



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: S150/2022
File Title: GLJ v. The Trustees of the Roman Catholic Church for the Dic
Registry: Sydney
Document filed: Form 27F - Outline of oral argument
Filing party: Appellant
Date filed: 07 Jun 2023

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

GLJ
Appellant

and

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**THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH
FOR THE DIOCESE OF LISMORE
ABN 72863788198**
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

PART I: PUBLICATION

1. This outline is in a form suitable for publication on the internet.

20 PART II: OUTLINE OF ORAL SUBMISSIONS

(1) The Court of Appeal's reasons

2. The available evidence, both documentary and testimonial, summarised in the Court of Appeal's reasons is copious (AS[38]).
3. The Court of Appeal was explicit that Anderson's death was *the* central factor justifying the stay, because of his unavailability to give instructions and evidence (AS[26]; Reply [4]).

(2) It is not necessary for the appellant to establish *House v The King* error

4. *House v The King* concerns decisions in respect of which our system of justice tolerates more than one legally correct answer (AS[15]–[17]; Reply [2]).

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Minister for Immigration and Border Protection v SZVFW (2018) 264 CLR 541 at [18], [46]–[49], [54]–[56], [85], [144], [145], [147], [150], [152], [154] (JBA vol 3 pt C tab 13 p 305)

5. Assessing whether a fair trial is possible may be evaluative and contextual but there can be only one legally correct answer. The ordinary standard of appellate review (the “correctness standard”) applies (AS[18]–[19]; Reply [2]–[3]).

6. No decision of this Court stands in the way of applying the ordinary standard of appellate review (AS[20]–[24]; Reply [3]).

Walton v Gardiner (1993) 177 CLR 378 at 389, 392, 398–9 (JBA vol 3 pt C tab 17 p 450)

Batistatos v Roads & Traffic Authority of New South Wales (2006) 226 CLR 256 at [7], [59], [69]ff, [223]–[224], [236] (JBA vol 3 pt C tab 8 p 115)

(3) The Court of Appeal made an error of principle in the significance it gave to Anderson’s death

- 10 7. Across many areas, a claimant is entitled not only to proceed to but to succeed at trial even though the person responsible for that claim is deceased or otherwise unavailable to give instructions or evidence (AS[26]–[27]).

8. Judicial guidance about the capacity to draw inferences, and about the appropriate degree of caution to be exercised, shows that there may be a fair trial of claims involving the conduct of deceased persons (AS[28]–[29]).

Plunkett v Bull (1915) 19 CLR 544 at 548–549 (JBA vol 3 pt C tab 14 p 359)

Holloway v McFeeters (1956) 94 CLR 470 at 480–481 (JBA vol 3 pt C tab 10 p 220)

R v Edwards (2009) 83 ALJR 717 at [23]–[24], [31] (JBA vol 4 pt D tab 21 p 597)

- 20 9. Defendants often wish, but are unable, to obtain instructions from the individual responsible for a claim. That has never hitherto compelled a stay (AS[30]).

10. The respondent does not lack the means to challenge the appellant’s account even without instructions or evidence from Anderson (Reply [4]–[6]).

(4) The Court of Appeal’s approach subverted the policy of legislative amendments in response to the Royal Commission into Institutional Responses to Child Sexual Abuse

11. After the Royal Commission, claims against institutional defendants may be brought even in circumstances where, before the legislative amendments, they could not have been brought; and can succeed even in circumstances where they would not hitherto have succeeded. The objective of the removal of limitation periods was to allow claims
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to proceed to trial on their merits, not to become bogged down in lengthy and expensive interlocutory disputes (AS[31]–[32]; Reply [7]).

Second reading speech to the Limitation Amendment (Child Abuse) Bill 2016 (NSW) (JBA vol 5 pt E tab 24 p 729)

Royal Commission, Redress and Civil Litigation Report, ch 14 (JBA vol 5 pt E tab 26 p 747)

12. While the test for a stay has not been altered by these amendments, whether the circumstances are such that a fair trial cannot occur must be assessed in the factual and legislative context provided by these amendments.

10 **(5) The Court of Appeal’s decision involved factual error**

13. If Anderson’s putative instructions were relevant, the material allows an inference to be drawn that he would have denied the abuse of the appellant (AS[39]–[40]).

14. The Court of Appeal was wrong to say that the difficulty for the respondent was highlighted by the foreshadowed tendency evidence from other witnesses and that this supported the grant of a stay.

Dated: 8 June 2023



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