

update

15 December 2006

Friday Facts: Court finds in favour of Westpac

On 6 December 2006 Justice Hansen delivered his judgment in the controversial case of Westpac Banking Corporation v Hilliard & Anor [2006] VSC 470 finding that Westpac was entitled to recover money which it had paid under a mistake.

Westpac Banking Corporation ("Westpac") had entered into a settlement agreement with its customers Steve Vizard, his wife and their companies collectively the PAS Group whereby Westpac compensated them over \$3 million for cheques which Roy Hilliard had written for his own benefit rather than for the benefit of PAS Group. The discovery was made after Mr Hilliard had departed from the employ of the PAS Group and Steve Vizard had called in accountants PPB to investigate "discrepancies" in the books of the companies.

PPB found that Mr Hilliard had stolen during his employment over \$3 million by making payments of just over \$2.5 million by cheque to a company known as Information Age Travel Pty Ltd ("IAT") of which Mr Hilliard was a director and shareholder and the balance of payments by cheque payments to other parties for the benefit of Mr Hilliard.

The findings of PPB were confirmed by accountants PKF who were appointed as investigative accountants by Westpac. Following the delivery of the investigative accountant's report, Westpac settled the matter with the PAS Group and issued proceedings against Mr Hilliard to recover the moneys it had paid in honouring the cheques which had been written.

Justice Hansen had the task of deciding whether on the balance of probabilities:

- a. Mr Vizard had authorized Westpac to pay cheques drawn by Mr Hilliard on PAS Group accounts for greater than the relevant mandate held by Westpac;
- b. Whether an authority forwarded to Westpac in 1996 to pay cheques drawn by Mr Hilliard on PAS Group accounts for amounts greater than \$50,000 was signed by Mr Vizard and thus authentic;
- c. Whether in 1992 Mr Vizard and Mr Hilliard made an arrangement, which continued until June 2000, whereby Mr Hilliard would withdraw cash from IAT's bank account and give it to Mr Vizard, and draw cheques on PAS Group accounts payable to IAT to reimburse the cash withdrawn;
- d. Whether in late 1993 Mr Vizard and Mr Hilliard made an arrangement which continued until June 2000, under which Mr Hilliard was rewarded for his services under the arrangement in (c) by payments of his Diners Club accounts and other personal expenses, by cheques drawn on PAS Group accounts.

Justice Hansen after hearing evidence from two competing handwriting experts decided that in relation to (a) and (b) above he was not convinced that the authority which had been faxed to Westpac was in fact signed by Mr Vizard.

In relation to (c) and (d) above His Honour considered that having regard to the matter overall, the likelihood or probability was that Mr Hilliard had received the benefit of 61 cheques none of which were written or paid for the benefit of the PAS Group.

Consequently, the Court accepted that Westpac had paid the 61 cheques under a mistake that they were for the benefit of or paid with the authority of the PAS Group and that Mr Hilliard had received and unjustly had the benefit of the payments. The Court ordered judgment in favour of Westpac.

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