



## HIGH COURT OF AUSTRALIA

26 May 2010

Manager, Public Information

JOHN ALEXANDER'S CLUBS PTY LIMITED & ANOR v WHITE CITY TENNIS CLUB LIMITED  
WALKER CORPORATION PTY LIMITED v WHITE CITY TENNIS CLUB LIMITED & ORS

[2010] HCA 19

White City Tennis Club Ltd ("the Club") operated a sporting club on land in Paddington, Sydney, that was part of a larger site owned by Tennis NSW. In 2004, Tennis NSW decided to sell the site. The Club signed a memorandum of understanding ("the MOU") with John Alexander's Clubs Pty Ltd ("JACS") that contemplated the acquisition by JACS of an option over the land on which the Club currently operated ("the Option Land"). The option was to be exercised on behalf of a yet-to-be-formed entity called White City Holdings ("WCH"), which, in the event, was never formed. JACS undertook to procure a further option for the Club in the event that JACS did not exercise the option itself. If no further option could be procured, the Club could require JACS to exercise the option on the Club's behalf. The MOU was premised on a third party (the Trustees of the Sydney Grammar School ("SGS")) purchasing the land being offered for sale by Tennis NSW.

SGS was successful in purchasing the land from Tennis NSW. It then entered into a series of agreements with JACS, the Club and another tennis club under which JACS (or its nominee) was granted an option to acquire the Option Land. The last of these ("the Agreement") provided that JACS and the Club agreed that the MOU continued but that the Agreement would prevail in the event of any inconsistency. The Agreement contained no condition that the option granted under it to JACS (or its nominee) be exercised on behalf of the Club or WCH.

On 12 April 2006, JACS purported to terminate the MOU on the basis that the Club had repudiated it, a suggestion that the Club denied. On 27 June 2007, Poplar Holdings Pty Ltd ("Poplar") exercised the option as JACS's nominee and became the registered proprietor of the land. Walker Corporation Pty Ltd ("Walker") financed Poplar's purchase; an unregistered mortgage over the Option Land and a floating charge over Poplar's assets were granted in its favour as security.

On the same day that Poplar exercised the option, the Club commenced proceedings in the Supreme Court of NSW against both JACS and Poplar, alleging that the MOU gave rise to a fiduciary duty on the part of JACS to exercise the option solely on behalf of the Club and that JACS had breached that duty. It argued that Poplar held its interest in the Option Land on a constructive trust for the Club. The Club made other allegations of equitable fraud, unconscionability and breach of the *Trade Practices Act 1974* (Cth).

The trial judge dismissed the proceedings, but on appeal to the NSW Court of Appeal the Club was successful. That Court decided that Poplar held its interest in the Option Land on a constructive trust for the Club, that it would be unconscionable for Poplar to deny the Club any entitlement to an interest in the Option Land and that the MOU gave rise to a fiduciary relationship between JACS and the Club. The Court of Appeal ordered Poplar to transfer the Option Land to the Club upon the Club paying the price at which Poplar exercised the option. After the decision of the Court of Appeal, Walker applied to be joined as a party to the appeal and sought an order that the Court of Appeal's declaration of a constructive trust over the Option

Land be set aside or, in the alternative, that it be without prejudice to Walker's interests. The Court of Appeal refused Walker's applications. JACS, Poplar and Walker were granted special leave to appeal to the High Court on 3 November 2009.

In a unanimous decision, the High Court decided that Poplar's exercise of the option granted under the Agreement did not amount to equitable fraud, unconscionable conduct or breach of fiduciary duty. The Court held that JACS was under no obligation to exercise the option granted under the Agreement on behalf of the Club, and that Poplar does not hold the Option Land on constructive trust for the Club. In rejecting the Club's assertion of a fiduciary relationship between it and JACS, the Court considered that there was no more vulnerability or reliance by the Club with respect to JACS than that between ordinary contracting parties. Nor were there any other factors justifying a finding that a fiduciary relationship existed between the Club and JACS. The Court also held that the Court of Appeal should have borne in mind the impact that a declaration of constructive trust over the Option Land would have on Walker's interests. It should have set aside its declaration of constructive trust and ordered that Walker be joined as a party to the appeal.

The High Court allowed the appeal by JACS from the Court of Appeal's first decision, which had the effect of setting aside the orders Walker sought to have set aside. As a result, the High Court dismissed Walker's appeal from the Court of Appeal's second decision declining to join Walker as a party to the appeal or to set aside the imposition of a constructive trust.

- *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.*