



## HIGH COURT OF AUSTRALIA

17 October 2018

UBS AG v SCOTT FRANCIS TYNE AS TRUSTEE OF THE ARGOT TRUST  
[2018] HCA 45

Today the High Court, by majority, allowed an appeal from a decision of the Full Court of the Federal Court of Australia. The appeal concerned the power to permanently stay proceedings as an abuse of the processes of the court.

The respondent, in his capacity as trustee of the Argot Trust ("the Trust"), commenced the present proceedings against the appellant ("UBS") in the Federal Court, claiming damages and equitable compensation arising out of advice and representations made by UBS to Mr Tyne and "through him" to related entities, namely the former trustee of the Trust ("ACN 074") and an investment company ("Telesto"). Mr Tyne was the controlling mind of ACN 074 and Telesto at all material times. The claimed loss arose in connection with the pledge of the Trust's assets to secure the liabilities of Telesto under credit facilities extended to Telesto by UBS.

UBS had earlier brought proceedings in the High Court of Singapore against Telesto (as principal debtor) and Mr Tyne (as guarantor) for default on the credit facilities ("the Singapore proceedings"). ACN 074 was not a party to those proceedings. Before the Singapore proceedings were concluded, Mr Tyne (in his personal capacity), Telesto and ACN 074 (as trustee) commenced proceedings in the Supreme Court of New South Wales ("the SCNSW proceedings"). UBS applied for a permanent stay of the SCNSW proceedings. Ward J granted a temporary stay, holding that it was not evident that there would be overlap between the SCNSW proceedings and the Singapore proceedings. In written submissions filed on behalf of Telesto, Mr Tyne and ACN 074 (as trustee) it was foreshadowed that the latter two parties would discontinue their claims. Ward J gave leave to file amended pleadings. These were subsequently filed and removed Mr Tyne and ACN 074 as plaintiffs. The Singapore proceedings were finalised in favour of UBS, and UBS then successfully obtained a permanent stay of the SCNSW proceedings on the basis that, as a matter of substance, the Singapore proceedings "covered" the causes of action pursued by Telesto, creating a *res judicata*.

The present proceedings were commenced in the Federal Court some 23 months after Ward J had granted leave to amend in the SCNSW proceedings (facilitating the discontinuance by Mr Tyne and ACN 074 as plaintiffs). Mr Tyne had become the trustee of the Trust. The claims made in the present proceedings arise out of the same facts, and are essentially the same claims, as those in the SCNSW proceedings.

UBS applied for a permanent stay of the present proceedings on grounds including that they were an abuse of process. The primary judge granted the stay, holding that the allegations were essentially the same as had been made by the Trust in the SCNSW proceedings before it discontinued its claims, and no "proper explanation" had been given for the failure to prosecute them in the Supreme Court. On appeal to the Full Court, the majority set aside the stay, holding that, in circumstances in which the Trust's claims had not been decided on the merits in the SCNSW proceedings, there was no unfairness in requiring UBS to answer them in the present proceedings.

By grant of special leave, UBS appealed to the High Court. By majority, the High Court allowed the appeal, holding that the timely, cost effective and efficient conduct of modern civil litigation takes into account wider public interests than those of the parties to the dispute. Hiving off the Trust's claim from the SCNSW proceedings, with a view to bringing it in another court after the determination of those proceedings, was the antithesis of the discharge of the duty imposed on parties to civil litigation in the Supreme Court and in the Federal Court. For the Federal Court to lend its procedures to the staged conduct of what is factually one dispute prosecuted by related parties under common control with the attendant duplication of court resources, delay, expense and vexation was rightly assessed by the primary judge to amount to an abuse of the processes of the court, warranting a permanent stay of proceedings.

*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.*