

ATTWELLS & ANOR v JACKSON LALIC LAWYERS PTY LIMITED (S161/2015)

Court appealed from: New South Wales Court of Appeal
[2014] NSWCA 335

Date of judgment: 1 October 2014

Special leave granted: 7 August 2015

Jackson Lalic Lawyers Pty Limited (“Jackson Lalic”) appealed against a decision of Justice Harrison in proceedings known as “the negligence proceedings”. In those proceedings his Honour had relevantly declined to answer, by way of a separate question, whether the advocates’ immunity from suit (“the Immunity”) was a complete answer to Mr Gregory Attwells’ and Mr Noel Attwells’ (“the Attwells”) claim of negligence against Jackson Lalic.

The negligence proceedings arose out of allegedly negligent advice given by Jackson Lalic to their client, the Attwells, in proceedings known as “the guarantee proceedings”. This was in circumstances whereby a guarantee was sought to be enforced against the Attwells. That advice led to the settlement of the guarantee proceedings by way of consent order.

At the hearing of the separate question, a statement of agreed facts which clearly defined the allegedly negligent breach of duty to the Attwells (in the guarantee proceedings), was before Justice Harrison.

On 1 October 2014 the Court of Appeal (Bathurst CJ, Meagher and Ward JJA), unanimously upheld Jackson Lalic’s appeal. Their Honours held that Justice Harrison had erred in declining to answer the separate question. They found that in circumstances whereby the alleged breach was clearly defined and agreed upon, it was appropriate for Justice Harrison to answer it.

The Court of Appeal also held that the advice given by Jackson Lalic fell within the scope of the Immunity because it led to the guarantee proceedings being settled. It was therefore intimately connected to them.

On 19 October 2015 the Law Society of New South Wales filed a summons, seeking leave to be heard as *amicus curiae* in this matter.

The grounds of appeal include:

- The Court of Appeal fell into error in that it held that the Immunity applied in the context of negligently advised and/or effected settlement, and/or an outcome not the result of a judicial determination on the merits.
- The Court of Appeal fell into error in that it applied the wrong test for the boundaries of the Immunity or in the alternative, misapplied the “intimate connection” test for the Immunity.