



HIGH COURT OF AUSTRALIA

14 August 2024

WILLS v AUSTRALIAN COMPETITION AND CONSUMER COMMISSION & ORS;
PRODUCTIVITY PARTNERS PTY LTD (TRADING AS CAPTAIN COOK COLLEGE) ACN
085 570 547 & ANOR v AUSTRALIAN COMPETITION AND CONSUMER COMMISSION &
ANOR
[2024] HCA 27

Today, the High Court dismissed two appeals from a decision of the Full Court of the Federal Court of Australia. The appeals raised two principal issues: first, whether conduct engaged in by Productivity Partners Pty Ltd ("the College") was, in all the circumstances, unconscionable contrary to s 21 of the *Australian Consumer Law* ("the ACL"); and, second, whether Mr Wills, and, through him, Site Group International Ltd ("Site"), were "knowingly concerned in, or party to", the College's unconscionable conduct, pursuant to s 224(1)(e) of the ACL.

The appeals related to the Commonwealth's Vocational Education and Training Fee Higher Education Loan Program ("the VFH Scheme"), through which the Commonwealth assisted eligible persons to fund their vocational education and training ("VET") by paying their "VET fees" directly to a registered training organisation (a "VET provider") on the basis that the person would incur a debt to the Commonwealth, being the amount of the VET fees plus a 20% "loan fee". That debt was incurred immediately after the census date for each VET unit of study in which a person was enrolled with a VET provider. The College was a VET provider owned by Site (Site acquired the College in 2014). Mr Wills was the Chief Operating Officer of Site and, between November 2015 and January 2016, acting Chief Executive Officer of the College.

In Federal Court proceedings, the Australian Competition and Consumer Commission alleged that the College engaged in a system of conduct, or a pattern of behaviour, that was unconscionable in contravention of s 21. The relevant conduct was that, during the impugned enrolment period from 7 September to 18 December 2015, the College changed its process for enrolment by removing two system controls. Those controls had previously ameliorated known risks of unwitting or unsuitable persons becoming and remaining enrolled at the date on which VET fees became claimable by the College from the Commonwealth in respect of their enrolment, including through agent misconduct, and thereby incurring VFH debts without receiving any corresponding benefit. The primary judge, and a majority of the Full Court of the Federal Court on appeal, found that the College had engaged in conduct which was unconscionable in contravention of s 21 and that Mr Wills, and through him Site, were knowingly concerned in the College's unconscionable conduct and also liable for that conduct.

The High Court held that the system of conduct engaged in by the College was, in all the circumstances, unconscionable in contravention of s 21. Further, Mr Wills was knowingly concerned in, or party to, the College's contravention, it having been proved that he knew the essential matters which together made up the conduct characterised as unconscionable and that he participated in that contravention. By reason of Mr Wills' knowledge and conduct being attributed to Site, Site was also knowingly concerned in the College's contravention.

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.