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ARTICLES

Unfair Preferences as an Instrument of Restoration – *Nikita Angelakis*

An insolvent debtor may direct a payment be made by a related party to satisfy the claims of one of its creditors. Following the decision of the Court of Appeal of Victoria in *Cant v Mad Brothers Earthmoving Pty Ltd*, such a payment may only be an unfair preference if it reduces the assets available for distribution to creditors. This is consistent with the rationale for the preference, and the restitutionary nature of relief available under Pt 5.7B of the *Corporations Act 2001* (Cth). The preference operates to restore property of the company, disposed of during the relation-back period, so that it can be distributed to all creditors. Given that the relief seeks to reverse a transfer of wealth from the company, a preference must involve the disposal of an asset to which the company was entitled prior to its liquidation.

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To the Purpose: Unduly Narrow Standing under s 447C – *Paulina Fishman*

Over 1,000 companies enter voluntary administration in Australia each year. Yet sometimes courts declare the purported appointment of an administrator invalid. Such a declaration can be sought most directly under s 447C of the *Corporations Act 2001* (Cth). This article examines one possible ground of invalidity: that a substantial improper purpose motivated the purported appointment. That examination reveals that shareholders, directors, and the Australian Securities and Investments Commission may each have a legitimate interest in challenging the validity of a purported appointment. Yet they currently lack standing, in those capacities, under s 447C. It is contended that s 447C standing is too narrow: it does not prevent such persons from seeking a declaration of invalidity, but merely drives them to make less tailored or more onerous applications for that relief.

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