



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No M111 of 2020

BETWEEN

JUDITH GAIL TALACKO

Appellant

and

**JAN TALACKO (AS EXECUTOR
OF THE ESTATE OF
HELENA MARIE TALACKO) &
ORS (ACCORDING TO THE
SCHEDULE)**

Respondents

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

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

Proposition 1

2 A mere reduction in chance, as opposed to the loss of a chance, cannot constitute actual loss sufficient to complete a cause of action (appellant's submissions, [52]–[61]). See *Sellars v Adelaide Petroleum NL* (1994) 179 CLR 332, at p 355.

Proposition 2

3 The first to fifth respondents have only incurred a reduction in their chance of recovering the amount of the judgment debt, as distinct from a loss of that chance (appellant's submissions, [45]–[46]).

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Proposition 3

4 The first to fifth respondents are wrong to contend that they lost a valuable opportunity upon entry into the donation agreement. It is the chance of recovering the amount of the judgment debt, however that might occur, that constitutes a valuable opportunity in the sense described in *Sellars v Adelaide Petroleum NL* (1994) 179 CLR 332. That chance has not been lost (appellant's submissions, [48]; appellant's reply to the first respondent, [3]–[5]; appellant's reply to the second to fifth respondents, [5]–[6]).

Proposition 4

5 The reduction in the first to fifth respondents' chance of recovering the amount of the judgment debt does not involve a diminution in the value of property in circumstances where the chance remains and has not been destroyed (appellant's reply to the second to fifth respondents, [9]–[10]). Cf *Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd* (2013) 247 CLR 613, at p 631 [32].

Proposition 5

6 Until the ongoing Czech proceedings have concluded, it is too early to say whether the first to fifth respondents' expenses of those proceedings were reasonably incurred or legally
10 caused by the tort. Any loss constituted by those expenses remains contingent on the outcome of the Czech proceedings (appellant's submissions, [65]; appellant's reply to the first respondent, [10]; appellant's reply to the second to fifth respondents, [7]–[8]).

9 March 2021

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