HIGH COURT OF AUSTRALIA

7 May 2025

LENDLEASE CORPORATION LIMITED ACN 000 226 228 & ANOR v DAVID WILLIAM PALLAS AND JULIE ANN PALLAS AS TRUSTEES FOR THE PALLAS FAMILY SUPERANNUATION FUND & ANOR
[2025] HCA 19

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales. The issue was whether, in a representative proceeding under Pt 10 of the *Civil Procedure Act 2005* (NSW) ("the CPA"), the Supreme Court of New South Wales can make an order under s 175(5) that notice be given to group members of the intention of the defendant (and perhaps the representative plaintiff) to seek certain orders if the proceeding is settled ("the proposed notice").

The proposed notice is of the intention of the defendants (and perhaps the representative plaintiffs), if the proceeding is settled, to seek an order that a group member who has neither opted out of the proceeding nor registered to participate in the proceeding shall remain a group member (and whose claims against the defendant will therefore be extinguished by the settlement) but shall not, "without leave of the Court, be permitted to seek any benefit pursuant to any settlement (subject to Court approval) of [the] proceeding that occurs before final judgment". At the request of the parties, a judge of the Supreme Court (Ball J) stated as a separate question for consideration by the Court of Appeal whether the Supreme Court has power, pursuant to ss 175(1), (5) and 176(1) of the CPA or otherwise, to approve the giving of such a notice. Relevantly, s 175(5) provides that "[t]he Court may, at any stage, order that notice of any matter be given to a group member or group members".

The Court of Appeal (Bell CJ, Ward P, Gleeson, Leeming and Stern JJA) unanimously held that the Supreme Court did not have power to order that the proposed notice be given. Their Honours concluded that an earlier decision of the Court of Appeal, *Wigmans v AMP Ltd* (2020) 102 NSWLR 199 was not plainly wrong, and so should be followed, despite the later decision of the Full Court of the Federal Court in *Parkin v Boral Ltd* (2022) 291 FCR 116 which found *Wigmans* to be plainly wrong. Their Honours also concluded that the giving of such notice would: subvert the statutory scheme, in which group members are taken to be entitled to the benefits of the proceeding unless they opt out of the proceeding, by converting it into a scheme in which group members must opt in to be taken to be entitled to the benefits of the proceeding; and place the representative plaintiff in an untenable position of conflict between its interests and those of unregistered group members who had not opted out of the representative proceeding.

The High Court unanimously allowed the appeal. The considerations which led the Court of Appeal to hold that the Supreme Court does not have the power to order the giving of the proposed notice, while legitimate, do not confine the power of the Supreme Court to order that the proposed notice be given. There is no justification in the text, context or apparent purpose of s 175(5) to construe that provision as not empowering the Supreme Court to order the giving of the proposed notice. The separate question was answered in the affirmative. To determine this appeal, it was not necessary for the Court to consider whether there should be any additional rule applicable to the circumstance where an intermediate appellate court is confronted by a conflict between one of its earlier decisions and a later decision of another intermediate appellate court.

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.

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