



HOUGHTON v ARMS [2006] HCA 59 High Court of Australia 13 December 2006

FACTS:

Mr Houghton was an employee of WSA Online Limited ("WSA") who advised Mr Arms on the setting up, design and administration of an online wine merchant site. With the launch of the site imminent, Mr Houghton on behalf of WSA incorrectly informed Mr Arms that there were other requirements to be satisfied before the site could be launched. Consequently result Mr Arms suffered severe financial loss as a result of the site not opening on time.

Mr Arms sued WSA and Houghton in the Federal Court. His action against My Houghton was dismissed. An appeal by Mr Arms was allowed by the Full Court (Nicholson, Mansfield and Bennett JJ).

Essentially the basis of the appeal was that an employee acting within the scope of actual authority could be liable for misleading or deceptive conduct. The Full Court found in favour of Mr Arms.

Mr Houghton then appealed to the High Court.

ISSUES:

Can an employee be liable under s 9 of the *Fair Trading Act (VIC)* [or similar Federal or State legislation] for work done in the course of employment and within the scope of authority from his employer?

FINDING:

The court found that the operation of s 9 of the *Fair Trading Act (VIC)* did extend its operation to individuals who through their conduct as an employee cause financial loss to another party where the conduct engaged in is misleading or is likely to mislead and it occurred in the course of trade or commerce.

QUOTE:

Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ [at 40]

The appellants are fixed with the findings by the primary judge respecting the conduct in which they engaged, being certain acts and omissions. As indicated earlier in these reasons, these were "in trade or commerce". Why then are the appellants not persons who contravened the prohibition imposed by s 9 of the FT Act? As a general proposition, and as Lord Rodger of Earlsferry stressed in Standard Chartered Bank v Pakistan Shipping Corpn (Nos 2 and 4)[28], in the world of tort the status of an individual as an employee does not divest that person of personal liability for wrongful acts committed while an employee. There is no good reason for treating the text of s 9 any differently and, in particular, for construing the section as if it read "[a] person, as principal, must not ...".

IMPACT:

The case illustrates the reach of the Fair-Trading legislation and the remedies available for misleading or deceptive conduct. It may have interesting application to officers of a company who mislead others into trading with the company just prior to administration or winding up.

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