



## Judgment Summary

### Supreme Court New South Wales

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#### Mackinnon as plaintiff representative of 153 plaintiff group members v Partnership of Larter, Jones, Miraleste Pty Ltd t/as USG Partner and Johnson, t/as “STC Sports Trading Club” (No 8) [2019] NSWSC 1658

Stevenson J

The Supreme Court has found that Mr Mackinnon is entitled to damages from Ms Leigh Johnson, the fifth defendant, and Mr Peter Foster, the twelfth defendant.

Mr Mackinnon, an investor in the “Sports Trading Club” (STC), brought these proceedings on behalf of 153 Group Members against 12 defendants, including Mr Foster and Ms Johnson. Earlier this year, the Court found that STC was a fraudulent gambling scheme devised, masterminded and controlled by Mr Foster, a known confidence trickster. A summary of that judgment can be found [here](#).

After receiving further submissions from the parties about whether Ms Johnson’s conduct caused damage to Mr Mackinnon and the other Group Members, the Court made further findings about the consequences of Ms Johnson’s misleading conduct.

The Court reiterated its findings that Ms Johnson had engaged in misleading or deceptive conduct, first, in relation to a document entitled ‘Sports Trading Club Associate Member Proposal’ (the Proposal) and, second, arising from her silence about Mr Foster’s involvement in STC. The main issue dealt was whether there was sufficient evidence to show that Mr Mackinnon’s loss was suffered because of Ms Johnson’s conduct.

The Court found that, from 14 March 2013, Ms Johnson represented to current and potential investors in the scheme that the statements in the Proposal were true when in fact they were false. Mr Mackinnon gave unchallenged evidence that he decided to loan money to STC on the basis of the information in the Proposal. The Court found that this was sufficient to establish that Mr Mackinnon suffered damage because of Ms Johnson’s conduct.

The Court also found that, from 14 March 2013, Ms Johnson remained silent about Mr Foster’s involvement in STC in circumstances where current and prospective investors in STC were entitled reasonably to expect that Ms Johnson would disclose his involvement either to them or to a person or body that would cause them to be made aware of those matters.

This was because, by 14 March 2013, Ms Johnson knew that Mr Foster was involved in STC more significantly than setting up and operating the business’s website and similar

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technological aspects, and rather was involved at a sufficiently high level to be arranging meetings with potential investors. By this time, Ms Johnson also knew that Mr Foster was so acutely aware that his involvement in STC needed to remain concealed that he was passing himself off as “Mark Hughes”.

Mr Mackinnon gave unchallenged evidence that, had he known that Mr Foster was involved in STC, he would not have loaned any money to the scheme.

The Court found that there were numerous steps that Ms Johnson could, and should, have done to reveal Mr Foster’s involvement in STC from 14 March 2013. This included telling the private investigators who she knew were investigating whether Mr Foster was involved in STC, approaching the ACCC who she knew were acutely interested in Mr Foster’s activities, and responding directly to questions that Mr Murray of the Courier Mail had asked her about Mr Foster’s involvement in STC.

The Court concluded that it was more likely than not that, had Ms Johnson taken steps from 14 March 2013 to cause Mr Foster’s involvement in STC to be revealed, his involvement would have become known to Mr Mackinnon before he made his investment.

The Court is yet to determine whether each of the other Group Members have suffered damage as a result of Mr Foster’s and Ms Johnson’s conduct. This will take place at a later hearing.