



HIGH COURT OF AUSTRALIA

12 May 2021

TALACKO v TALACKO & ORS [2021] HCA 15

Today the High Court unanimously dismissed an appeal from judgments of the Court of Appeal of the Supreme Court of Victoria and allowed cross-appeals from a judgment of the same Court. The appeal concerned whether loss or damage had been suffered such that an unlawful means conspiracy was actionable. The cross-appeals concerned whether damages for the unlawful means conspiracy should be discounted to reflect the chance of separate recovery from two of the conspirators in foreign proceedings.

A conspiracy by unlawful means was undertaken by Jan Emil Talacko with his wife and two of their sons. The conspiracy was directed at depriving Jan Emil's siblings, or those claiming through them – the first to fifth respondents to this appeal ("the Respondents") – of the value of their rights, namely a chose in action against Jan Emil arising from an unquantified judgment in their favour ("the chose in action against Jan Emil"). The conspiracy involved agreements by which Jan Emil donated valuable properties that he held in the Czech Republic to his sons (collectively, "the Donation Agreement") to impede recovery of the anticipated judgment debt, which was later quantified. In 2009, the proceeding which led to this appeal concerning, amongst other things, unlawful means conspiracy was commenced by the Respondents in the Supreme Court of Victoria. In 2011 and 2012, the Respondents brought proceedings against the sons in the Czech Republic to set aside the Donation Agreement ("the Donation Agreement Proceedings") to enable a claim to be made, and enforced, directly against the sons.

The Supreme Court of Victoria held that the unlawful means conspiracy was not actionable because the Respondents had not proved that they had suffered loss or damage. The primary category of loss alleged by the Respondents – being prevented from recovering the judgment debt because of the Donation Agreement – was held to be only contingent since the value of the properties might yet be recovered from the sons through the Donation Agreement Proceedings. An appeal to the Court of Appeal was allowed on the basis that the Respondents had suffered loss or damage. The quantification of the primary category of loss by the Supreme Court of Victoria was discounted by 25%, including for the prospect that Jan Emil might have impeded recovery even without the unlawful means conspiracy. The damages were further reduced by 20% to account for a speculative prospect of separate recovery from the sons through the Donation Agreement Proceedings.

The High Court dismissed the appeal, holding that the Court of Appeal was correct to conclude that the Respondents had suffered loss or damage so that the unlawful means conspiracy was actionable. The reason for this was that the value of the Respondents' rights, the chose in action against Jan Emil, was reduced by Jan Emil's entry into the Donation Agreement because the transfer of the properties reduced the available assets to meet the anticipated judgment debt. The Court allowed the cross-appeals, concluding that the 20% prospect of success arising from the Donation Agreement Proceedings could not be said to be a benefit of any real value to the Respondents that had reduced their loss.

- *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.*