



HIGH COURT OF AUSTRALIA

11 June 2014

HOWARD v COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA

[2014] HCA 21

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia, holding that the appellant, Stephen Howard, was liable to income tax on equitable compensation received in satisfaction of a judgment.

Mr Howard was a director of Disctronics Ltd ("Disctronics"). In his income tax assessment for the 2005 income year, he did not include, as part of his assessable income, his share of an award of equitable compensation received in satisfaction of a judgment in proceedings in the Supreme Court of Victoria. Those proceedings concerned a joint venture, of which Mr Howard was a member, involving the purchase, lease and on-sale of a golf course. Whilst the joint venture was on foot, Mr Howard and two other directors of Disctronics, who were also members of the joint venture, endeavoured to have Disctronics become the purchaser of the golf course, although two other members of the joint venture did not agree. Subsequently, the two other members of the joint venture diverted to their own use the business opportunity pursued by the joint venture and, in so doing, were found to have breached fiduciary duties they owed to Mr Howard and the other members of the joint venture.

The Commissioner of Taxation ("the Commissioner") assessed Mr Howard to income tax on the basis that his share of the equitable compensation was part of his assessable income for the relevant year. Mr Howard disputed the assessment, claiming that he received the amount of equitable compensation as constructive trustee for Disctronics and that it was, therefore, incorrectly included in his assessable income. He argued that from the time the directors decided to try to involve Disctronics as the purchaser, his fiduciary obligations to Disctronics as a director meant that he could not retain that gain for himself to the exclusion of Disctronics.

Mr Howard appealed to the Federal Court in the exercise of its original jurisdiction against the Commissioner's decision. The primary judge held that Mr Howard had received the compensation as constructive trustee for Disctronics and that it was, therefore, incorrectly included as part of his assessable income. That holding was reversed on appeal to the Full Court, which held that there could be no conflict of interest in the way contended for by Mr Howard, and no breach of his fiduciary duty to Disctronics. The Full Court also rejected Mr Howard's additional claim that by a litigation agreement between Disctronics and its directors, entered into at about the time the Supreme Court proceedings were instituted, he had assigned the right to receive the amount of equitable compensation to Disctronics, such that the income was not derived by him beneficially. By grant of special leave, Mr Howard appealed to the High Court.

Dismissing the appeal, the High Court held that Mr Howard did not receive the amount of equitable compensation as constructive trustee for Disctronics because, at the time Mr Howard obtained or became entitled to that amount, there was no actual conflict, and no real possibility of conflict, between his personal interests and his duties as a director of Disctronics. As to the litigation

agreement, the Court held that as it provided for the assignment of Mr Howard's future income, rather than his underlying rights to receive those sums, the proceeds of the action were income in his hands. The sum received was correctly included in his assessable income.

- *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.*