



HIGH COURT OF AUSTRALIA

4 March 2015

KORDA & ORS v AUSTRALIAN EXECUTOR TRUSTEES (SA) LIMITED

[2015] HCA 6

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The Court held that the proceeds of the sale of timber and scheme land, which were payable to the operators of a timber plantation investment scheme, were not subject to an express trust in favour of the scheme investors.

The third appellant, "the Forest Company", planted pine trees on land it owned or leased. When the trees were mature, they were felled and the logs were sold by the fourth appellant, "the Milling Company". After making certain allowances and deductions, the Milling Company was to pay the residue of the proceeds of sale of the timber to the Forest Company by instalments.

Prospectuses were issued seeking investment in the scheme. The scheme investors, "Covenantholders", entered into "Covenants" with the Forest Company. Each Covenant recorded that it entitled the Covenantholder to "the net proceeds from the timber apportionable" to a specified portion of the area planted by the Forest Company in the year stated in the Covenantholder's application.

As the relevant legislation required, the Forest Company also made a deed with the respondent, "the Trustee Company", as trustee for the Covenantholders. Upon receiving the proceeds of sale of the timber from the Milling Company, the Forest Company was to retain specified expenses and then pay the balance of the proceeds to the Trustee Company for distribution to Covenantholders. The Trust Deed imposed numerous obligations on the Forest Company, but contained no provision expressly declaring or providing that the Forest Company was, or was to act as, a trustee.

In September 2012, the first and second appellants were appointed as the receivers and managers over the Forest Company and Milling Company. The Trustee Company claimed on behalf of the Covenantholders that the proceeds of a sale of timber which was payable to the Milling Company, and the proceeds of a sale of land on which timber was grown which was payable to the Forest Company, were subject to an express trust in the hands of the Forest Company or the Milling Company in favour of the Covenantholders, and thus not available to the receivers and managers.

The Trustee Company succeeded in the Supreme Court of Victoria and declarations were made that it was beneficially entitled to the tree sale proceeds and a proportion of the land sale proceeds. An appeal to the Court of Appeal of the Supreme Court of Victoria was dismissed by majority. By special leave, the receivers and managers and others appealed to the High Court.

The High Court held that the scheme documentation did not support the existence of a trust or trusts over the proceeds in the hands of the Forest Company and Milling Company.

- *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.*