



HIGH COURT OF AUSTRALIA

7 May 2014

AUSTRALIAN FINANCIAL SERVICES AND LEASING PTY LIMITED v HILLS INDUSTRIES LIMITED & ANOR

[2014] HCA 14

Today the High Court unanimously held that the first and second respondents would not be required to repay monies that had been mistakenly transferred to them by the appellant as a result of a fraud committed by a third party, because each respondent had established a defence that they had changed their position on the faith of the receipt of the payments.

The appellant, Australian Financial Services and Leasing Pty Ltd ("AFSL"), provided businesses with finance to purchase commercial equipment. The respondents, Hills Industries Ltd ("Hills") and Bosch Security Systems Pty Ltd ("Bosch"), were manufacturers and suppliers of such equipment. Hills and Bosch were both owed debts by various companies in a corporate group (referred to collectively as "TCP"). A director and shareholder of TCP created false invoices suggesting that TCP had purchased equipment from each of Hills and Bosch. On the basis of these invoices, AFSL agreed to purchase the equipment and lease it back to TCP. AFSL paid the amounts of the false invoices to Hills and Bosch. AFSL later discovered the fraud and sought repayment from Hills and Bosch. Hills and Bosch resisted AFSL's claim on the basis of their change of position. In particular, both companies relied upon the application of AFSL's payments to the discharge of TCP's debts, and the circumstances that they had ceased pursuing the recovery of the debts and continued to trade with TCP. It was not in dispute that Hills and Bosch had both acted on the faith of the receipt of AFSL's payments.

In the Supreme Court of New South Wales, the primary judge rejected Hills' defence of change of position, but held that the defence had been made out in relation to Bosch. AFSL and Hills both appealed to the Court of Appeal, which held that each of Hills and Bosch was entitled to rely on a defence of change of position in response to AFSL's claim for repayment. By grant of special leave, AFSL appealed to the High Court.

The High Court unanimously dismissed AFSL's appeal. A majority of the Court held that the relevant enquiry was whether retention of the monies by Hills and Bosch would be inequitable in all the circumstances. The Court rejected the approach argued by AFSL, which focused on the extent to which Hills and Bosch had been "disenriched" subsequent to the receipt. The principle of disenrichment, like that of unjust enrichment, is inconsistent with the law of restitution as it has developed in Australia. The Court concluded that, in the circumstances of this case, the disadvantages which would enure to Hills and Bosch if they were required to repay AFSL are such that it would be inequitable to require them to do so.

- *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.*