



HIGH COURT OF AUSTRALIA

14 February 2014

MILNE v THE QUEEN

[2014] HCA 4

Today the High Court unanimously allowed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales which had upheld the conviction of Michael John Milne for money laundering under s 400.3(1) of the *Criminal Code* (Cth) ("the Code").

Mr Milne was the sole director and shareholder of Barat Advisory Pty Ltd. Barat Advisory owned shares in a company called Admerex Ltd. In February 2005, Mr Milne arranged for certain Admerex shares to be swapped for shares in another company, Temenos Group AG. He intended at that time that Barat Advisory would not declare, in its income tax return, the capital gain derived from that transaction. An intentional failure by Barat Advisory to declare the capital gain would be an offence against the Code.

In November 2006, Mr Milne caused an income tax return to be lodged for Barat Advisory that did not declare the capital gain derived from the swap of Admerex shares.

Mr Milne was convicted of money laundering under s 400.3(1) of the Code after a trial by jury in the Supreme Court of New South Wales. Section 400.3(1) makes it a crime for a person to deal with property worth \$1,000,000 or more intending that it "will become an instrument of crime". An "instrument of crime" is defined in s 400.1(1) as property that is "used in the commission of, or used to facilitate the commission of, an offence".

Mr Milne's appeal against that conviction to the Court of Criminal Appeal was dismissed. By special leave, he appealed to the High Court. He argued that the Court of Criminal Appeal erred in its interpretation of the definition of "instrument of crime" and wrongly held that the Admerex shares were capable of falling within that definition in the circumstances of the case. The question in this appeal was whether the Admerex shares upon which the capital gain was made could be said to have been intended to become an "instrument of crime".

Allowing the appeal, the High Court held that s 400.3(1) requires that there be a dealing with the property and an intended future use of the property. On the Crown case, there could not be an intended future use of the Admerex shares after they were swapped for the Temenos shares. The Court quashed Mr Milne's conviction for money laundering and entered a verdict of acquittal on that charge.

- *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.*