



Equity Division Supreme Court New South Wales

Case Name: Mackinnon as plaintiff representative of 153 plaintiff group members v Partnership of Larter, Jones, Miraleste Pty Ltd t/as USG Partner and Johnson, t/as "STC Sports Trading Club" (No 9)

Hearing Date(s): 13 December 2019

Date of Decision: 13 December 2019

Jurisdiction: Equity - Commercial List

Before: Stevenson J

Decision: Fifth defendant's applications refused

Category: Consequential orders (other than Costs)

Parties: Ian Henry Mackinnon as plaintiff representative of 153 plaintiff group members (Plaintiff)
The partnership of Anne Patricia Larter, Alan Jones, Miraleste Pty Ltd trading as USG Partner and Leigh Johnson, trading as "STC Sports Trading Club" (First Defendant)
Anne Patricia Larter (Second Defendant)
Alan Jones (Third Defendant)
Miraleste Pty Ltd trading as USG Partner (Fourth Defendant)
Leigh Johnson (Fifth Defendant)
Sports Trading Club Limited (a company incorporated in Hong Kong) (Sixth Defendant)
Bella Development Limited (a company incorporated in Hong Kong) (Seventh Defendant)
East Ocean Capital Limited (a company incorporated in Hong Kong) (Eighth Defendant)
Arabella Racing Pty Ltd (Ninth Defendant)
Banksia Holdings (Tenth Defendant)
Arabella Louise Foster (Eleventh Defendant)
Peter Foster (Twelfth Defendant)

Representation: Solicitors:
Nelson McKinnon Lawyers (Plaintiff)
P N Argy (Fifth Defendant)

EX TEMPORE JUDGMENT

- 1 I have invited the plaintiff's legal representatives to bring in short minutes of order that they propose to give effect to my reasons. They have done that. I propose to make those orders in a moment.
- 2 Mr Argy for Ms Johnson, however, seeks three orders.
- 3 The first is that the proceedings be stood over to sometime next year, "to enable an application to be prepared to join Westpac Banking Corporation".
- 4 Evidently the basis of that application is press reports in the last few days in which Mr Gamble, to whom I referred at [158] of my 18 February 2019 judgment, is reported to be investigating whether the payments made from the STC Westpac account to Hong Kong "could be part of the 23 million transactions Austrac alleges [Westpac] failed to properly vet".
- 5 Whether Mr Gamble's investigations will reveal any connection between what happened in these proceedings and what Westpac is alleged by Austrac to have failed to have done is a matter about which I can make no comment.
- 6 If Ms Johnson wishes to bring some proceedings against Westpac based upon those matters, that is a matter for her. It does not provide any basis in my opinion for me to stand these proceedings over to enable any such application to be made.
- 7 Next Mr Argy seeks an order that these proceedings be stayed until the plaintiff has obtained leave from the Federal Court of Australia to proceed against Ms Larter, notwithstanding her bankruptcy. The implications of Ms Larter's bankruptcy were debated at length in submissions before me last year. I have dealt with the matter at [74] to [81] of my February judgment. It is far too late for Ms Johnson to make an application now that the proceedings

be stayed until the parties obtain leave. I therefore do not propose to make that order.

8 Finally Mr Argy has sought to reagitate the submissions he has earlier made that the claims made in these proceedings are apportionable claims for the purpose of s 34(1) of *Civil Liability Act 2002* (NSW). I have dealt with that matter at [179] to [182] of my 28 November 2019 judgment. I do not propose to review those matters.

9 In these proceedings, I make the following orders:

(1) Judgment in favour of Ian Mackinnon in his personal capacity against the fifth defendant and the twelfth defendant for \$200,000.00.

(2) Interest on the judgment pursuant to s 100 *Civil Procedure Act 2005* (NSW) as against the fifth defendant and twelfth defendant from 4 November 2013 to 28 November 2019 in the sum of \$71,188.36.

(3) The fifth defendant and twelfth defendant to pay the plaintiff's costs of these proceedings as agreed or as assessed.

(4) I stand the matter over for directions before the Commercial List Judge on 7 February 2020.

10 If the List Judge considers it appropriate then to fix the balance of these proceedings before me then no doubt they will do so.
