



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**16 JULY 2018**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**TRENDS PUBLISHING INTERNATIONAL LTD v ADVICEMISE  
PEOPLE LTD AND OTHERS**

**(SC 103/2017) [2018] NZSC 62**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

On 22 May 2015, Trends Publishing International Ltd (the appellant) entered into a compromise with all of its unsecured creditors under Part 14 of the Companies Act 1993. Under the terms of the compromise, \$50,000 was to be made available to pay each creditor in full up to the first \$1,000 of their debts. The creditors would then share pro rata in what was left of the \$50,000 along with nine additional monthly payments of \$13,300. They would otherwise forego payment of their debts.

All unsecured creditors were classed together and the compromise was approved by a qualified majority. However, over 75 per cent of the value of votes in favour was made up by three creditors who were associated with Trends (the insider creditors). If they had not voted, the qualified majority would not have been achieved. The compromise was also strongly supported by creditors owed less than \$1,000.

A group of creditors who opposed the compromise agreement (the respondents in this appeal) sought orders under s 232(3) of the Companies Act in the High Court. Under s 232(3), the court may order that a creditor is not bound by the compromise or make any other order it thinks fit.

The challenging creditors argued that the insider creditors should have been classified separately from the arm’s-length creditors for voting

purposes due to their disparate interests and that the information provided in support of the compromise was insufficient.

In the High Court, Heath J concluded that the grouping of the insiders with the arm's-length creditors was designed to ensure that the proposal would be approved and amounted to manipulation. Such manipulation constituted unfair prejudice for the purposes of s 232(3) and therefore the Judge set aside the compromise. The Court of Appeal upheld Heath J's decision to set aside the compromise, although on slightly different grounds.

Trends obtained leave to appeal to this Court. The Supreme Court has unanimously dismissed the appeal.

William Young, Glazebrook, and O'Regan JJ held that the insider creditors should not have been classed, for voting purposes, with the arm's-length creditors. As well, the payment in full of the first \$1,000 of debts meant that the creditors owed \$1,000 or less were getting what they were owed and thus there was no practical reason to include them in the compromise. The impact of this preference was not confined to those owed less than \$1,000 because proposed payment out in full of the first \$1,000 of debts incentivised those who were owed small debts to support the compromise. In contrast, at best the challenging creditors were to receive between 11 and 18 per cent of the debts owed to them. Accordingly, a single classification of all creditors was inappropriate given the vastly different treatment accorded to their debts. This misclassification amounted to unfair prejudice in respect of the challenging creditors who voted against the compromise and material irregularity in respect of the challenging creditor whose vote was not successful. Given that the process which resulted in the approval of the compromise was fundamentally misconceived, there was no reason to differ from the conclusion of the Court of Appeal that the compromise should be set aside.

In their reasons, Elias CJ and Ellen France J held that the failure to exclude the insider creditors from the arm's-length creditors, without more, did not amount to material irregularity. In classifying creditors under Part 14, the focus is on the similarity or dissimilarity of their rights against the company and the way in which those rights are affected by the compromise. As all of the creditors had the same rights against the company, they were appropriately classed together.

However, they agreed that the compromise promoted by the board of directors of Trends was an abuse of the Part 14 procedure and resulted in unfair prejudice to the challenging creditors. They also held that the inadequacies in the information provided to the creditors amounted to material non-disclosure and thus irregularity under s 232(3). They would have ordered different relief (that the challenging creditors are not bound by the compromise) but otherwise dismissed the appeal.

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