

## Ancient Order of Foresters in Victoria Friendly Society Ltd v Lifeplan Australia Friendly Society Ltd [2018] HCA 43

<https://lawcasesummaries.com/knowledge-base/ancient-order-of-foresters-in-victoria-friendly-society-ltd-v-lifeplan-australia-friendly-society-ltd/>

### Facts

- Through its subsidiary Funeral Plan Management Pty Ltd (“**FPM**”), Lifeplan provided products to meet the cost of pre-arranged funerals.
- Ancient Order of Foresters in Victoria Friendly Society Limited (“**Foresters**”) was also involved in the funeral products business although it had a much smaller market share than Lifeplan’s. Foresters' business was not profitable.
- Woff and Corby were employed by Lifeplan as managers at FPM, but in 2010, they approached Foresters with a five-year plan to divert Lifeplan’s existing funeral products business to Foresters, using Lifeplan’s confidential information and business records.
- Woff and Corby proposed to run this business through a company called Funeral Planning Australia Pty Ltd (“**FPA**”). FPA was incorporated while Woff and Corby were still employed by Lifeplan. This plan was very successful.
- Once implemented, Foresters’s profit increased enormously (from almost no profit to a huge profit), whereas Lifeplan suffered an almost identical loss of profit over the same period.
- Lifeplan and FPM commenced proceedings against Woff, Corby and FPA for breaches of fiduciary duties towards them as employers, as well as contraventions of the *Corporations Act 2001* (Cth).
- Foresters was subsequently joined to the action the basis that it had knowingly assisted in those breaches. Lifeplan and FPM elected to claim an account of profits for the entire value of Foresters’ funeral products business, rather than damages.

### Held

- The High Court unanimously dismissed Foresters’ appeal. A majority of the court (Kiefel CJ, Keane and Edelman JJ, and Gageler J ) allowed Lifeplan’s cross-appeal and held that the total capital value of Foresters’ funeral business should be disgorged.
- The High Court confirmed that the causal test applying to accounts of profit for breaches of fiduciary duty is a liberal one, and that this extends to assistance of dishonest and fraudulent breaches.
- The focus should be on the overall effect of Forester’s wrongful conduct and not the direct consequence of each act of knowing assistance.
- The benefit which Foresters stood to gain was not sporadic deposits from retail customers but rather the Lifeplan business connections.
- “[A]ny benefit” received “as a result of” participation in a dishonest breach of fiduciary duty is recoverable, and business connections constitute such a benefit.

- Foresters provided the commercial vehicle to exploit the business connections to be acquired from Lifeplan and its role was crucial to the implementation of the plan devised by Mr Woff and Mr Corby.
- It is not necessary that the breach be the sole cause of the profit.

### **Quotes**

"A causal connection between a fiduciary's breach of fiduciary obligation and a benefit or gain sufficient for the fiduciary or knowing participant to be liable to the equitable remedy of account will exist if the benefit or gain to the fiduciary or knowing participant would not have been obtained "but for" the breach, in the same way as a causal connection sufficient for the fiduciary to be liable to the equitable remedy of compensation will exist if a loss to the person to whom the fiduciary obligation is owed would not have been sustained but for the breach. Because the concern of equity is to vindicate the equitable obligation that has been breached, the "but for" connection will be sufficient even though other contributing causes might be in play. That the fiduciary's breach of fiduciary obligation is dishonest and fraudulent is also good reason for treating a sufficient causal connection as existing if the dishonest and fraudulent breach can be concluded to have played a material part in contributing to the benefit or gain of the fiduciary or knowing participant even in circumstances where it cannot be concluded that the benefit or gain would not have been obtained but for the breach."

### **Full Text**

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2018/43.html>

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