



## HIGH COURT OF AUSTRALIA

14 November 2012

NIGEL CUNNINGHAM SWIFT MANSFIELD v THE QUEEN & ANOR

JOHN KIZON v THE QUEEN & ANOR

[2012] HCA 49

Today the High Court unanimously held that a person can contravene the prohibitions on insider trading by trading in securities while in possession of "inside information" as described in the *Corporations Act 2001* (Cth) even if that information proves to be false.

It was alleged that the managing director of AdultShop.com Limited, a listed public company, told each of the appellants, Mr Nigel Mansfield and Mr John Kizon, information about AdultShop's prospects and that Mr Mansfield and Mr Kizon shared that information with each other. It was alleged that, armed with this "inside information", Mr Mansfield and Mr Kizon bought or procured the purchase of shares in AdultShop. The appellants were charged with committing or conspiring to commit numerous offences against the insider trading provisions of the *Corporations Act*.

In the District Court of Western Australia, the prosecution conceded that a jury could not be satisfied beyond reasonable doubt that the information about AdultShop's prospects allegedly in the possession of Mr Mansfield and Mr Kizon was true. The trial judge held that a person could generally only commit insider trading if he or she possessed information that was factually correct and therefore entered judgments of acquittal on the AdultShop counts. A majority of the Court of Appeal of the Supreme Court of Western Australia disagreed, allowed the prosecution's appeal and ordered that there be a new trial.

By special leave, Mr Mansfield and Mr Kizon appealed to the High Court. They submitted that a person cannot be guilty of insider trading by buying or procuring the purchase of shares while in possession of information that is objectively false.

The High Court unanimously dismissed the appeal. The Court held that a person can contravene the insider trading provisions of the *Corporations Act* even if the information he or she possesses is false, as long as the statutory criteria for insider trading are met.

- *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.*