



HIGH COURT OF AUSTRALIA

11 March 2020

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v KING & ANOR [2020] HCA 4

Today the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland concerning the construction of the word "officer" as defined in s 9 of the *Corporations Act 2001* (Cth).

The first respondent, Mr King, was the Chief Executive Officer and an executive director of MFS Ltd, the parent company of the MFS Group of companies ("the MFS Group"). The MFS Group was involved in funds management and financial services. Premium Income Fund ("PIF") was the largest registered managed investment scheme in the MFS Group, and MFS Investment Management Pty Ltd ("MFSIM"), the second respondent, was its responsible entity. MFSIM entered into a \$200 million loan facility with the Royal Bank of Scotland on 29 June 2007 ("the RBS loan facility"). The RBS loan facility was to be used solely for the purpose of PIF, and not for the purposes of other companies in the MFS Group.

On 27 November 2007, MFSIM and senior personnel in the MFS Group, including Mr King, arranged for \$150 million to be drawn down from the RBS loan facility. Of these funds, \$130 million was paid to MFS Administration Pty Ltd ("MFS Administration"), the treasury company of the MFS Group. MFS Administration used \$103 million of those funds to pay an outstanding debt in the name of MFS Castle Pty Ltd, a wholly owned subsidiary of MFS Ltd. No agreement had been reached by which MFSIM received any consideration for this payment, nor was there any promise of repayment or security for the transaction.

The Australian Securities and Investments Commission ("ASIC") contended that Mr King breached his duties as an "officer" of MFSIM under s 601FD of the *Corporations Act*, despite the fact that he had ceased to be a director of MFSIM on 27 February 2007. ASIC submitted that Mr King was an "officer" of MFSIM under the *Corporations Act* because he fell within para (b)(ii) of the definition of "officer of a corporation" in s 9 of the Act, being "a person ... who has the capacity to affect significantly the corporation's financial standing". The Court of Appeal held that Mr King did not fall within that definition because any capacity he had to affect the financial standing of MFSIM did not derive from his occupation of an "office" within MFSIM in the sense of a "recognised position with rights and duties attached to it".

By grant of special leave, ASIC appealed to the High Court. The Court unanimously held that para (b)(ii) of the definition of "officer of a corporation" in s 9 of the *Corporations Act* is not limited to those who hold or occupy a named office in a corporation or a recognised position with rights and duties attached to it. The factual findings made by the primary judge, which were not disturbed by the Court of Appeal, including that Mr King acted as the "overall boss of the MFS Group" and assumed "overall responsibility for MFSIM", were sufficient to establish that Mr King had the capacity to affect significantly the financial standing of MFSIM.

- *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.*