



HIGH COURT OF AUSTRALIA

Manager, Public Information

29 July 2009

DOUGLAS RONALD CAMPBELL & ANOR

v

BACKOFFICE INVESTMENTS PTY LTD & ANOR

[2009] HCA 25

Today, the High Court allowed an appeal against an award of damages for misleading or deceptive conduct in connection with the sale of a share representing a half interest in Healthy Water Pty Ltd (the Company). The Court concluded that the evidence did not support the finding by the Court of Appeal of New South Wales that certain pleaded representations had been made or that the purchaser had relied upon misrepresentations about the financial affairs of the Company in making his decision to buy into it. The High Court upheld the Court of Appeal's decision that the primary judge had erred in making an order for the vendor of the share to buy it back from the purchaser.

The vendor, Mr Douglas Campbell, established a business to sell and maintain water filtration systems. Eventually he incorporated the Company to carry on that business, and in 2004 he decided to undertake a capital restructure. Mr Timothy Weeks became interested in the business and in January 2005 Mr Weeks' company, Backoffice Investments, entered into a share sale agreement (SSA) under which Backoffice purchased one of the two issued shares in the Company from Mr Campbell for \$850,000. The relationship between Mr Campbell and Mr Weeks quickly broke down. By consent a provisional liquidator was appointed in April 2005 and on 31 May 2005 the provisional liquidator sold the Company's assets to another company controlled by Mr Campbell for \$196,815. That money was used to pay the Company's liabilities and the provisional liquidator's fees and expenses. The Company was left an empty shell and its shares were worthless.

On 1 April 2005 Mr Weeks filed a statement of claim against Mr Campbell and the Company alleging numerous causes of action including oppression pursuant to section 232 of the *Corporations Act 2001* (Cth), for which he sought an order that Mr Campbell buy back the share; breach of warranties in the SSA, for which he sought damages; and a claim of misleading and deceptive conduct in breach of section 42 of the *Fair Trading Act 1987* (NSW), for which he also sought damages.

The primary judge allowed Mr Weeks' oppression claim and ordered Mr Campbell to buy back the Company share for \$853,000. The claim for damages for misleading and deceptive conduct failed because the primary judge found that Mr Weeks had not relied on the alleged misrepresentations when he purchased the share in the Company. Her Honour found there had been breach of some of the warranties in the SSA but awarded no damages, given she had made the buy-back order.

By majority the New South Wales Court of Appeal allowed Mr Campbell's appeal against the buy-back order. By a different majority the Court of Appeal found that Mr Campbell had made pre-contractual representations which were misleading and deceptive, and which had been relied on by Mr Weeks when entering into the SSA. The Court of Appeal ordered Mr Campbell to pay

damages of \$850,000 to Mr Weeks and Backoffice. Two of the judges of the Court of Appeal did not decide whether there had been a breach of any warranties and the third judge agreed with the primary judge's conclusions concerning breach of warranties but held that only nominal damages were payable. The High Court granted special leave to appeal against the decision of the Court of Appeal.

All members of the High Court held that the Court of Appeal had been correct to set aside the primary judge's buy-back order. However, their Honours considered that the evidence did not support a finding that certain pleaded representations were actually made, or that Mr Weeks and Backoffice would not have purchased a share in the Company had he been aware of the falsity of certain statements made by Mr Campbell concerning the Company's financial performance. The Court noted that live issues concerning breach of contractual warranties had not been determined by the Court of Appeal. The High Court ordered that the order made by the Court of Appeal setting aside the primary judge's buy-back order should stand, the orders entering judgment for Backoffice for \$850,000 for reliance on misleading and deceptive conduct should be set aside, and issues concerning breach of contractual warranties, and any potential damages arising therefrom, should be remitted to the Court of Appeal.

- *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.*