

update

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Friday Facts: Primelife executives engaged in serious misconduct

A bid by the former Chief Executive of Primelife Corporation, Ted Sent, to sue his employer for wrongful dismissal has failed with His Honour Justice Mandie of the Supreme Court of Victoria delivering a scathing judgment this week. His Honour found that both Mr Sent and his deputy had engaged in serious misconduct by making improper cash payments and secretly taping board meetings and employees telephone conversations.

Judgment in the six week trial which was heard in the Supreme Court of Victoria earlier this year was handed down on Wednesday this week. The former head of the aged care provider, Primelife, was suing the company for wrongful dismissal along with his former deputy Sandi Porter, claiming over \$5 million in damages.

The judgment delivered by Justice Mandie this week sheds some light into what was happening behind closed doors at Primelife in early 2000 when a number of investment schemes were being promoted by the company to investors.

Justice Mandie found that Mr Sent had lied to the board of directors after being asked on three separate occasions whether he was or had video taped Primelife board meetings and tape conversations. His Honour found that Mr Sent's assistant, Ms Porter, assisted him in doing so. He also found that the taping of Primelife employees' telephone calls without their consent was in breach of their respective contracts of employment but not proven by Primelife to be in contravention of section 7 of the Telecommunications (Interception) Act (Cth) 1979 (the "Telecommunications Act") and section 6 of the Surveillance Devices Act (Vic) 1999 (the "Surveillance Devices Act").

Under the Telecommunications Act a person must not intercept, or authorize, or permit the interception of a communication passing over a telecommunications system without the knowledge of the person making the communication.

Under the Surveillance Devices Act a person must not knowingly install, use, or maintain, a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party, without the express or implied consent of each party to the conversation.

The main difference between the Telecommunications Act and the Surveillance Devices Act is that the former applies to communications passing over a telecommunications system and the later applies to communications recorded at one end of a telephone conversation.

Interestingly, an exception to the Surveillance Devices Act apart from the express or implied consent of each party to record the private conversation, is that it is in the public interest, or, it is for the protection of the lawful interests of the person making it.

Primelife did not seek to call any evidence to establish the precise nature of how the telephone conversations were recorded. That is, whether they were intercepted or recorded at one end. Therefore the Court was unable to find that there had been a breach of either the Telecommunications Act or the Surveillance Devices Act.

His Honour also found that cash payments of over \$200,000 which had been made by Mr Sent to Mick Gatto and/or his company "Arbitrations & Mediations" had not been properly accounted for, amounting to serious misconduct on the part of Mr Sent. Mr Sent claimed that Mr Gatto was on a retainer to assist Primelife with its negotiations and relationships with the construction unions. During the trial Mr Gatto was questioned about what the payments were for. He said that he "would keep his ear close to the ground and deal with any threats to the company including finding out and letting Sent know if any site employees were stealing from the company". Mr Gatto was also asked about his company "Arbitrations & Mediations" and was forced to admit that he did not know what an "arbitration" or "mediation" was.

His Honour in finding the payments to be serious misconduct on the part of Mr Sent stated that, in his opinion Mr Sent's "conduct in making cash payments to Gatto and, in particular, continuing to make cash payments to Gatto in 2003, was destructive of the confidence which must exist between employer and employee and repugnant to the interests of Primelife and therefore constituted serious misconduct, notwithstanding Sent's belief that his conduct was furthering the interests of Primelife".

The decision is interesting in terms of its impact on litigation which Primelife is involved in relating to investment schemes it promoted at the relevant time and allegations of misleading and deceptive conduct by Primelife raised by investors*. No doubt investors who are litigating claims for return of their funds from these schemes will find great interest about the mechanics of Primelife's operations and conduct from the outcome of this case.

*Civoken Pty Ltd & Anor v Madden Grove Developments Pty Ltd [2006] VSC 283.

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