

## **KENDIRJIAN v LEPORE & ANOR (S170/2016)**

Court appealed from: New South Wales Court of Appeal  
[2015] NSWCA 132

Date of judgment: 21 May 2015

Special leave granted: 17 June 2016

On 21 November 1999 Mr David Kendirjian was injured when a vehicle in which he was travelling collided with a vehicle driven by Ms Cheree Ayoub. In 2004 Mr Eugene Lepore, a solicitor, (“the First Respondent”) commenced District Court proceedings on Mr Kendirjian’s behalf against Ms Ayoub. Ms Ayoub admitted liability and a five day hearing on the quantum of Mr Kendirjian’s loss was fixed to commence on 30 August 2006 before Delaney DCJ. Mr Lepore briefed Mr Jim Conomos (“the Second Respondent”) to appear for Mr Kendirjian.

On the first day of the hearing, and after some earlier negotiations, Ms Ayoub’s legal representatives communicated to the Respondents an offer to settle the proceedings for \$600,000 plus costs.

Mr Kendirjian alleged that the Respondents did not advise him of the amount of that settlement offer “but merely of the fact that an offer had been made” and that they had rejected it “absent any instructions from him, on the basis that it was too low”.

Mr Kendirjian alleged that he only became aware of the amount of the settlement offer around January 2009. He then commenced District Court proceedings against the Respondents in October 2012, claiming the difference between the settlement offer and the judgment on damages.

On 16 May 2014 Taylor DCJ ordered that Mr Kendirjian’s proceedings be summarily dismissed. This was on the basis that the Respondents were immune from suit under the advocates’ immunity principle stated in *D’Orta-Ekenaike v Victorian Legal Aid* (2005) 23 CLR 1 (“D’Orta-Ekenaike”).

On 21 May 2015 the New South Wales Court of Appeal (Macfarlan & Leeming JJA, Bergin CJ in Eq) dismissed Mr Kendirjian’s subsequent appeal. Their Honours held that the Respondents’ allegedly negligent advice (or omission to advise) in relation to the settlement offer constituted out of court conduct that led to the continuation of court proceedings. It was therefore protected by the advocate’s immunity.

On 11 November 2016 the Full Court of this Court (Kiefel, Bell, Gageler, Keane, Nettle and Gordon JJ) allowed, by consent, Mr Kendirjian’s appeal against the First Respondent. Consequential orders were also made. The appeal therefore is proceeding only against the Second Respondent.

The grounds of appeal are:

- The New South Wales Court of Appeal erred in finding that the Respondents were immune from suit under the advocates' immunity principle.
- The New South Wales Court of Appeal erred in extending and not limiting the scope of the application of the advocates' immunity principle as stated in D'Orta-Ekenaike to the facts of Mr Kendirjian's case.