



HIGH COURT OF AUSTRALIA

6 December 2023

MICHAEL THOMAS POTTS v NATIONAL AUSTRALIA BANK LIMITED (ABN 12 004 044
937)
[2023] HCA 41

Today, the High Court unanimously revoked special leave to appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales.

The appellant was the company secretary, chief financial officer and a director of Dick Smith Holdings Ltd now known as DSHE Holdings Ltd (receivers and managers appointed) (in liquidation) ("DSHE"). The primary judge ordered judgment against the appellant in the sum of \$57,278,091.44 in favour of the respondent bank ("NAB"). This sum represented damages caused by the appellant's misleading and deceptive conduct which had induced NAB to enter into various agreements to loan funds to DSHE prior to its liquidation. The Court of Appeal dismissed the appellant's appeal against that judgment.

The High Court granted special leave to appeal on one ground of appeal. That ground was that the Court of Appeal erred in finding that the appellant had failed to establish that DSHE was a concurrent wrongdoer for the purposes of the appellant's proportionate liability defences. The ground relied on a single written representation made by DSHE that all information provided by DSHE to NAB was accurate in all material respects and not misleading by omission.

At the appeal hearing, it emerged that the legal principles relevant to the ground of appeal were not in issue. Instead, the appellant sought to argue that the representation was falsified by DSHE providing information to NAB which was alleged to have been misleading by omission in a material respect at the date provided. Neither the primary judge, nor the Court of Appeal, had made findings to that effect.

Special leave to appeal would not have been granted to address the arguments made by the appellant at the appeal hearing because those arguments were entirely factual, and did not raise a question of law of public importance or meet any of the other criteria for a grant of special leave to appeal. In any event, the High Court found that none of the appellant's contentions concerning the deficient factual basis for the Court of Appeal's findings were made out.

- *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.*