.

---

[1] *Magistrates' Court Civil Procedure Rules* 1999, r27.05.
[2] *Casualife Furniture Pty Ltd v Knopp* [2001] VSC 395.
[3] Transcript of proceedings before the magistrate, 64.
[4] Transcript, 67.
[5] *Guss v Magistrates' Court of Victoria and Jacotine* [2003] VSC 365.
[6] *Deputy Commissioner of Taxation v Casualife Furniture International Pty Ltd* [2004] VSC 157; (2004) 9 VR 549; (2004) 55 ATR 599.
[7] *Guss v The Magistrates' Court of Victoria and Jacotine* [2005] VSC 153.
[8] [1995] Ch 11; [1994] 2 All ER 833; [1994] 1 BCLC 743; [1994] 3 WLR 616.
[9] Reference was made to *Re Standard Manufacturing Co* [1891] 1 Ch 627, 641; *Re ELS Ltd* [1995] Ch 11; [1994] 2 All ER 833; [1994] 1 BCLC 743; [1994] 3 WLR 616; *Vangale Pty Ltd (In Liq) v Kumagai Gumi Co Ltd* [2002] QSC 137, [35]-[42]; *Sheahan v Carrier Airconditioning Pty Ltd* [1997] HCA 37; (1997) 189 CLR 407, 422-3; (1997) 147 ALR 1; (1997) 71 ALJR 1223; (1998) 39 ATR 419; (1997) 15 ACLC 1116; (1997) 24 ACSR 312; *Tricontinental Corporation & Anor v Commissioner of Taxation & Ors* [1988] 1 Qd R 482; *Lyford v Commonwealth Bank of Australia* (1995) 17 ACSR 211-217.
[10] For example, see the discussion of the cases in *Vangale Pty Ltd (In Liq) v Kumagai Gumi Co Ltd* [2002] QSC 137, [35]-[42].
[11] [1891] 1 Ch 627.
[12] Ibid, 641.
[13] [1995] Ch 11; [1994] 2 All ER 833; [1994] 1 BCLC 743; [1994] 3 WLR 616.

[14] Ibid, 836 (emphasis is added).
[15] The case in fact involved two councils. It is unnecessary to refer to the second council, which obtained its liability order after the crystallisation of the charge.
[16] [1995] Ch 11; [1994] 2 All ER 833, 836-7; [1994] 1 BCLC 743; [1994] 3 WLR 616.
[17] *Interpretation of Legislation Act* 1984 (Vic), s35(a).
[18] [1954] HCA 76; (1954) 92 CLR 262, 272-3; [1955] ALR 49; 17 ABC 227.
[19] [1990] 2 WAR 448.

APPEARANCES: For the appellants Guss: Mr L Watts, counsel. Poulton Elliott and Grey, solicitors. For the second respondent Jacotine: Mr B Dennis, counsel. Victorian Government Solicitor.
