
The Continued Role of the Common Law Indoor Management Rule Due Inquiry Exception

David Morrison*

Introduction

The Indoor Management Rule is a rule at company law¹ which has had an interesting history of development² within Australia. The rule allows outsiders³ dealing with a company to make assumptions about the internal consistency of decisions made by a company with its rules.

The purpose of this paper⁴ is to consider the extent to which the common law Indoor Management Rule due inquiry exception applies in transactions ex post the introduction of s.164(4)(b) of the *Corporations Law*. The paper will briefly outline the development of the indoor management rule within the Australian jurisdiction and consider the application of significant recent cases relevant to the due inquiry exception. The paper concludes with the view that the common law Indoor Management Rule operates in addition to the statutory Indoor Management Rule when considering transactions where an inquiry ought to have been made.⁵

* Lecturer, Law School, University of Queensland.

1 Note the comments of Mason J in *Northside Developments Pty Ltd v. Registrar General* (1990) 64 ALJR 427 at 434 where he felt that it made little difference whether the Indoor Management Rule (in its common law form) was a subset of agency law or an organic principle of company law.

2 Commencing originally with English common law.

3 "Outsider" being a person who is neither a company officer nor a company member.

4 This paper was presented at the AAANZ Conference in Christchurch New Zealand in July 1996. It relies upon the contents of work submitted for coursework assessment and draws substantially upon a paper presented to the Corporate Law Teachers' Conference (6-8 February 1994).

5 This paper seeks to provide a view on the possible outcome of the continued application of the common law. For a summary of points from the various cases see Law, LJ 'Security Transactions With Companies: Mitigating The Effect Of Defective Execution', *The Queensland Law Society Journal*, Volume 25, Number 5, October 1995, at 417.

The Indoor Management Rule

The Indoor Management Rule was established at common law in the case of *Royal British Bank v. Turquand*⁶. In *Turquand* the Court allowed the outsider to make the assumption that company officers had duly complied with the company's rules⁷. The directors of the company gave a guarantee to their bankers for borrowing without complying with their company's usual requirement of a shareholders' general resolution of approval. The company sought to rely on the absence of shareholder approval to avoid payment. The Court rejected this and found for the bank on the basis that the bank was entitled to assume that the borrowings were duly authorised. Accordingly the basis of this decision became known as the "rule in *Turquand's* case" and latterly as the "Indoor Management Rule".

The exceptions to the common law Indoor Management Rule⁸ were the Doctrine of Constructive Notice⁹, actual knowledge¹⁰, due inquiry¹¹ and forgery.¹² It is necessary to more fully consider the due inquiry exception at common law in order to understand its significance with respect to the current operation of the statutory exception contained in s.164(4)(b).

The Due Inquiry Exception at Common Law

Due inquiry operated as an exception to the Indoor Management Rule at common law on the basis that an outsider was not entitled to make the presumption of regularity if the circumstances were such that the outsider should have inquired further, per Lord Simonds in *Morris v. Kanssen*¹³ where he stated that an outsider:

6 (1856) 6 E&B 327.

7 At that time companies were incorporated by a specific Act of Parliament with a set of rules akin to articles called the Deed of Settlement.

8 The Doctrine of Ultra Vires is an aligned subject area which is beyond the scope of consideration in this paper. Briefly, Ultra Vires allowed a company to avoid being bound by a transaction which was "beyond its power"; see *Re Haven Gold Mining Co* (1882) 20 Ch D 151. Interestingly, despite the attempts of s.161 and s.162 of the Corporations Law to abolish the doctrine, it persists in limited scope, notwithstanding the seemingly express explanation of the meaning of s.161 and s.162 given in s.160; see *ANZ Executors & Trustee Company Ltd v. Qintex Australia Ltd & Anor* (1990) 8 ACLC 791.

9 The Doctrine of Constructive Notice applied to preclude an outsider from relying upon a company's actions where a reading of the public documents of the company would have made it clear that the outsider could not rely on the Indoor Management Rule, notwithstanding the actual state of the outsider's knowledge; see *Ernest v. Nicholls* [1857] VI HLC 401.

10 An outsider was precluded where s/he had relevant actual knowledge of the company's rules and sought to make a contrary reliance on the basis of the Indoor Management Rule; see *Howard v. Patent Ivory Manufacturing Co* (1888) 38 Ch D 156 and *Biggerstaff v. Rowatt's Wharf Limited* [1896] 2 Ch 93.

11 Due inquiry extends the ambit of actual knowledge by requiring an outsider to make further inquiries to determine the regularity of the transaction where the circumstances of the transaction are such as to put the outsider on notice; see *Morris v Kanssen* [1946] AC 459 and *Custom Credit Holdings Ltd v. Creighton Investments Pty Ltd* (1985) 3 ACLC 248.

12 An outsider was precluded from making the assumption of regularity of an instrument where that instrument was forged; see *Ruben v. Great Fingall Consolidated* [1906] AC 439.

13 [1946] AC 459.

“...cannot presume in his own favour that things are rightly done if inquiry that he ought to make would tell him that they were wrongly done”.¹⁴

In *Custom Credit Holdings Ltd v. Creighton Investments Pty Ltd*¹⁵ a decision of Clarke J in the Supreme Court of New South Wales, the question as to due sealing of leases by corporate execution arose for consideration. The leases were to be executed in accordance with the company's (Rohn Products Pty Ltd) articles which required a directors' resolution. The leases appeared to be duly executed and were accepted as such by the outsider (Custom Credit). Clarke J held that Custom Credit could not rely on the apparent validity of the execution because they had been put on notice. This was so because a resolution had not been passed by the company. Indeed one of the directors (whose signature was necessary) was clearly reluctant to execute the leases¹⁶ due in part to advice given by his solicitor. Clarke J stated that:

It is plain from... [the] facts that prior to the...[outsider] accepting the leases its officer was apprised of the fact that one of the two directors had not approved the execution and his solicitor was questioning its validity. In my opinion the outsider was put on notice of a probable irregularity and, having failed to make any further inquiry or taken any other steps to satisfy itself as to the validity of the execution, is unable to rely on the indoor management rule.¹⁷

Because the leases were executed in 1983, before the introduction of the statutory Indoor Management Rule, the common law Indoor Management Rule due inquiry exception operated to preclude the outsider from relying on the apparent valid execution of the lease documents.

Thus where an outsider has knowledge which gives them reason to inquire as to the internal matters of the company and they seek to rely instead on the presumptions allowed by the Indoor Management Rule, then the outsider will not be able to so rely. This proposition was clearly supported by Kirby P in *Registrar-General v. Northside Developments Pty Ltd & Ors*¹⁸ where he cited Wright L with approval¹⁹ stating that:

Whatever may be the exact scope of the rule in *Turquand's* case 'I think it is quite clear on principle and on the authorities...that it can never be relied upon by a person who is put on inquiry. The rule proceeds on a presumption that certain acts have been regularly done, and if the circumstances are such that the person claiming the benefit of the

14 *Ibid* at 475.

15 (1985) 3 ACLC 248.

16 *Ibid* at 254.

17 *Ibid* at 255.

18 (1989) 7 ACLC 52.

19 In *B Lippett (Liverpool) Ltd v. Barclays Bank Ltd* (1928) 1 KB 48 at 56.

rule is really put on inquiry, if there are circumstances which debar that person from relying on the prima facie presumption, then it is clear...that he cannot claim the benefit of the rule'.²⁰

Australian Consideration of the Indoor Management Rule

The Australian High Court approved the common law Indoor Management Rule in the case of *Albert Gardens (Manly) Ltd v. Mercantile Credits Ltd*²¹ and took the opportunity to make significant comment in the case of *Northside Developments Pty Ltd v. Registrar-General*.²² The latter case remains an important reference for the operation of the common law Indoor Management Rule today because of its comments on the due inquiry exception. Of continuing interest is the statement by Mason CJ:²³

“What is important is that...the rule in *Turquand's* case...[gives] sufficient protection to innocent lenders and other persons dealing with companies, thereby promoting business convenience and leading to just outcomes..[which calls for] a fine balance of competing interests To hold that a person dealing with a company is put on inquiry when that company enters into a transaction which appears to be unrelated to the purposes of its business and from which it appears to gain no benefit is, in my opinion, to strike a fair balance...”²⁴

The current form of the Indoor Management Rule in Australia is found within the Corporations Law in s.164. In *Barclays Finance Holdings v. Sturgess & Ors*²⁵ Wood J stated that the statutory provision was introduced to clarify the common law position rather than to make a new rule.²⁶ The statutory provisions were introduced to apply from 1 January 1984²⁷ The statutory exceptions to the Indoor

20 *Supra* n.18 at 60.

21 (1973) 131 CLR 60.

22 (1990) 64 ALJR 427.

23 Also cited at greater length by Law, L, 'Security Transactions With Companies: Mitigating The Effect Of Defective Execution', *The Queensland Law Society Journal*, Volume 25, Number 5, October 1995.

24 *Supra* n.22 at 434.

25 (1985) 3 ACLC 662.

26 See *Barclays Finance Holdings v. Sturgess & Ors* (1985) 3 ACLC 662 at 667 where Wood J stated that “There can be little doubt that [s.164 was] enacted, inter alia, to clarify and codify the indoor management rule developed from the decision in *Royal British Bank v. Turquand*...; to overcome the distinction drawn in *Morris v. Kanssen*...between defective appointments and non-existent appointments; to overcome the view arising out of *Ruben v. Great Fingall Consolidated*...that the indoor management rule cannot assist in the case of forgery; and to codify the rule in *Howard v. Patent Ivory Manufacturing Co*...to the effect that a third party could not take advantage of the indoor management rule if he had notice, actual or constructive that the person with whom he was dealing lacked the authority of the company”.

27 Introduced as ss.68A-68D of the various State Companies Codes, followed by ss.164-166 of the Corporations Law from 1 January 1991. Note that s.165 abolishes the Doctrine of Constructive Notice and s.166 details the forgery exception to the Indoor Management Rule.

Management Rule are contained in s.164(4) which precludes reliance by an outsider in the circumstances of actual knowledge, and in limited circumstances of inquiry, particularly:

164(4)(a) “the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or”

164(4)(b) “the person’s connection or relationship with the company is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct.”

The actual knowledge exception in s. 164(4)(a) is clearly a restatement of the actual knowledge exception to the Indoor Management Rule at common law. Section 164(4)(b) however, appears to be narrower than the due inquiry exception at common law requiring some sort of “connection or relationship” as a prerequisite for an outsider to be put on inquiry. Section 164(4)(b) is clearly critical for outsiders, particularly bankers in understanding the ambit of protection which borrowing companies are given by the statute. The Explanatory Memorandum to s.164(5)²⁸ does not provide assistance in seeking to determine a clear interpretation of the ambit of operation of the section.²⁹ It is therefore necessary to refer to the case decisions which have specifically considered the ambit of s.164(4)(b).

Relevant Cases Considering the Statutory Indoor Management Rule

Unfortunately the cases considering the Statutory Indoor Management Rule have not been consistent in their application of s. 164(4)(b). This presents difficulty for those seeking to rely,³⁰ since there is uncertainty with respect to the ambit of inquiry which financial institutions are to make in taking security.³¹ A consideration of these cases now follows.

Lyford v. Media Portfolio Ltd

In *Lyford v. Media Portfolio Ltd*³² the statutory Indoor Management Rule was

28 A similar provision relating to the acquisition of property from the company.

29 The Explanatory Memorandum: Corporations Bill 1988, paragraph 571 states that: “...A person dealing with a company, or with a person who has acquired, or purports to have acquired, title to property from a company, will not be entitled to make assumptions under Bill sub-cl. 164(3) where the person knows or ought to know that the assumption is incorrect”.

30 Including bankers taking security over company assets.

31 For a more general discussion of third party security taking, see Bryan Horrigan, ‘Third Party Securities — Theory, Law and Practice’ in *Enforcing Securities* JA Greig and B Horrigan The Law Book Company Limited 1994.

32 (1989) 7 ACLC 271.

considered with respect to a transaction where funds were advanced by one company (Broadlands) to another (Media) in the absence of compliance with the latter's articles³³.

When Media failed to make the required loan repayments it sought to preclude Broadlands' reliance on the statutory Indoor Management Rule³⁴ on the basis that the transaction in question was executed in a manner contrary to the usual way in which the two companies dealt.

Nicholson J. considered the meaning of "connection or relationship" stating that:

Section [164(4)(b)] refers to knowledge a person ought to have by reason of his connection or relationship with the company and not to knowledge which he ought to have because something in the particular transaction would put a reasonable person on enquiry. The focus of para. (b) is on the nature of the "connection or relationship with the company". In my view, these words require reference to the facts which show the nature of that connection or relationship and an assessment of whether that connection or relationship was such as ought to have produced the state of knowledge referred to in para. (b).³⁵

Therefore because Media's reference to matters of the transaction were to wider circumstances and not to the "connection or relationship" with Media, Broadlands was allowed to rely on the statutory Indoor Management Rule.³⁶ Thus the interpretation of the statutory exception contained in s 164(4)(b) given by Nicholson J was narrower in application than the common law due inquiry exception,³⁷ finding that Broadlands had no "...legal or non-arm's length connection or relationship. ...[and]...was not a director, secretary, shareholder or employee of the...[company]."³⁸ This interpretation of the statute therefore gives an outsider greater reliance on the statutory Indoor Management Rule than the previous position at common law. This narrower interpretation of the statute is contrary to the view of Gummow J in *Australian Capital Territory Pty Ltd v. Minister for Transport & Communications*

33 The articles required that the seal only be applied after a resolution of the board of directors or after a resolution of a committee of directors.

34 Pursuant to the equivalent of s.164(4)(b).

35 *Supra* n.32 at 281.

36 (1989) 7 ACLC 271 at 281 where Nicholson J stated that the defendants contentions are "substantially not directed to...[the outsider's]..."connection or relationship" with the...[company]. Rather, they are directed to facts which are said to give notice of irregularities such as should have led to further enquiry. The argument therefore appeals to the rule of common law and not to the content of para. (B) in the terms in which it is enacted".

37 (1989) 7 ACLC 271 at 281 where Nicholson J stated "it looks to a far too narrow factual basis to characterize the "connection or relationship" between...[the outsider]...and the...[company]. It is necessary to look at all the facts and circumstances of the connection or relationship between the person and the relevant company. The definitions of "connection" and of "relationship" in the *Shorter Oxford English dictionary* (1973) at pp.401 and 1786 are supportive of this as, in my opinion, is the statutory context".

38 *Supra* n.32 at 281.

& *Ors*³⁹ where he stated that:

But [s 164] appears not to be so much a comprehensive code as a provision designed to repair the failings of the common law. In these circumstances..it would be ironic if a legislative attempt to correct defects in the common law resulted in other flaws becoming ossified in the common law. Whilst [s.164] in some of its operations undoubtedly clarifies the rule in *Turquand's case* and deals more effectively with the mischief and inconvenience to which the rule was directed, nevertheless there remains scope outside [s.164] for the development of the rule in *Turquand's case*.⁴⁰

Bell Resources Holdings Pty Ltd v. Commissioner for ACT Revenue

*Bell Resources Holdings Pty Ltd v. Commissioner for ACT Revenue Collections*⁴¹ concerned an appeal from the Administrative Appeals Tribunal to the Federal Court of Australia with respect to the statutory Indoor Management Rule. Jenkinson J. considered circumstances where two natural persons affixed the seal of *both* the transferor and transferee companies, one of those natural persons being the secretary of both companies, signing in compliance with each of the company's articles of association. His Honour was of the view that:

the "connection" and the "relationship" of each of...[the natural persons]...and the transferee company with the transferor company were such that each of those three ought to have known that the document had not been duly sealed by the transferor company.⁴²

Accordingly, the transferee company was precluded by s 164(4)(b) from relying upon the statutory Indoor Management Rule.

Brick and Pipe Industries Ltd v. Occidental Life Nominees Pty Ltd

In *Brick and Pipe Industries Ltd v. Occidental Life Nominees Pty Ltd*⁴³ the plaintiff (Brick and Pipe) was acquired by the Goldberg group with the Brick and Pipe's shares held by a Goldberg subsidiary (Arnsberg Pty Ltd). Brick and Pipe was subsequently used to guarantee funds advanced to another Goldberg group company, Sperssea Pty Ltd. Brick and Pipe did not receive any benefit from giving the guarantee. After the failure of the Goldberg group Brick and Pipe asserted that the outsider financier (Occidental) was precluded from relying on the Indoor Management Rule. The court found in favour of the financier.⁴⁴

Interestingly, in *Brick and Pipe* the court felt that s.164(4)(b) did not include

39 (1989) 7 ACLC 525.

40 *Ibid* at 528.

41 (1990) 8 ACLC 533.

42 *Ibid* at 543.

43 (1992) 10 ACLC 253.

44 Note however that the facts of the case are unusual since the court found that Mr Goldberg had actual authority to enter into the transactions despite his appointment as a mere director.

the common law exception of being put on inquiry stating that:

Although [s.164] was undoubtedly inspired by the rule in *Turquand's case* and is in a sense a codification of it, the section does not incorporate the concept of being “put on enquiry” and we are obliged to have regard to the assumptions, as defined by the section, which the respondents were entitled to make subject to the exceptions in subs.4.⁴⁵

Therefore the court in *Brick and Pipe* supported the view of the statutory exception given in *Lyford*.

Advance Bank Australia Ltd v. Fleetwood Star Pty Ltd & Anor

In *Advance Bank Australia Ltd v. Fleetwood Star Pty Ltd & Anor*⁴⁶ the company, Fleetwood Star Pty Ltd held the director's (and his wife's) family home. The director fraudulently forged his wife's signature in order to give the family property as third party security for an unrelated transaction. In this case the court cited *Brick and Pipe* with approval stating that:

Whilst [s.164] was derived from the rule in *Turquand's case*, it seems to me that the codification is broader in the protection it extends to a person dealing with a company. The codified rule does not attract consideration of those matters which prior to the codification might have been considered to have put a person dealing with the company upon inquiry.⁴⁷

On appeal⁴⁸ however, Gleeson CJ felt that Parliament probably had not intended to limit the operation of s.164(4)(b) stating that:

In *Lyford*...Nicholson J observed that the focus of [s.164(4)(b)] is on the nature of the third party's “connection or relationship with the company”. Indeed to ignore that would be to render the first ten words of the paragraph otiose. The inquiry is whether that connection or relationship was such as ought to have produced the relevant state of knowledge. It is impossible exhaustively to state the facts or circumstances that might give rise to or involve a relevant connection or relationship. Obvious examples would be dealings between a company and a person who is a director or shareholder or employee...However, the provision is not limited to such cases, and whilst it is necessary to attend to the language of the statute, it is unlikely that Parliament intended a radical narrowing of the qualification to the common law rule.⁴⁹

The appeal decision of *Advance Bank* represents the turning point in judicial opinion as to the ambit of the statutory due inquiry exception.

45 *Supra* n.43 at 262.

46 (1992) 10 ACLC 703.

47 *Ibid* at 712.

48 (1993) 11 ACLC 629.

49 *Ibid* at 638-639.

Bank of New Zealand v. Fibern Pty Ltd

The case of *Bank of New Zealand v. Fibern Pty Ltd*⁵⁰ considered circumstances similar to those in *Advance Bank*. As for *Advance Bank*, in *Fibern* the company held a residential property asset occupied by its directors. This residential asset was used by one of the directors (Doyle) to give guarantees and a third party mortgage to the bank as security for advances made to other companies of which Doyle was a director. Allen J held that the bank was not able to rely on the statutory Indoor Management Rule for similar reasons as those given by the High Court in its consideration of the common law position in *Northside*, namely that:

The bank knew that Fibern was not a trading company...[and] that there was no apparent benefit from the transactions to Fibern, the company, as distinct from the benefits to the man...indeed the material before the bank suggested the contrary. On the reasoning of every one of the judges who constituted the bench in *Northside*...the bank was put upon inquiry.⁵¹

On appeal⁵² Kirby P strengthened the possibility of using the common law due inquiry exception in addition to s.164(4)(b). With reference to *Northside*, His Honour noted the folly of jumping to extreme conclusions about the ambit of the statute without having regard to its practical consequences.⁵³ Kirby P then made an analysis of *Northside* drawing parallels with the facts of the case before him with respect to the due inquiry exception.⁵⁴

Kirby P considered the ambit of s.164(4)(b) rejecting the view of both Studdert J in *Advance Bank* and the Court in *Brick and Pipe* that the statute does not include the "common law concepts of being put upon inquiry".⁵⁵ Kirby P clearly stated that the common law Indoor Management Rule due inquiry exception can be read as included within the operation of the statutory Indoor Management Rule:

...the [section] is expressed in sufficiently broad terms to indicate that a person dealing with a company will be taken to know that certain assumptions are not correct where the circumstances of the "connection or relationship with the company" put that person upon inquiry.

The question of what activates the requirement of an inquiry is..best answered by the common law...[which] has produced rules as to the circumstances in which the nature of a transaction or relationship is such as to put the person dealing with the company

50 (1992) 10 ACLC 1557.

51 *Ibid* at 1571.

52 (1994) 12 ACLC 48.

53 *Ibid* at 52.

54 (1994) 12 ACLC 48 at 54-56; "(i) the transactions were not duly authorised by Fibern; (ii) the purported secretary was not an officer of the company at all; (iii) there was no benefit in the transaction for the company; and (iv) the actual secretary, far from being aware of the transaction, was ignorant of it and stood to lose by it the house in which she was living".

55 *Supra* n.52 at 53-54.

on inquiry...[and] does not involve a test more restrictive than that which exists under the common law.⁵⁶

Comment

It therefore seems that the later cases point towards the continued operation of the common law due inquiry exception within the ambit of s.164(4)(b). This will ensure that the apparent poor drafting of s.164(4)(b) does not hamper the practical realities of being put on notice by a transaction. Whilst the courts have been careful to apply the common law due inquiry exception within the ambit of the statute, it is suggested that the common law Indoor Management Rule might simply be able to operate in addition to s.164(4)(b).

The idea that the common law Indoor Management rule due inquiry exception might apply in addition to s.164(4)(b) has not been wholeheartedly embraced by other commentators. Horrigan⁵⁷ has suggested that the cases of *Northside* and *Brick and Pipe* suggest that s.164 “largely subsumes the common law on indoor management, so that there probably scant room for common law notions of being put on inquiry”.⁵⁸ Although he does consider it appropriate to “import” the common law due inquiry exception⁵⁹ (a concept similar to the view of Kirby P in the *Fiberi* appeal) at times where it is impossible to separate the operation of s.164(4)(b) from circumstances putting the outsider on notice where a reasonable person would make further inquiry. It is suggested that Kirby P placed a wider interpretation on the operation of the common law due inquiry exception, such that if the circumstances of due inquiry arise in a case to which the statute applies, then the common law is to be considered. Two recent case decisions support this wider view that the common law due inquiry exception operates in addition to s.164(4)(b).

Recent decisions

Two recent decisions of the Victorian Supreme Court,⁶⁰ *Sixty-Fourth Throne Pty Ltd v Macquarie Bank*⁶¹ and *Pyramid Building Society v Scorpion Hotels Pty Ltd*,⁶² assist in determining the role of the common law Indoor Management Rule due inquiry exception.

Both cases involved circumstances which were similar to *Fiberi*. In each case

56 *Ibid* at 54.

57 B Horrigan ‘Third Party Securities — Theory, Law and Practice’ in *Enforcing Securities* JA Greig and B Horrigan (editors) The Law Book Company Limited 1994.

58 *Ibid*. See also B Horrigan ‘Contemporary Securities Issues — Principles and Practice’, paper delivered at Queensland Law Society, Securities VIII, 7-9 October 1994 at p.69.

59 B Horrigan ‘Contemporary Securities Issues — Principles and Practice’ paper delivered at Queensland Law Society, Securities VIII, 7-9 October 1994 at p.71.

60 See DS Morrison ‘Due inquiry and the lender’ *Australian Banking Law Bulletin*, Volume 12, Number 3, August 1996.

61 (1996) 14 ACLC 670, per Hedigan J.

62 (1996) 14 ACLC 679, per Nathan J.

the company debtor in question claimed that the bank was precluded from relying on s.164(3) because of the operation of s.164(4)(b). Both cases considered the ambit of the common law due inquiry exception's operation in the application of s.164(4)(b).

Hedigan J in *Sixty-Fourth Throne* cited Gleeson CJ in *Advance Bank*⁶³ and Kirby P in *Fiberi* with approval,⁶⁴ concluding with the view that:

In the present context the difference between [the bank] being put on enquiry and whether [the bank] ought to have known of the want of authority may be more apparent than real.⁶⁵

In *Pyramid* Nathan J referred to *Northside* stating that:

Pyramid was in fact on its enquiry, but it was insufficiently alert. It was in the same position as the bank in *Northside*. I find the case apposite and I am compelled to draw the same conclusions as the majority in that case.⁶⁶

Nathan J in *Pyramid* agreed with the comments by Hedigan J in *Sixty-Fourth Throne* stating that the difference between being put on enquiry and being in the position where one ought to know were "the same side as one coin".⁶⁷

Nathan J also made a useful contribution to the discussion on the meaning of the words "connection or relationship" in s.164(4)(b) stating that they should be:

"given their usual and common sense meaning...[including connections or relationships] which may be characterised as close...as much as to those...which may be distant or scant".⁶⁸

Both of these recent decisions make a valuable contribution to the understanding of the operation of the common law due inquiry exception in circumstances which involve an application of s.164(4)(b). Both decisions clearly embrace the common law notion of being put on inquiry and Nathan J in *Pyramid* further suggests "common sense" in the interpretation of s.164(4)(b) which in any event supports a widening in scope of the section itself.

63 (1993) 11 ACLC 629 at 638-639; "The inquiry is whether that connection or relationship was such as ought to have produced the relevant state of knowledge...it is unlikely that Parliament intended a radical narrowing of the qualification of the common law rule".

64 *Supra* n.61 at 672.

65 *Ibid* at 673.

66 *Supra* n.62 at 689.

67 *Ibid* at 696.

68 *Ibid* at 695.

Conclusion

This paper has examined the extent to which the common law Indoor Management Rule due inquiry exception applies to modify the operation and ambit of s.164(4)(b) of the *Corporations Law*.

Until the High Court hears a statutory Indoor Management Rule case in circumstances requiring consideration of s.164(4)(b), the precise ambit of the application of common law due inquiry will remain unsettled. Notwithstanding this, the current trend in judicial opinion is that the s.164(4)(b) exception is sufficiently wide to incorporate an application of the common law indoor management rule due inquiry exception. Whether s.164(4)(b) incorporates the common law or whether the common law applies in addition to s.164(4)(b) is a moot point.

The continued application of the common law will facilitate reasonable and practical outcomes in the use of s.164(4)(b). No commentary, including this paper, has suggested that the statutory provisions will be less effective or indeed taken over by this recognition of the role of the common law.

Therefore it is suggested that the common law due inquiry exception operates in addition to the statutory exceptions contained in s.164(4)(b) and both the common law and the statute are necessary considerations for those seeking to rely on the s.164(3) assumptions.

Bibliography

- Annetta, V. 'Brick and Pipe Industries Ltd', (1991), 9 *Company and Securities Law Journal* 258.
- Carroll, R. 'Corporate Dealings and the Presumption of Regularity', A paper presented at the National Corporate Law Teachers' Conference, Brisbane, (1993).
- de Jersey, Mr Justice. 'A Question of Notice', A paper presented at the Queensland Law Society Securities Intensive V Seminar, Royal Pines, (1991).
- Ford, H.A.J., Austin, R.P. 'Ford's Principles of Corporations Law', 6th edition, Butterworths, Sydney, (1992).
- Horrigan, B. 'Third Party Securities — Theory, Law and Practice', in 'Enforcing Securities', Greig, J.A., Horrigan, B. (editors), The Law Book Company Limited, 1994.
- Law, L.J. 'Security Transactions With Companies: Mitigating The Effect Of Defective Execution', *The Queensland Law Society Journal*, Volume 25, Number 5, October 1995.
- Lipton, P. 'Holding Out that a Person is an Officer of a Company', (1991) 9 *Company and Securities Law Journal* 404.
- Lipton, P. 'The Inquiry Exception to the Rule in Turquand's case: Past or Present?', (1991) 9 *Company and Securities Law Journal* 37.
- Morrison, D.S. 'The Indoor Management Rule — A Review', *Australian Journal of Corporate Law*, Volume 4, Number 2, June 1994, (earlier version previously presented at Corporate Law Teachers' Conference, Sydney, February 1994).
- Morrison, D.S. 'Due Inquiry and the Lender', *Australian Banking Law Bulletin*, Volume 12, Number 3, August 1996.

Mourell, M. 'Northside', (1991) 19 Australian Business Law Review 36.

Redmond, P. 'Companies and Securities Law — Commentary and Materials', The Law Book Company Limited, Sydney, (1991).

Worthington, S. 'Company Law Case Analysis', (1992) 20 Australian Business Law Review 516.