



## HIGH COURT OF AUSTRALIA

Manager, Public Information

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### EUROPEAN BANK LTD v ROBB EVANS OF ROBB EVANS & ASSOCIATES [2010] HCA 6

After its success before the Court of Appeal of the Supreme Court of New South Wales, European Bank Ltd was unable to enjoy the funds owed to it. They had been paid into Court pending the outcome of Mr Evans' application for special leave to appeal against a separate decision of the Court of Appeal. Mr Evans gave the usual undertaking as to damages. Today the High Court held that, pursuant to that undertaking, Mr Evans was liable to compensate European Bank for the losses suffered from its inability to convert those funds from United States dollars to euros.

Mr Evans unsuccessfully sued European Bank for US\$7.5 million in the Equity Division of the Supreme Court of New South Wales. The Court of Appeal dismissed Mr Evans' appeal.

Mr Evans determined to seek special leave to appeal against that decision to the High Court. He gave the "usual undertaking as to damages" (that is, an undertaking to submit to any order the Court may consider to be just for the payment of compensation, such compensation to be assessed by the Court) and the Court of Appeal ordered that an amount of US\$8,731,023.73 be paid into Court, pending the outcome of the High Court application. (That amount would otherwise have been paid to European Bank in accordance with the judgment the Court of Appeal had entered in its favour in a separate but related appeal.) A court officer invested the amount in an interest-bearing account with the Westpac Banking Corporation.

On 11 March 2005 the High Court dismissed Mr Evans' application for special leave to appeal and thereafter the Court of Appeal ordered that the amount in the Westpac investment account be paid to European Bank. In May 2005 European Bank instituted proceedings in the Supreme Court for an assessment of the compensation payable pursuant to the undertaking as to damages Mr Evans had given to the Court of Appeal.

The primary judge made findings including the following:

- a. Mr Evans knew that European Bank dealt exclusively in foreign currencies, earned income from interest rates and currency differentials, and would be denied the opportunity to convert the funds from United States dollars to other currencies to take advantage of market fluctuations in the value of those currencies;
- b. but for the Court of Appeal order for the funds to be paid into court, European Bank would have converted the funds from United States dollars into euros in July 2004; and
- c. European Bank would thereby have earned, in addition to the interest earned in the Westpac investment account, US\$800,000.

The primary judge ordered Mr Evans to pay to European Bank the sum of A\$1,251,008.33 as compensation. The Court of Appeal, however, set aside the orders made by the primary judge, finding that the loss suffered by European Bank was too remote and not a natural consequence of the orders made for the funds to be paid into court. The High Court granted European Bank special leave to appeal that decision.

The High Court unanimously held that the appeal should be allowed. The relevant questions for the primary judge were:

1. what was the alleged loss;
2. did the loss flow directly from the court's order for funds to be paid into court; and
3. could the loss have been foreseen at the time the order was made?

The third question required an inquiry as to whether a loss of the kind actually sustained could have been foreseen, not whether the actual loss suffered was foreseen at the time the undertaking was given. The primary judge had found that European Bank's loss had flown directly from the order and that the loss could have been foreseen. Those findings had not been disturbed by the Court of Appeal, and the primary judge's decision should not have been set aside.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*