

# Prime Trust: Court overturns banning of Bill Lewski, Michael Wooldridge



July 14 2016 - 6:15PM

Sarah Danckert, Sydney Morning Herald

The corporate watchdog has been left with egg on its face after the Full Court of the Federal Court found the former directors of Prime Trust – who include businessman Bill Lewski, former federal health minister Michael Wooldridge and former Places Victoria boss Peter Clarke – did not breach the Corporations Act when they signed off on a controversial \$33 million payment to Mr Lewski.

The Full Court found ASIC took too long to bring its case against the directors and as such a crucial meeting in July 2006 where the listing fee was granted by changing the constitution could not be considered.

Former federal health minister Dr Michael Wooldridge was originally hit with a 27-month ban and a \$20,000 fine.

The statute of limitations for breaches of the Corporations Act is six years.

"The failure of ASIC to commence proceedings before August 23, 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 July 19, 2006 as establishing a contravention," the Full Court found.

Bill Lewski is free to go about his business after the Full Court of the Federal Court threw out his 15-year ban.

As a result, Justice John Middleton told a brief hearing in Melbourne on Thursday: "We are of the view the trial judge should not have concluded the directors breached the Corporations Act".

The Australian Securities and Investments Commission is now facing a legal bill in the millions after the decision. The regulator is currently reviewing the decision that was handed down on Thursday morning.

Retirement village owner Prime Trust, once worth \$560 million, collapsed in 2010 wiping out the savings of about 8000 investors.

The court matter rested on whether the directors of Prime Trust, who were also directors of the trust's responsible entity Australian Property Custodian Holdings Ltd, had not acted in the best interests of investors when approving the deed to pay Mr Lewski a \$33 million fee for listing the company he had founded ahead of its 2007 float on the Australian Securities Exchange.

*Investors were left disappointed by the decision that overturned a 15-year ban for Mr Lewski and a \$230,000 fine, four-year bans for fellow directors Kim Jaques and Mark Butler and a 27-month ban for Dr Wooldridge and a \$20,000 fine for each. Mr Clarke was never banned but instead fined \$20,000.*

"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 member and Prime Trust investor Steve O'Reilly said.

It is unclear whether the directors will now sue the regulator for compensation over loss of income as Mr Lewski, Wooldridge, Mr Jaques and Mr Butler have all been serving out their bans since the original banning orders were handed down in 2014.

Craig Shepard of KordaMentha, the liquidator for Prime Trust, said the ruling would not affect separate legal action brought by the liquidators to recoup \$50 million for the listing fee.

"The outcome in favour of the former directors was significantly affected by the failure of ASIC to commence proceedings before August 23, 2012," Mr Shepard said.

"The pending proceeding in the Supreme Court of Victoria is not affected by this limitation issue. There is direct reliance in the Supreme Court proceeding on the conduct of the former directors that occurred at the critical meeting on July 19, 2006," Mr Shepard said.

In a statement released after the ruling, Dr Wooldridge said the demise of Prime Trust had taken a significant toll on many people including his family but particularly the unitholders who suffered loss.

"I am glad the decision by Mr Justice Murphy has been overturned; I always maintained his decision was unjust," Wooldridge said.

"This decision allows me to meaningfully rebuild," Dr Wooldridge said.

A statement from Mr Lewski's lawyers at SBA Law said: "Mr Lewski is 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 the belief that they had acted in accordance with, and in reliance on, their legal and professional advices," Mr Lewski's lawyers said.

A spokesman for Mr Clarke said the former senior government official was always confident he had acted appropriately in his role as a director of Prime Trust. Mr Clarke, who had only just joined the board ahead of the vote to grant the payment to Mr Lewski, abstained from voting on the payment.

Through his spokesman, Mr Clarke said "today's decision by the Full Court of the Federal Court to absolve him from all controversies following a four-year court battle with ASIC was a relief but also expected"