



HIGH COURT OF AUSTRALIA

5 February 2025

ANTHONY NAAMAN v JAKEN PROPERTIES AUSTRALIA PTY LIMITED
ACN 123 423 432 & ORS
[2025] HCA 1

Today, the High Court dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned whether a successor trustee owes a fiduciary obligation to a former trustee in respect of the former trustee's entitlement to indemnification out of trust assets or the commensurate beneficial interest in the trust assets that the former trustee retains following replacement of the former trustee by the successor trustee.

The appellant is a judgment creditor of a former trustee and is subrogated to the former trustee's entitlement to indemnification. The first respondent ("Jaken") is a successor trustee who transferred trust assets to third parties leaving insufficient trust assets to satisfy the former trustee's entitlement to indemnification. The second to seventh respondents ("the third parties") comprise individuals involved in the management of Jaken and recipients of trust assets.

By cross-claim in the Equity Division of the Supreme Court of New South Wales, the appellant sought relief including equitable compensation, an account, damages, interest and costs, in general terms seeking to enforce a judgment debt. The appellant claimed that the transfers of trust assets to the third parties were part of a dishonest and fraudulent design in breach of fiduciary duties owed by Jaken to the former trustee. The primary judge considered that a successor trustee owes a former trustee a fiduciary obligation not to deal with the trust assets so as to destroy, diminish or jeopardise the former trustee's entitlement to indemnification. The primary judge found that Jaken had "engaged in a dishonest and fraudulent design to strip itself of assets that might otherwise be available to satisfy [the former trustee's] power of indemnity" to which the appellant was subrogated. In light of the identified fiduciary obligation, the primary judge found that the third parties had knowingly assisted in the dishonest and fraudulent breach of that identified fiduciary obligation, and were amenable to orders for equitable compensation and to account. Jaken and the third parties appealed. By majority, the Court of Appeal held that a successor trustee does not owe a fiduciary obligation to a former trustee in respect of either the entitlement of the former trustee to indemnification out of the trust assets or the commensurate beneficial interest of the former trustee in the trust assets. The denial of the existence of the putative fiduciary obligation by the majority removed the basis on which the primary judge held the appellant able to obtain orders for equitable compensation and to account against the third parties.

The High Court, by majority, held that a successor trustee does not owe a fiduciary obligation to a former trustee in respect of the entitlement of the former trustee to indemnification out of the trust assets or the commensurate beneficial interest that the former trustee has in the trust assets. The majority stated that the explanation for that answer lies in the nature of a trustee's entitlement to indemnification out of the trust assets being an entitlement to have the trust assets applied for the purpose of recouping expenditure or exonerating liability properly incurred by the trustee. Accordingly, the remedies of equitable compensation and account are not available to the former trustee against the third parties.

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.