"When a release of "all claims" doesn't mean "all claims"

Concealed misconduct and the limits of general releases

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Parties often include broad general releases from liability in respect of "all claims" in deeds of settlement and other agreements with the intention of resolving matters between them. The recent decision of *FMR Investments Pty Ltd v Keogh* [2026] WASC 138 serves as a reminder that a release of "all claims" may not in fact bar every claim between the parties and illustrates the willingness of Australian Courts to constrain broad general releases, particularly in respect of unknown claims arising out of dishonesty or fraud.

The facts

FMR Investments Pty Ltd (FMR) is a mining company that owns and operates the Gordon Sirdar gold mine located north-east of Kalgoorlie and the Greenfields Mill east of Coolgardie.

The defendant was employed by FMR between May 2009 and March 2020, in an executive position as manager of operations. His employment was terminated in circumstances where it had recently come to light that he had a conflict of interest in respect to involvement with the operations of a contractor.

On the day that the manager's employment ended, the manager and FMR entered into a deed containing mutual releases in respect of "all Claims that party has or may have in connection with, arising from or touching on the Employment", being the manager's employment with FMR.

Clause 2 defined "Claims" as "all actions, claims, demands, complaints, suits, proceedings, liabilities, sums of money, damages, costs or any legal administrative, governmental, arbitral or other proceedings or investigations, whether directly or indirectly, arising out of, related to or in connection with the Employment, but excluding any entitlement to workers' compensation that may exist pursuant to legislation".

After executing the deed, FMR discovered that the manager had engaged in (additional) misconduct while he was an officer of FMR. The conduct involved:

- Appropriating gold bearing ore from FMR's tailings stockpile for use by a third-party as part of their milling campaign at FMR's Mill, for which the manager and his wife received payments from the third-party
- Causing FMR to pay invoices for unauthorised "management fees" that were applied for the manager's ultimate benefit in circumstances where no such services had been supplied.

FMR commenced proceedings against the manager. The manager contended (among other things) that the claims fell within the scope of the release and could not be pursued.

Findings

The court rejected the manager's position and held that the release did not extend to FMR's claims.

Restraining broad general releases

The court confirmed that when construing deeds of release, the approach of the plurality of the High Court in *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112 applies. This means that courts will restrain the scope of broad general releases by applying the following three principles.

- First, as a matter of construction, wide general words in a release of obligations should be restrained by the particular occasion mentioned in any recitals
- Secondly, as a matter of construction, wide general words in a release of obligations may be limited by the matters that were in the contemplation of the parties when the release was given
- Thirdly, in equity, a releasee may not rely upon wide general words in a release of obligations as a mechanism for avoiding the fulfilment of obligations that fall outside "the true purpose of the transaction as ascertained from the nature of the instrument, and the surrounding circumstances including the state of knowledge of the respective parties concerning the existence, character and extent of the liability in question and the actual intention of the releasor".

- However, the third principle will not apply if it is plain that the parties intended that wide general words in a release of obligations should include all conceivable further disputes between them in relation to a particular subject matter or generally, whether or not the facts underpinning the further disputes were in existence or known to one or both of the parties when the release was given.

Application to FMR's claims

In determining that the release did not bar FMR's claims, the court received evidence regarding the decision to terminate the manager, FMR's internal processes and subjective intentions with respect to the deed. The court also examined the correspondence during the negotiation of the deed, as well as the deed itself. It then applied the three principles arising from *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112 as follows.

- *First,* the "particular occasion" mentioned in the two recitals forming part of "background" of the deed was the mutual ending of the manager's and FMR's employment relationship without any admission as to liability and the release should be so confined.
- Second:
  - At the time of execution of the deed, while it occurred in the context of the discovery of his conflict of interest, FMR was not aware of the facts giving rise to the specific claims in the proceedings, and there had been no suggestion that the manager had acted dishonestly or fraudulently
  - The manager failed to prove that the claims the subject of the proceedings were within the parties' contemplation when entering into the deed, and the release could not be construed to release the manager from claims arising from facts not known to FMR at that time, let alone from claims based on allegations of dishonest or fraudulent conduct
- Third:
  - Although the release was wide, it could have been broader, including that it did not expressly state that it was to apply to claims that either party was unaware of at the time of execution, and/or to claims involving fraud or dishonesty and the deed did not otherwise make it plain that it was to extend to such claims. Accordingly, it was not plain that the parties intended for the release to extend to FMR's claims
  - It would be unconscientious for the manager to be permitted to rely on the wide general words reflected in the release as a mechanism for escaping liability for the claims the subject of the proceedings
- Additionally, claims based on allegations of dishonest or fraudulent conduct would, in any event, have fallen outside the lawful scope of the manager's employment with FMR and, thus, outside the meaning of "Employment" as defined in the deed.

Key takeaways

- Before concluding that a claim has been released, parties should carefully consider the terms of the relevant release and the court's approach to construing releases.
- Australian Courts will constrain wide general releases by reference to the recitals in the relevant deed (which accordingly need to be carefully drafted), the matters within the parties' contemplation at the time of execution and whether the release is being used to avoid obligations falling outside the intended purpose of the release.
- Although a broad release may appear to cover a claim, express words will typically be required if a release is to extend to claims that were concealed or otherwise unknown to either party and/or that involve fraud or dishonesty.

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