



## Common Law Division Supreme Court New South Wales

Case Name: Cachia v DPG Services Pty Ltd

Medium Neutral Citation: [2019] NSWSC 754

Hearing Date(s): 14 June 2019

Date of Orders: 14 June 2019

Date of Decision: 14 June 2019

Jurisdiction: Common Law

Before: Garling J

Decision:

- (1) Pursuant to s 173 of the Civil Procedure Act, 2005 I approve the settlement, the terms of which are set out in a document dated 27 March 2019, signed by the identified members of the group and the solicitors for the parties and called "Terms of Settlement".
- (2) I order that the settlement moneys after deductions of disbursements and repayments required by law be divided equally between the identified group members.
- (3) I order the defendant to pay the plaintiff the sum of money set out in paragraph 1 of the Terms of Settlement dated 27 March 2019 together with the agreed sum of costs in settlement of the whole of the proceedings.
- (4) I note the agreement of the parties set out in paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Terms of Settlement.
- (5) I order that the judgment be entered forthwith.

Catchwords: CIVIL PROCEDURE — Representative proceedings — Settlement — Court approval

Legislation Cited: Australian Consumer Law  
Civil Procedure Act 2005  
Competition and Consumer Act 2010 (Cth)  
Crimes Act 1900

Cases Cited: Not Applicable

Texts Cited:	Not Applicable
Category:	Procedural and other rulings
Parties:	Joe Cachia (P) DPG Services Pty Ltd (D1)
Representation:	Counsel: J Catsanos (P) M Perry (D1)  Solicitors: Shine Lawyers (P) K&L Gates (D1)
File Number(s):	2018/68746
Publication Restriction:	Not Applicable

## JUDGMENT

- 1 On 18 November 2011, a fire deliberately lit by Roger Dean at the Quakers Hill Nursing Home caused the death of a number of patients who were being cared for at that nursing home. Mr Dean pleaded guilty to eleven counts of murder (contrary to s 18 of the *Crimes Act* 1900) and eight counts of recklessly causing grievous bodily harm (contrary to s 35(2) of the *Crimes Act*). He has been sentenced to imprisonment for life.

### The Proceedings

- 2 On 2 March 2018, proceedings were commenced in this Court by the plaintiff pursuant to Part 10 of the *Civil Procedure Act* 2005. The proceedings were brought in negligence, breach of contract and breach of the *Australian Consumer Law* against the defendant, DPG Services Pty Limited, which was the operator of the Quakers Hill Nursing Home and the employer of Mr Dean.
- 3 The group members of those proceedings were defined as being "*people who suffered mental harm, nervous shock, loss and damage caused by the death of a close family member as a result of the fire*".
- 4 The representative proceedings were judicially managed by this Court and fixed for hearing on 28 May 2019. Prior to that hearing, as is common in actions of this kind, the parties engaged in a mediation and an agreement was reached to resolve the whole of the proceedings.

### Proposed Settlement

- 5 Because these are representative proceedings, the Court is required to give its approval to any settlement. In April, an initial proposal was advanced that the Court could approve the proposed settlement without any further notification to potential group members. It was also submitted that the Court should approve the division of the settlement moneys amongst the known group members. The Court declined to approach the matter in that way and

required advertisements to be placed notifying of the proposed settlement in accordance with the usual procedure in cases of this kind.

- 6 Those advertisements produced two inquiries. One of those inquiries related to a person who clearly would be a group member. I am satisfied that that group member has been provided with a more than adequate opportunity to identify the components of their claim, to seek to participate if they wish in the settlement or else to object to it if they were concerned that the settlement of the proceedings was inappropriate. From the evidence placed before me, I am satisfied that all of those opportunities have been provided to that individual and that the failure of that individual to take up those opportunities ought be considered by the Court to be the consequence of a careful and thoughtful decision.
- 7 The second enquiry was from a person who was not, as it turned out, a group member.
- 8 The proposed settlement provides for a global sum to be paid to the group members and an agreed sum for party-and-party costs. The evidence recently provided suggests that in addition to the party-and-party costs, there will be a further sum of about 25% of that figure by way of solicitor and client costs, which will be charged equally to the identified group members.
- 9 As well, in the proposed distribution, each of the group members will be responsible (in differing amounts) for the payment of disbursements that may relate to their individual claim, or else sums that are required to be repaid by them to statutory authorities for various benefits which they have received.

### **Approval**

- 10 In considering the question of whether the Court should grant approval to the proposed settlement, the central issue is whether the Court has been persuaded that the settlement is in the interests of the representative group as a whole, having regard to the legal and factual issues raised within the proceedings. In considering this question, I have had regard to the affidavits

that have been put before the Court and also to the confidential advice of junior counsel with which, I am told, senior counsel concurs. It is unnecessary and inappropriate for me to recount publicly the contents of that advice because it is confidential.

- 11 Having read it, and having regard to all of the issues of law and fact raised in the proceedings, I am satisfied that the proposed settlement is one which is in the best interests of the representative group and that the Court's approval ought be granted.

### **Orders**

- 12 I make the following orders:

- (1) Pursuant to section 173 of the *Civil Procedure Act* 2005, I approve the settlement, the terms of which are set out in a document dated 27 March 2019, signed by the identified members of the group and the solicitors for the parties and called "Terms of Settlement".
- (2) I order that the settlement moneys after deductions of disbursements and repayments required by law be divided equally between the identified group members.
- (3) I order the defendant to pay the plaintiff the sum of money set out in paragraph 1 of the Terms of Settlement dated 27 March 2019 together with the agreed sum of costs in settlement of the whole of the proceedings.
- (4) I note the agreement of the parties set out in paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Terms of Settlement.
- (5) I order that the judgment be entered forthwith.

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