



HIGH COURT OF AUSTRALIA

4 May 2016

GREGORY IAN ATTWELLS & ANOR v JACKSON LALIC LAWYERS PTY LTD
[2016] HCA 16

Today the High Court, by majority, allowed an appeal against a decision of the Court of Appeal of the Supreme Court of New South Wales. A majority of the High Court held that the advocate's immunity from suit does not extend to negligent advice given by a lawyer which leads to the settlement of a case by agreement between the parties embodied in consent orders.

The first appellant and another person guaranteed payment of the liabilities of a company to a bank. The company defaulted on its obligations to the bank and the bank commenced proceedings against the guarantors in the Supreme Court of New South Wales ("the guarantee proceedings"). The guarantors and the company retained the respondent firm of solicitors to act for them. The amount of the company's debt to the bank was \$3.4 million. The guarantors' liability under the guarantee was limited to \$1.5 million. The proceedings were settled on the opening day of the trial on terms that judgment would be entered against the guarantors and the company for almost \$3.4 million, but the bank would not seek to enforce payment of that amount if the guarantors paid to the bank the sum of \$1.75 million before a specified date. The terms of the settlement were reflected in a consent order for judgment in the amount of \$3.4 million and the Court's noting of the non-enforcement agreement between the parties.

The guarantors failed to meet their payment obligation under the settlement before the specified date. The appellants then brought proceedings in the Supreme Court against the respondent ("the negligence proceedings") alleging that it was negligent in advising them to consent to judgment being entered in the terms of the consent orders and in failing to advise them as to the effect of the consent orders. The respondent asserted that it was immune from suit by virtue of the advocate's immunity. The immunity question was ordered to be determined separately from the negligence proceedings. The primary judge declined to answer the separate question on the basis that, without further evidence in relation to the respondent's alleged negligence, his Honour could only form a view about the application of the advocate's immunity on a hypothetical basis. The Court of Appeal granted leave to appeal and held that the respondent was immune from suit because the negligence proceedings would necessarily involve a re-agitation of the issues raised in the guarantee proceedings.

By grant of special leave, the appellants appealed to the High Court. The Court, by majority, allowed the appeal. The Court unanimously declined to reconsider its previous decisions on the advocate's immunity, which confirmed that the immunity extends to "work done out of court which leads to a decision affecting the conduct of the case in court". Nevertheless, the Court held, by majority, that the respondent was not immune from suit, because the advice to settle the proceedings was not intimately connected with the conduct of the case in court in that it did not contribute to a judicial determination of issues in the case. This conclusion was not affected by the circumstance that the parties' settlement agreement was embodied in consent orders.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*