

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M83 of 2018

**ON APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF
AUSTRALIA**

BETWEEN:

**AUSTRALIAN SECURITIES &
INVESTMENTS COMMISSION**

Appellant

10 AND

PETER CLARKE

First Respondent



**AUSTRALIAN PROPERTY CUSTODIAN
HOLDINGS LIMITED ACN 095 474 436
(RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) (CONTROLLERS
APPOINTED)**

Second Respondent

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SUBMISSIONS OF THE APPELLANT

Part I: Publication

1. These submissions are in a form suitable for publication on the internet.

Part II: Issues arising

2. The same issues arise in this appeal as are set out in Part II of the submissions filed by the Appellant (ASIC) in proceeding M79 of 2018 (**Lewski Appeal**).

Part III: Section 78B of the *Judiciary Act 1903* (Cth)

3. ASIC considers that no notice need be given in compliance with this provision.

Part IV: Reasons for judgment of primary and intermediate court

- 30 4. The reasons and judgments of the primary judge and intermediate court are set out in Part IV of ASIC's submissions in the Lewski Appeal.

Part V: Facts

5. ASIC repeats the recitation of facts set out in Part V of its submissions in the Lewski Appeal.

Part VI: Argument

6. The First Respondent (**Mr Clarke**) was one of five defendants to ASIC's proceeding number 594/2012 in the Federal Court of Australia who instituted separate appeals to the Full Court from the orders of Murphy J in that proceeding. The appeals were heard and determined together, and the Full Court made orders in the appeals substantially in common form, rather than orders specific to each appellant, allowing the appeals, dismissing ASIC's claim by Originating Process and setting aside all of the orders and declarations of the trial judge.

10 7. ASIC does not wish to disturb the outcome in the Full Court insofar as it relates specifically to Mr Clarke. However, because of the form of the orders made by the Full Court, in order to complete the relief sought by ASIC in respect of the other four appeals, it is necessary for ASIC to appeal from the orders of the Federal Court in this proceeding. The orders sought in Part VII below have been framed so as to preserve the Full Court's disposition as it concerns Mr Clarke, whilst setting aside its orders insofar as they relate to the other appeals.

8. ASIC otherwise repeats the argument set out in Part VI of its submissions in the Lewski Appeal.

Part VII: Orders sought

9. ASIC seeks the following orders:

20 (a) The appeal is allowed.

(b) Paragraphs 3 and 4 of the orders of the Full Court of the Federal Court of Australia made on 1 November 2017 in proceeding VID795/2014 be set aside and in their place, the following orders be made:

"3. Paragraphs 40-47 of the declarations and paragraph 2.5 of the orders made by the trial judge in proceeding VID 594 of 2012 (Trial Proceeding) dated 2 December 2014 are set aside and in lieu thereof ASIC's claim in paragraphs 6-19 of its originating process dated 21 August 2012 in the Trial Proceeding in so far as they were made against the sixth defendant are dismissed.

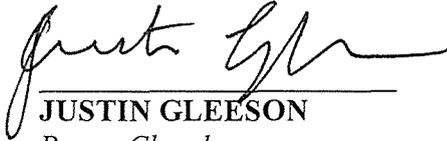
30 4. *ASIC pay the costs of the sixth defendant in the Trial Proceeding, including reserved costs."*

(c) There be no order as to costs of the appeal to the High Court.

Part VIII: Length of oral argument

10. The estimated time required for ASIC's oral argument in this proceeding is included in the estimate of time in ASIC's submissions in the Lewski Appeal.

Date: 6 July 2018



JUSTIN GLEESON

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