



HIGH COURT OF AUSTRALIA

10 October 2018

ANCIENT ORDER OF FORESTERS IN VICTORIA FRIENDLY SOCIETY LIMITED v
LIFEPLAN AUSTRALIA FRIENDLY SOCIETY LIMITED & ANOR
[2018] HCA 43

Today the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia and by majority allowed a cross-appeal from the same judgment. The appellant was ordered to account to the respondents in the sum of \$14,838,063.

Lifepan Australia Friendly Society Limited ("Lifepan"), through its subsidiary Funeral Plan Management Pty Ltd ("FPM"), engaged in the funeral products business, providing investment products to meet the cost of pre-arranged funerals. Ancient Order of Foresters in Victoria Friendly Society Limited ("Foresters") was also involved in the funeral products business although its market share was significantly smaller than that of Lifepan.

Woff and Corby were employed by Lifepan in management positions at FPM. In 2010, they approached Foresters with a plan to divert as much of Lifepan's existing funeral products business as possible to Foresters. They formalised their proposal in a five-year business concept plan ("the BCP") which utilised Lifepan's confidential information and business records to win over Lifepan's client base and take that business for Foresters. Following the implementation of the BCP, the Foresters funeral products business proved highly successful. Foresters' annual inflows into its funeral products business grew from \$1.6 million in 2010 to \$24 million in 2012. Over the same period, Lifepan's inflows correspondingly fell from \$68 million to \$45 million.

Lifepan and FPM commenced proceedings against Woff and Corby for breaches of fiduciary duties and contraventions of the *Corporations Act 2001* (Cth), and subsequently joined Foresters, alleging that it had knowingly assisted in those breaches. At an early stage, Lifepan and FPM elected to claim an account of profits for the entire value of Foresters' funeral products business, rather than damages. The primary judge found Woff and Corby had breached fiduciary and statutory duties and Foresters had knowingly assisted in those breaches. While the primary judge ordered an account of profits in equity and under the *Corporations Act* against each of Woff and Corby, his Honour declined to order an account of profits against Foresters, finding that confidential information was not itself "used to generate profits" by Foresters. The Full Court allowed Lifepan's appeal on the basis that the primary judge's formulation of the causal nexus required was unduly narrow. The Full Court ordered Foresters to account for profits in the sum of \$6,558,495, representing the net present value of profits made and projected to be made on contracts entered during the five-year period of operation contemplated by the BCP, with a modest deduction of six months.

On appeal to the High Court, Foresters contended that the Full Court erred in concluding there was a sufficient causal nexus between the profits and Foresters' knowing participation in the breaches of Woff and Corby. The High Court held that Foresters' knowing assistance of Woff and Corby's breaches had at least some bearing on the success of its funeral products business, rendering it liable to disgorge profits thereby generated. A majority of the Court allowed Lifepan's and FPM's cross-appeal on the basis there was no reason in principle to restrict Foresters' obligation to disgorge less than the entire capital value of the business it acquired. The Court held Foresters should account to Lifepan and FPM in the sum of \$14,838,063.

- *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.*