

# Court throws out ASIC's

## Prime Trust case

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COURTS

In a major legal setback for the corporate regulator, a court has thrown out bans against directors of failed retirement home empire Prime Trust, including former health minister Michael Wooldridge, over their decision to pay founder Bill Lewski a \$33 million listing fee.

Overturing the bans, including one of 15 years slapped on Mr Lewski, the Full Federal Court

pointed the finger at the Australian Securities & Investments Commission's tardiness in bringing the proceedings, which meant the regulator could not rely on events at a crucial Prime Trust board meeting to prove its case.

ASIC now faces a hefty legal bill unless it is successful in an appeal to the High Court, which legal on-lookers believe is likely.

Victims of the collapse said they were "disappointed" by the ruling. "We believe that the issues raised in the appeal judgment are complex and we are currently

reviewing and considering the findings of the appeal judges," Prime Trust Action Group spokesman Steve O'Reilly said.

However, Prime Trust's directors are not yet free of the court system. A \$50m civil claim filed in the Victorian Supreme Court is still afoot as it was filed more quickly than ASIC's case.

Prime Trust collapsed in October 2010, three years after listing on the ASX, taking with it \$550m pumped into the fund by investors.

The regulator brought its action alleging breach of duties by

Prime Trust's directors — Mr Lewski, Dr Wooldridge, Mark Butler, Kim Jaques and former Victorian Liberal Party heavy-weight Peter Clarke — on August 23, 2012.

In December 2014, Federal Court judge Bernard Murphy banned Mr Lewski for 15 years, fining him \$230,000, banned Dr Wooldridge for two years and three months, fining him \$20,000, and banned Mr Butler and Mr Jaques each for four years with a \$20,000 fine. Mr Clarke was not banned but was fined \$20,000.

ASIC alleged the directors breached their duties at a board meeting on August 22, 2006 — just one day inside the six-year statute of limitations — by approving the lodgement with ASIC of a change to the trust's constitution allowing the fee to be paid to Mr Lewski. However, the directors argued they were following up on a board meeting a month earlier, on July 19, where they agreed the change should be made.

"The failure of ASIC to commence proceedings before 23 August 2012 has been the primary

cause for the complexities introduced into the proceeding, as no direct reliance could be placed upon the conduct that occurred on 19 July, 2006 as establishing a contravention," justices Andrew Greenwood, Lindsay Foster and John Middleton said.

"The importance of failing to distinguish the purpose of the two meetings led the trial judge into error by failing to consider each breach alleged in proper context."

The judges said the directors' appeals should be allowed, the orders of Justice Murphy set aside

and "the proceeding be dismissed, with costs following the event".

Costs are likely to be substantial as the original trial ran for 20 days and involved six senior counsel, while the appeal took three days and the services of seven silks.

Prime Trust's receivers, Korda Mentha, have charge of a lawsuit originally filed over the same issue with the Victorian Supreme Court in March 2012 — meaning the July board meeting can still be considered in that case.

Mr Lewski's solicitor, Sam Bond of SBA Law, said his client

was "very pleased with the result of the unanimous decision delivered today by the Full Court of the Federal Court of Australia".

"He is particularly relieved that the Court found that all of the Directors acted honestly — as it has always been their belief that they had acted in accordance with, and in reliance on, their legal and professional advices."

An ASIC spokesman said the regulator was considering whether to appeal to the High Court.

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