



HIGH COURT OF AUSTRALIA

14 August 2013

LEGAL SERVICES BOARD v SIMON GILLESPIE-JONES

[2013] HCA 35

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria, which had held that the respondent was entitled to make a claim for compensation against the Legal Practitioners Fidelity Fund ("the Fidelity Fund").

The respondent, a barrister, was briefed by a solicitor to appear for a client in criminal proceedings. The client made a series of payments to the solicitor on account of his legal costs, including barristers' fees. However, the solicitor misappropriated most of this money, such that the amount remaining was insufficient to meet the respondent's fees. The respondent made a claim against the Fidelity Fund, which is maintained by the Legal Services Board ("the Board") under the *Legal Profession Act 2004* (Vic) ("the Act"). The respondent argued that his claim should be allowed under Pt 3.6 of the Act, on the basis that he had suffered a pecuniary loss as a result of the solicitor's default. The default was said to be that the solicitor had failed to pay or deliver trust money to the respondent.

The Board rejected the respondent's claim. The respondent then successfully appealed to the County Court of Victoria. The County Court held that the respondent had suffered a pecuniary loss as a result of the solicitor's default, constituted by the solicitor's failure to pay or deliver trust money to the respondent in accordance with a direction given by the client. The County Court's decision was upheld by the Court of Appeal, which would have allowed the respondent's claim on the basis that the solicitor had failed to pay him money to which he was beneficially entitled. By special leave, the Board appealed to the High Court.

The High Court allowed the Board's appeal. The joint reasons of French CJ, Hayne, Crennan and Kiefel JJ held that the respondent's claim against the Fidelity Fund should be disallowed, because he had not suffered a relevant pecuniary loss. There can be no failure to pay or deliver trust money unless there is an instruction to the solicitor to pay or deliver the money, and it is not complied with. The County Court had not made any finding that the instructions the client gave to the solicitor amounted to an instruction to pay the respondent. That Court's findings were not challenged in the Court of Appeal, and could not be revisited by the High Court. Therefore, the joint reasons held that it could not be said that the solicitor had failed to pay or deliver trust money to the respondent. In the reasons of Bell, Gageler and Keane JJ, the respondent had no entitlement to, or expectation of, payment of trust money and suffered no loss by reason of the failure of the solicitor to pay or deliver trust money to him.

- *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.*