



HIGH COURT OF AUSTRALIA

5 November 2025

R LAWYERS v MR DAILY & ANOR
[2025] HCA 41

Today, the High Court unanimously allowed an appeal from a decision of the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction ("the Full Court").

Mr Daily and Ms Daily met in 1996. Between 2002 and July 2005, R Lawyers, a firm of solicitors, provided advice to Mr Daily and prepared a draft financial agreement. On or around 21 July 2005, Mr Daily and Ms Daily signed a deed ("the BFA"), which recited the parties' intention to "contract out" of Pt VIII of the *Family Law Act 1975* (Cth) ("the FLA") and to enter into a "binding financial agreement under s 90B" within Pt VIIIA of the FLA. Mr Daily and Ms Daily married in late 2005. The BFA purported to make provision for how, in the event of the breakdown of the marriage, the property and financial resources of Mr Daily and Ms Daily were to be dealt with.

Mr Daily and Ms Daily separated in September 2018. In December 2019, Ms Daily sought to set aside the BFA and sought an order under s 79 of the FLA for the alteration and settlement of property. In August 2021, and against the contingency that the BFA might be set aside or unenforceable, Mr Daily filed an application joining R Lawyers to the proceedings commenced by Ms Daily, seeking damages for, relevantly, negligence relating to the drafting of the BFA, the provision of advice about the terms of the BFA, and the provision of advice about the operation of the FLA. R Lawyers denied Mr Daily's claims, and pleaded that those claims were statute barred.

The primary judge relevantly found that: the BFA was void for uncertainty and liable to be set aside on hardship grounds under s 90K(1)(d) of the FLA and made an order setting aside the BFA on both bases; and R Lawyers had breached the duty of care it owed to take reasonable care in advising Mr Daily; and found that Mr Daily's claim against R Lawyers in negligence was not statute barred. The primary judge awarded Mr Daily damages for the legal costs incurred in litigating whether the BFA was void for uncertainty but refused to award damages in relation to Mr Daily's claim that he was financially worse off as a result of the outcome of Ms Daily's application for orders under s 79 of the FLA ("the second component"). The Full Court overturned the primary judge's refusal to award damages in relation to the second component and dismissed a cross-appeal from R Lawyers against the primary judge's finding that Mr Daily's negligence claims were not statute barred.

The High Court held that the second component of Mr Daily's claim was bound to fail because, at trial, he failed to adduce evidence establishing the fact of loss beyond the wasted litigation costs unsuccessfully defending the validity of the BFA as not void for uncertainty. The High Court also held that Mr Daily's cause of action in negligence against R Lawyers did not accrue until (at least) the time of his separation from Ms Daily and, consequently, that claim was not statute barred.

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.