



## Judgment Summary

### Supreme Court New South Wales

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#### 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 7) [2019] NSWSC 103

Stevenson J

The Supreme Court has found that the “Sports Trading Club” (STC) was a fraudulent gambling scheme devised, masterminded and controlled by a known confidence trickster: Mr Peter Foster.

Mr Mackinnon, an investor in the scheme, brought these proceedings on behalf of 153 Group Members against 12 defendants, including Mr Foster and the two partners in the scheme, Ms Anne Larter and Ms Leigh Johnson. Only Ms Johnson actively defended the proceedings. The Court was satisfied that both Mr Peter Foster and Ms Leigh Johnson engaged in misleading or deceptive conduct in relation to STC.

The scheme was conducted by “The “Sports Trading Club Partnership” at Mr Foster’s instigation. Ms Larter was the General Partner. She and Ms Johnson understood Ms Johnson to be a Limited Partner.

The STC scheme purported to “trade” on the outcome of various sporting events. These “trades” were said to be placed by highly skilled account managers, under the supervision of a senior analyst and chief investment officer, and with the assistance of savants. The “sports trading” market was said to be lucrative, recession-proof, and yield certain tax benefits. STC itself was said to have “trading rooms” in Sydney, London and Hong Kong. In fact, the scheme was seemingly based at a residence in Byron Bay, under the control of Mr Foster.

The STC scheme was sophisticated and elaborate. Group Members initially responded to newspaper ads for an unspecified business that promised its investors over \$5,000 a week in returns, on the proviso they make a “fully secured” and “totally guaranteed” loan or contribution of \$50,000. “Investors” were instructed to call “Mark Hughes” on the number at the bottom of the ad. In fact, “Mark Hughes” was an alias adopted by Mr Foster to conceal his involvement in the scheme. After calling the advertised phone number, Group Members were provided with further details over the phone and via a document titled the “Sports Trading Club Associate Member Proposal”. Evidence was also given of a “trading room” in which “live trades” were witnessed and those “live trades” could be viewed in real time through an investor’s private login on the club’s website.

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It was through the conversations with “Mark Hughes” and the Proposal that misleading representations were made, upon which the Group Members relied and made their investment. Each was invited to sign a “Loan and Profit Sharing Agreement” under which they “loaned” money to STC to be traded on their behalf. Under the Agreement, they were purportedly entitled to full repayment of their loan after a specified time, plus half of the profits generated from the trades facilitated by their investment. Of the \$29.6 million paid to the STC, \$12.3 million was invested by the Group Members. Only \$6.4 million has been recovered, leaving \$5.9 million outstanding.

The main issues were: first, factual findings as to what happened; second, whether Mr Mackinnon could proceed against Ms Larter and Mr Foster notwithstanding their bankruptcy; third, whether Mr Foster made misleading or deceptive representations; and finally, whether Ms Johnson – on Mr Foster’s instruction or otherwise – made misleading or deceptive representations. These inquiries necessitated findings about the credibility of Ms Johnson and one of the plaintiff’s key witnesses, an investor in the scheme, Mr Pieter de Klerk.

On the first issue, the Court made findings about the way in which Mr Foster and Ms Larter perpetuated the scheme, Ms Johnson’s role as Limited Partner and Ms Johnson’s growing suspicion that fraud was afoot. The Court concluded that Ms Johnson was not a credible witness, that she knew Mr Foster was masquerading as “Mark Hughes”, was deeply suspicious that Mr Foster was behaving fraudulently, and yet remained relevantly silent about her deep concerns. Her evidence was found to contain implausible assertions and numerous inconsistencies.

On the second issue, the Court found that Mr Mackinnon could proceed against Mr Foster notwithstanding his bankruptcy and the absence of leave from the Federal Court; but not against Ms Larter.

On the third issue, the Court was satisfied that Mr Foster made the alleged representations through his conversations with investors and via the Proposal document. The Court found that, in making those representations, Mr Foster had engaged in misleading and deceptive conduct.

On the fourth issue, the Court found that Ms Johnson was instructed by Mr Foster to conceal his involvement and to maintain the illusion of “Mark Hughes” as “National Sales Manager”. The Court found that by remaining silent in circumstances where she strongly suspected fraud, she engaged in misleading or deceptive conduct because prospective investors were entitled reasonably to expect that she would speak out.

The Court has found that the Group Members are entitled to judgment against Mr Foster for the unrecovered balance of the amounts paid to STC. The Court will now hear submissions about whether Ms Johnson’s conduct caused damage to the Group Members.

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