



HIGH COURT OF AUSTRALIA

Public Information Officer

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NICHOLAS TERRENCE FISH AND NISHA NOMINEES PTY LIMITED v SOLUTION 6 HOLDINGS LIMITED, SOLUTION 6 PTY LIMITED, NEVILLE BUCH, NEIL GAMBLE AND INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

The jurisdiction of the Industrial Relations Commission of New South Wales did not extend to a review of the terms of a share acquisition agreement, the High Court of Australia held today.

Mr Fish controlled Nisha Nominees which owned FishTech and Partners, an information technology company. In 2000, Nisha sold FishTech to Solution 6 Holdings for \$19 million in shares in Solution 6 at an issue price of \$9.75 per share. The share purchase agreement also provided that Mr Fish would work for Solution 6 Holdings' subsidiary, Solution 6 Pty Ltd, as executive manager – enterprise integration services. When the share purchase agreement was executed, Solution 6 shares were trading at \$13.30, but by the time of completion the share price had dropped to about \$3.

In November 2001, Mr Fish's employment was terminated. He and Nisha applied to the IRC seeking orders under Part 9 of Chapter 2 of the *Industrial Relations Act* declaring the share purchase agreement to have operated in an unfair, harsh and unconscionable manner and contrary to the public interest, and seeking orders varying that agreement to provide Mr Fish with the difference between the current price of the Solution 6 shares and the issue price of \$9.75. The Solution 6 companies and Mr Buch and Mr Gamble, two directors of those companies, successfully applied to the NSW Court of Appeal for an order prohibiting the IRC from taking steps to exercise its powers regarding the share purchase agreement. Mr Fish and Nisha appealed to the High Court.

The principal question for the Court was whether the Court of Appeal was right to hold that the share purchase agreement was not a contract of a kind in respect of which the IRC could exercise its powers under the IR Act. The High Court, by a 5-2 majority, upheld the Court of Appeal's decision and dismissed the appeal. Section 106(1) of the Act provides that the IRC may make an order declaring wholly or partly void, or varying, any contract whereby a person performs work in any industry if the IRC finds the contract is unfair. The agreement in question was not a contract whereby Mr Fish performed work in an industry.

- *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.*