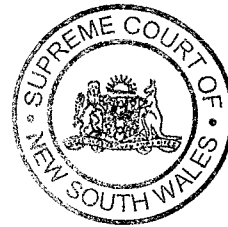


FILED

28 FEB 2019



Form 104 (version 5)
UCPR 51.10

SUMMONS SEEKING LEAVE TO APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2019/ 66325

TITLE OF PROCEEDINGS

Applicant Commonwealth of Australia
Respondent Clayton William Searle

PROCEEDINGS IN THE COURT BELOW

Title below Clayton William Searle v Commonwealth of Australia
Court below Supreme Court of New South Wales
Case number below 2016/45027
Date[s] of hearing 4 October and 16 November 2018
Material date 31 January 2019
Decision of Fagan J

FILING DETAILS

Filed for Commonwealth of Australia, Applicant
Legal representative Nicole Joy Wearne, Norton Rose Fulbright Australia
Legal representative reference 2836969
Contact name and telephone Lindsay Houghton (02) 9330 8304
Contact email lindsay.houghton@nortonrosefulbright.com

HEARING DETAILS

This summons seeking leave to appeal is listed for directions at [time, date and place to be inserted by the registry unless otherwise known].

8/4/2019
2.30pm

DETAILS OF APPLICATION FOR LEAVE TO APPEAL

- 1 This application for leave to appeal is brought under s 101(1)(a) and s 101(2)(r)(i) of the *Supreme Court Act 1907* (NSW).
- 2 The applicant has not filed a notice of intention to appeal.

ORDERS SOUGHT

- 1 Leave to appeal from the decision below be granted on the grounds set out in the draft Notice of Appeal attached and marked "A".
- 2 Appeal allowed.
- 3 Common questions 22 and 23 are answered as follows:

Question 22

Whether the Defendant made the Training Representation:

- a. in writing contained on the Defence Force webpage or webpages?

Answer: No.

- b. in writing contained in the draft Training Contract provided to the Plaintiff and the draft Group Member Contracts provided to the Group Members?

Answer: No.

Question 23

Whether by making the Contractual Representation, the Defendant engaged in conduct which was deceitful in that the Contractual Representation was false and untrue, the Defendant made it recklessly without caring whether it was true or false, and made it with the intention that the Plaintiff and the Group Members should act upon it?

Answer: No.

- 4 Dismiss the proceedings below.
- 5 The Respondent to pay the Applicant's costs of the appeal and of the application for leave to appeal.

SIGNATURE OF LEGAL REPRESENTATIVE

This summons seeking leave to appeal does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the applicant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record by her employed solicitor

Date of signature

28 February 2019

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons seeking leave to appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons seeking leave to appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons seeking leave to appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

A party opposing an application for leave to appeal must file and serve a response (see UCPR 51.13) within 28 days after the filing of this summons and the accompanying White Folder. If you do not file and serve a response, the summons may be disposed of in your absence and without further notice to you.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this summons seeking leave to appeal.

[on separate page]

FURTHER DETAILS ABOUT APPLICANT

Applicant

Name Commonwealth of Australia
Address c/- Norton Rose Fulbright Australia
Level 18, Grosvenor Place
225 George Street, Sydney NSW 2000

Legal representative for applicant

Name Nicole Joy Wearne
Practising certificate number P0005430
Firm Norton Rose Fulbright Australia
Contact solicitor Lindsay Houghton
Address Level 18, Grosvenor Place
225 George Street, Sydney NSW 2000
DX address DX 368 Sydney
Telephone (02) 9330 8304
Fax (02) 9330 8111
Email lindsay.houghton@nortonrosefulbright.com
Electronic service address As above

DETAILS ABOUT RESPONDENT

Respondent

Name Clayton William Searle
c/- Levitt Robinson
Level 6, 162 Goulburn St
East Sydney NSW 2010

"A"

Form 105 (version 7)
UCPR 51.16, 51.18, 51.20

DRAFT NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number

TITLE OF PROCEEDINGS

Appellant **Commonwealth of Australia**

Respondent **Clayton William Searle**

PROCEEDINGS IN THE COURT BELOW

Title below Clayton William Searle v Commonwealth of Australia
Court below Supreme Court of New South Wales
Case number below 2016/45027
Date[s] of hearing 4 October and 16 November 2018
Material date 31 January 2019
Decision of Fagan J

FILING DETAILS

Filed for **Commonwealth of Australia, Appellant**
Legal representative Nicole Joy Wearne, Norton Rose Fulbright Australia
Legal representative reference 2836969
Contact name and telephone Lindsay Houghton (02) 9330 8304
Contact email lindsay.houghton@nortonrosefulbright.com

HEARING DETAILS

This notice of appeal is listed for directions at [time, date and place to be inserted by the registry unless otherwise known].

TYPE OF APPEAL

Procedure – Fairness – Natural Justice – Bias

DETAILS OF APPEAL

- 1 This appeal is brought under s 101(2)(a) and s 101(2)(r)(i) of the *Supreme Court Act 1907* (NSW).
- 2 Leave to appeal was granted on
- 3 The appellant has not filed a notice of intention to appeal.
- 4 The appellant appeals from the decision below except in relation to orders 1 and 2.

APPEAL GROUNDS

- 1 The Trial Judge erred in holding that the Respondent's abandonment of the negligent misrepresentation and deceit claims did not constitute an abandonment in a representative capacity.
- 2 His Honour erred in deciding not to answer common questions 22 and 23.
- 3 His Honour erred in failing to dismiss the proceedings.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Common questions 22 and 23 are answered as follows:

Question 22

Whether the Defendant made the Training Representation:

- a. in writing contained on the Defence Force webpage or webpages?

Answer No.

- b. in writing contained in the draft Training Contract provided to the Plaintiff and the draft Group Member Contracts provided to the Group Members?

Answer: No.

Question 23

Whether by making the Contractual Representation, the Defendant engaged in conduct which was deceitful in that the Contractual Representation was false and untrue, the Defendant made it recklessly without caring whether it was true or false, and made it with the intention that the Plaintiff and the Group Members should act upon it?

Answer: No.

3 Dismiss the proceedings below.

4 The Respondent to pay the Appellant's costs of the appeal and the application for leave to appeal.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

Solicitor for the Appellant by her employed solicitor

2019

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.