

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2011-404-008345
[2014] NZHC 1584**

UNDER the Companies Act 1993

BETWEEN HOLLAND CORPORATE LIMITED
Plaintiff

AND PETER JESSE HOLLAND
First Defendant

NICOLA VIVIAN MANTHEL
Second Defendant

Hearing: 30 June, 2, 3 and 4 July 2014

Counsel: N W Ingram QC for the Plaintiff
No Appearance of, or for the First and Second Defendants

Judgment: 8 July 2014

**RESULT JUDGMENT OF DUFFY J
[Re Formal Proof]**

This judgment was delivered by Justice Duffy
on 8 July 2014 at 9.30 am, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: N W Ingram QC, Auckland

Solicitors: Graeme Skeates Law (G H Skeates), Auckland

[1] Holland Corporate Ltd (“HCL”) sues Peter Jesse Holland for breach of fiduciary duties that he owed to HCL.

[2] The substantial hearing of the proceeding has proceeded by way of formal proof. Mr Holland was not represented and could not be present at the hearing of the civil proceeding. He is in Australia and he has appointed a controlling trustee under s 188 of the Bankruptcy Act 1966 (Commonwealth of Australia). In *Downey v Holland* [2014] NZHC 1546, I ruled that under art 20(2) of sch 1 of the Insolvency (Cross-Border) Act 2006, this proceeding could continue.

[3] HCL needs to have this proceeding determined promptly if it is to have the judgment recognised by the controlling trustee. I propose, therefore, to deliver a result judgment with reasons to follow.

[4] I have given careful consideration to the evidence and the legal submissions presented to me by HCL. I am satisfied that at all material times:

(a) Mr Holland, as a director of HCL, owed HCL fiduciary duties of loyalty, to act in good faith, not to profit from his position as a director of HCL, and not to place himself in a position of conflict with HCL’s interests; and

(b) Mr Holland breached the fiduciary duties that he owed to HCL;

[5] The consequences of the said breaches of fiduciary duties for HCL are that Mr Holland has profited at HCL’s expense by receiving payments in the sum of AUD \$355,318 (for identified invoices) and AUD \$85,480 (for unidentified invoices) that should have gone to HCL:

[6] Therefore, Mr Holland is liable to account to HCL for those payments in the sum of AUD \$440,798.

[7] In breach of the said fiduciary duties, Mr Holland has performed services for third parties either in his own right, or on behalf of entities other than HCL, thereby depriving HCL from receiving value for those services from the third parties. Those

services being the services identified in invoices that refer to: Balena Forza; JD Herbert; and Apache Services Pty Ltd. Therefore, HCL is entitled to payment of equitable compensation from Mr Holland to the value of those services, which comes to a total of \$166,407.50. Accordingly, for these breaches of fiduciary duties, Mr Holland is liable to pay equitable compensation of AUD \$166,407.50.

[8] In breach of the said fiduciary duties, Mr Holland has performed services for Gleneagles Securities (Aust) Pty Ltd either in his own right, or on behalf of entities other than HCL, thereby depriving HCL from receiving value for those services from Gleneagles Securities (Aust) Pty Ltd. Therefore, HCL is entitled to payment of equitable compensation from Mr Holland to the value of those services, which is NZD \$450,000. Accordingly, for this breach of fiduciary duty, Mr Holland is liable to pay equitable compensation of NZD \$450,000.

[9] It follows that judgment for HCL is entered against Mr Holland in the total sum of AUD \$607,205.50 and NZD \$450,000.

Duffy J