

HIGH COURT OF AUSTRALIA

FRENCH CJ,
HAYNE AND KIEFEL JJ

HUNT & HUNT LAWYERS

APPELLANT

AND

MITCHELL MORGAN NOMINEES PTY LTD
& ORS

RESPONDENTS

Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd [No 2]
[2013] HCA 23
29 May 2013
S270/2012

ORDER

In addition to the orders of this Court made on 3 April 2013, further order that:

"Order 12 of the orders dated 3 July 2009 made by Young JA in the Supreme Court of New South Wales be amended to read that there be judgment for the cross-claimants, Mitchell Morgan, against the cross-defendants, Hunt & Hunt Lawyers, in the sum of \$311,870.24."

On appeal from the Supreme Court of New South Wales

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd [No 2]

Judgments and orders – Interest – Interest on judgment – Whether pre-judgment interest, pursuant to s 100 of *Civil Procedure Act* 2005 (NSW), or post-judgment interest, under s 101 of *Civil Procedure Act*, should apply to judgment sum.

Civil Procedure Act 2005 (NSW), ss 100, 101.

1 FRENCH CJ, HAYNE AND KIEFEL JJ. On 3 April 2013, this Court made orders in this matter allowing the appeal by Hunt & Hunt Lawyers ("Hunt & Hunt") from the Court of Appeal of the Supreme Court of New South Wales and substituting orders for those made by that Court. The quantum of the judgment in favour of the first and second respondents (together "Mitchell Morgan") was not specified because the rate of interest applied by the Court of Appeal was not evident from the materials before this Court. Hunt & Hunt and Mitchell Morgan were directed to file a joint minute of orders. In default of agreement as to those orders, each of those parties was to file and serve its proposed minute of order together with written submissions. Hunt & Hunt and Mitchell Morgan did not agree as to quantum.

2 It now appears that the Court of Appeal applied interest at the rates sought by Mitchell Morgan in submissions made in that Court. For the larger part of the period in question, up to the date of judgment in that Court, the rate sought was that provided by Practice Note SC Gen 16 pursuant to s 100 of the *Civil Procedure Act* 2005 (NSW). That rate was sought and applied even though the interest rate provided for by r 36.7 of the Uniform Civil Procedure Rules 2005 (NSW), pursuant to s 101 of the *Civil Procedure Act*, might have applied after judgment at first instance. That rate is higher than that which applies under s 100. Mitchell Morgan now seeks interest for the period from judgment in the Court of Appeal at the rate applicable under s 101. We see no reason to alter the approach taken by the Court of Appeal at the request of Mitchell Morgan.

3 In adjusting the sum for which the Court of Appeal gave judgment for interest up to the date of judgment in this Court, but in limiting the amount to be recovered by Mitchell Morgan to 12.5 per cent of its total loss, in accordance with the primary judge's decision, the sum of \$311,870.24 is reflected. There will be a further order that:

"Order 12 of the orders dated 3 July 2009 made by Young JA in the Supreme Court of New South Wales be amended to read that there be judgment for the cross-claimants, Mitchell Morgan, against the cross-defendants, Hunt & Hunt Lawyers, in the sum of \$311,870.24."

4 Hunt & Hunt seeks further orders. The order of this Court directing submissions in the event that agreement was not reached was not an invitation to the relevant parties to seek orders which had not previously been sought and notified, and upon which no submissions had previously been addressed. No orders will therefore be made that interest be paid on orders for Hunt & Hunt's costs or that any costs payable to Hunt & Hunt be paid by Mitchell Morgan's lenders' mortgage insurer.