

COMMERCIAL LAW CASE NOTES



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Sample

Garcia v National Australia Bank Ltd (1998) HCA 48

- Court details

Full Court of the High Court of Australia.¹

- Procedural history

This case began in the Supreme Court of New South Wales. That decision was appealed to the New South Wales Court of Appeal. The applicant did not like the decision of that court and was granted leave to appeal to the High Court of Australia.²

- Facts

In 1979, Jean Balharry Garcia and her then husband, Fabio Garcia, executed a mortgage over their jointly owned matrimonial home in favour of the National Australia Bank. Between 1979 and 1987, Jean Balharry Garcia also signed several guarantees. These documents were signed to secure a loan that was made to Fabio Garcia for use in his company, Citizens Gold Bullion Exchange Pty Limited. The couple separated in 1988, and in the following year, Fabio Garcia's company wound up.³

In 1990, Jean Balharry Garcia commenced proceedings in the Supreme Court of New South Wales seeking declarations that the various documents were of no force or effect and as such were void. The trial judge applied the rule in *Yerkey v Jones* and granted a declaration that none of the guarantees which the appellant had given bound her.⁴

1 *Garcia v National Australia Bank Ltd* (1998) HCA 48.

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

On appeal, the New South Wales Court of Appeal held that the rule in *Yerkey v Jones* should no longer be applied as it had been overruled by *Commercial Bank of Australia Ltd v Amadio*.⁵

The appellant was granted leave to appeal to the High Court of Australia.⁶

- Issues

There were three main issues in this case. Namely:

“1. Does the principle stated by Dixon J in *Yerkey* express a special rule of equity applicable to a case where a wife gives a guarantee of a debt for the benefit of her husband (or entities controlled by him) and where the wife's agreement to give the guarantee was obtained by undue influence, pressure or misrepresentation on the part of the husband or without an adequate understanding of the nature and effect of the transaction? Does that principle represent the holding of this Court or simply an opinion of Dixon J, never specifically endorsed by the Court as a binding rule? (The *Yerkey v Jones* point).

2. Whatever the status of the opinion of Dixon J in *Yerkey*, should any rule which *Yerkey* may have stated in 1939 now be regarded as obsolete and subsumed in the principles expressed in later decisions such as *Amadio*? Should this be done having regard to changes in society affecting married women, their legal status, the expansion of the availability of financial credit to them and the desirability of avoiding reliance upon discriminatory criteria for the provision of equitable relief and the development of equitable doctrine? (The *Commercial Bank of Australia Ltd v Amadio* point).

3. If the equitable principle expressed by Dixon J in *Yerkey* is revealed as his individual opinion, is overruled as obsolete or now treated as absorbed in the broader doctrines of equity, does the exposition of such doctrine in *Amadio*

⁵ Ibid.

⁶ Ibid.

sufficiently meet the particular problem of sureties who are emotionally vulnerable or dependent on the debtor? Or is a broader statement of equitable principle required than that expressed in *Amadio*? In particular, should this Court follow the decision of the House of Lords in *Barclays Bank Plc v O'Brien* or some modified version of the principles there stated? (The *Barclays Bank Plc v O'Brien* point).⁷

- Reasoning / Decision (commentary)

By a majority of five to one, the High Court declined to adopt the approach taken by Lord Browne-Wilkinson in *Barclays Bank Plc v O'Brien*, and instead, held that the rule in *Yerkey v Jones* still applied in Australia. Justice Kirby in his dissenting judgement argued that the approach taken in *Yerkey v Jones* should be rejected. However, the High Court was unanimous in overturning the decision of the Court of Appeal in favour of reinstating the trial judge's orders.⁸

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⁷ Ibid at 49.

⁸ Ibid.