

Shafron v ASIC (20120) 88 ACSR 126

<https://lawcasesummaries.com/knowledge-base/sharon-v-asic-20120-88-acsr-126/>

Facts

- This was part of the complex set of James Hardie Industries litigation.
- Peter Shafron performed the dual role of co-company secretary and group general counsel
- Shafron was an officer of the company due to being a company secretary.
- Shafron was accused of failing to advise the CEO to disclose certain financial information to the ASX and also that a report he had commissioned into asbestos-related liabilities had certain limitations.
- ASIC alleged Shafron had breached his duty of care and diligence under section 180(1) of the *Corporations Act 2001* (Cth).
- Shafron claimed that his conduct related to his role as general counsel and was not an officer of the company because he was not the "ultimate decision maker".
- The trial court had found that Shafron was an officer when he engaged in the defaulting conduct.

Issues

- Was Shafron an officer of James Hardie Industries? Did he act in 2 different capacities (company secretary and general counsel)?

Held

- The High Court held that Shafron was appointed to act in both capacities - it was not possible to clearly divide his roles. Sometimes Shafron would be acting as an officer and other times he was not.
- The High Court confirmed that Shafron was a senior executive in the James Hardie group of companies.
- A person with multiple roles in a company must be assessed according to their whole position in totality. It is not correct to divide up their time into neat categories.
- Shafron did not occupy two separate and distinct roles in James Hardie Industries.
- As a result, Shafron breached his duties of care and diligence under section 180(1) of the *Corporations Act 2001* (Cth).

Quotes

"...the idea of 'participation' directs attention to the role that a person has in the ultimate act of making a decision, even if that final act is undertaken by some other person or persons. The notion of participation in making decisions presents a question of fact and degree in which the significance to be given to the role played by the person in question must be assessed."

(French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ at [26])

Full Text

The full text is available here: <https://jade.io/summary/mnc/2012/HCA/18>

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