

AUSTRALIA / JUDGMENT

D'Cruz v Coutinho

[2025] NSWSC 150**COURT**

Supreme Court

DECIDED

06 March 2025

BEFORE

Hammerschlag CJ in Eq

CASE / FILE NUMBER

2023/00297771

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Supreme Court

New South Wales

Medium Neutral Citation: D'Cruz v Coutinho [2025] NSWSC 150**Hearing dates:** 24 February 2025**Date of orders:** 6 March 2025**Decision date:** 06 March 2025**Jurisdiction:** Equity**Before:** Hammerschlag CJ in Eq**Decision:** Judgment for the plaintiffs against each of the first, second, fourth and sixth defendants for \$854,010, together with pre-judgment interest.

Catchwords: CONSUMER LAW – Australian Consumer Law (ACL) s 18 – Claim for damages against defendants who made misrepresentations to the plaintiffs which induced them to invest in worthless property investment opportunities – Sixth defendant claims that he was acting as a mere conduit in the provision of information, was a mere introducer and is protected by disclaimers in his emails – HELD – Defendants engaged in conduct which was misleading or deceptive, or likely to mislead or deceive – First defendant was a person involved in the contraventions by the second and fourth defendants – Sixth defendant was not a mere conduit or introducer and did not establish the existence of any disclaimer – Because of the conduct of the defendants the plaintiffs suffered loss

Legislation Cited: Civil Procedure Act 2005 (NSW)
Competition and Consumer Act 2010 (Cth), Sch 2 – Australian Consumer Law

Cases Cited:	ACCC v Glaxo-SmithKline Consumer Healthcare Australia Pty Ltd [2019] FCA 676; (2019) 371 ALR 396 Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592; [2004] HCA 60 CH Real Estate Pty Ltd v Jainran Pty Ltd [2010] NSWCA 37; (2010) 14 BPR 27,361 [98410] Henville v Walker (2001) 206 CLR 459; [2001] HCA 52 I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd (2002) 210 CLR 109; [2002] HCA 41 Milner v Delita Pty Ltd (1985) 61 ALR 557 Yorke v Lucas (1985) 158 CLR 661; [1985] HCA 65
Category:	Principal judgment
Parties:	Beryl Clotilda D'Cruz (First Plaintiff) Stanislaus Gregory D'Cruz (Second Plaintiff) Jude Savio Pio Coutinho (First Defendant) Pinnacle Property Enterprises Pty Ltd t/as Avondale Property Group (Second Defendant) Great Southern Agricultural Holdings Pty Ltd (Third Defendant) QC Property Management Pty Ltd (Fourth Defendant) Nigel Christian Savio Sequeira (Sixth Defendant)
Representation:	
Counsel:	A Harding SC (Plaintiffs)
Solicitors:	Lionheart Lawyers (Plaintiffs) Sixth Defendant (Self-represented)
File Number(s):	2023/00297771
Publication restriction:	Nil

JUDGMENT

Introduction

The plaintiffs, Mrs Beryl D'Cruz and her husband, Mr Stanislaus D'Cruz are in their early and late 70s, respectively.

The second defendant company traded under the name Avondale Property Group (APG). APG, the third defendant, Great Southern Agricultural Holdings Pty Ltd (Great Southern) and the fourth defendant, QC Property Management Pty Ltd (QCPM) are companies associated with the first defendant, Mr Jude Savio Pio Coutinho (Coutinho – sometimes referred to by the parties as Jude), who is the sole director of the three. From 19 October 2021, Coutinho has been the sole shareholder in APG. He has, at all material times, been the sole shareholder in QCPM.

The sixth defendant, Mr Nigel Sequeira (Sequeira), is or was a mortgage broker.

He introduced the plaintiffs to, and spruiked, two dud property investment opportunities which were being promoted by Coutinho through APG and QCPM.

The first property, to which I shall refer to as The Meadows, is at 245 Mount Scanzi Road, Kangaroo Valley, New South Wales. The second, to which I shall refer to as Highlands Estate, is at 2319 Moss Vale Road, Barrengarry, New South Wales. Highlands Estate was sometimes referred to as Barrengarry.

The plaintiffs invested \$854,010 into these so-called opportunities and lost it all.

The plaintiffs say that they were induced by conduct of APG, QCPM, Coutinho and Sequeira, which was misleading or deceptive, or likely to mislead or deceive in contravention of section 18(1) of the Competition and Consumer Act 2010 (Cth), Sch 2 – Australian Consumer Law (ACL), to invest in The Meadows and Highlands Estate opportunities and suffered loss or damage because of that conduct. They allege that Coutinho was a person involved in the contraventions of APG and QCPM. They say that Sequeira, in his own right, engaged in conduct, which was misleading or deceptive, or likely to mislead or deceive and also was causative of their loss, but in any event, they say, he was a person involved in the contraventions by APG and QCPM. They claim damages from APG, QCPM, Coutinho and Sequeira.

As is mentioned later, the plaintiffs discontinued their claim against the fifth defendant Mr Ryan Martinez (Martinez). During the hearing they abandoned (correctly) their claim against Great Southern, which played no relevant role in the events which give rise to the claim. They also abandoned (correctly) an untenable claim based on total failure of consideration. There was no contract.

Relevant Statutory Enactments

References below to sections are, unless otherwise stated or the context indicates differently, to sections of the ACL.

ACL

Subsection 18(1) of the ACL (which is in Chapter 2) provides:

18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Subsection 236(1) provides, relevantly:

236 Actions for damages

- (1) If:
 - (a) a person (the claimant) suffers loss or damage because of the conduct of another person; and
 - (b) the conduct contravened a provision of Chapter 2 ...;

the claimant may recover the amount of the loss or damage by action against that other person, or against any person involved in the contravention.

Subsections 4(1) and (2) provide, relevantly:

4 Misleading representations with respect to future matters

(1) If:

- (a) a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act); and
- (b) the person does not have reasonable grounds for making the representation;

the representation is taken, for the purposes of this Schedule, to be misleading.

(2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation made with respect to a future matter by:

- (a) a party to the proceeding; or
- (b) any other person;

the party or other person is taken not to have had reasonable grounds for making the representation, unless evidence is adduced to the contrary.

Under section 2, a person involved in a contravention, relevantly, includes a person who:

...

- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention;

...

CPA

Subsections 61(1) and (2) of the Civil Procedure Act 2005 (NSW) (CPA) provide that:

- (1) The court may, by order, give such directions as it thinks fit (whether or not inconsistent with rules of court) for the speedy determination of the real issues between the parties to the proceedings.
- (2) In particular, the court may, by order, do any one or more of the following—
 - (a) it may direct any party to proceedings to take specified steps in relation to the proceedings,
 - (b) it may direct the parties to proceedings as to the time within which specified steps in the proceedings must be completed,
 - (c) it may give such other directions with respect to the conduct of proceedings as it considers appropriate.

Subsection 61(3)(c) of the CPA provides:

- (3) If a party to whom such a direction has been given fails to comply with the direction, the court may, by order, do any one or more of the following—

...

- (c) it may strike out any defence filed by a defendant, and give judgment accordingly,

...

Subsection 61(4) of the CPA provides:

- (4) Subsection (3) does not limit any other power the court may have to take action of the kind referred to in that subsection or to take any other action that the court is empowered to take in relation to a failure to comply with a direction given by the court.

Background

The plaintiffs first became acquainted with Sequeira in about 2018 when he acted as their mortgage broker in obtaining a loan for them to buy a property in Doncaster, Victoria. At that time Sequeira worked for the Commonwealth Bank of Australia. He also started a business called “My Loan Pays Me”. He borrowed \$100,000 from the plaintiffs towards his business, the source of which was the loan arranged by him for them on security of the Doncaster property. He is apparently a Credit Representative of an Australian Credit Licence holder.

In about August 2021, Mrs D’Cruz and Sequeira had a conversation to the following effect:

Sequeira: Hi Beryl. Given you are going to have some cash from the sale of the Doncaster East Property, are you looking to invest? I know a developer named Jude Coutinho who has development projects in Meadows Estate in Kangaroo Valley. His plan is to sub-divide the land. His project is expected to yield a significant financial return, which you can use to pay down your Chatswood mortgage. Jude is heavily loaded but he still needs investors to purchase the proposed sub-divided lots so that he can have the money to settle on the purchase. Settlement will be happening soon.

Mrs D’Cruz: I am interested. I’d like to know more.

Sequeira: I have purchased a lot in Meadows Estate myself and so has Ashish and four others. I can send you some material and arrange a call with Jude. I am assisting Jude with arranging the finance for the project. I am also assisting Jude with arranging the investors to ensure he has the money to settle on the purchase. I know the ins and outs of the development projects.

Mrs D’Cruz: Ok.

Ashish is a friend of the plaintiffs who is known to Sequeira.

Mrs D’Cruz discussed what Sequeira had told her with her husband and she wanted to hear more about the proposal.

On 26 August 2021, Sequeira sent the following email to Mr and Mrs D'Cruz:

Hi Beryl,

Please see attached the Presentation, Information Memorandum, and the Expression of Interest form for The Meadows Estate Project (Kangaroo Valley).

I have purchased LOT 1 and Ashish is at LOT 6.

They have 9, 1Acre Lots and just 4, 2Acre LOTs available. 1Acre LOTs is for \$150k and the 2Acre LOTs is \$250k. [sic]

DA Approval will take place in 18-24mths.

There is already another Small [sic] development with 16, 1 to 1.5 Acre LOTs through another developer just next to the Meadows that has got their DA Approval and all LOTs there have been already Sold, the cheapest being for \$940k to \$1.1M.

Feel free to contact me if you're interested to discuss this project in detail.

Regards,

Nigel Sequeira

Managing Director – My Loan Pays Me (Emphasis added.)

The Information Memorandum in fact describes itself as an Investment Memorandum. It states that the development known as The Meadows is located a 3 minute drive to the village centre in Kangaroo Valley. It incorporates the following:

The Investment Memorandum also incorporates the following table:

It also incorporates the following:

It includes:

It includes an Expression of Interest Form which provides bank account details for the investor to make their "investment contributions".

At this point, I interpolate that Sequeira's statement in his email that he had "purchased LOT 1" was not true.

In fact, Sequeira and Coutinho had agreed that in lieu of commission, Sequeira would be entitled to a call option to buy Lot 1 in The Meadows. In argument, Sequeira maintained that he had never actually received any benefit. He did not explain how he came to tell the plaintiffs that he had bought Lot 1. No documents for the purchase had been (or were ever) executed.

In this context, there are in evidence, unsigned documents providing for Sequeira's company (ILIM Corp) to have a call option on Lot 1 in The Meadows from Great Southern (as seller), for \$1 in consideration for his company, the buyer, advancing the investment sum of \$150,000 at an interest rate of 20%. What these documents reveal is that the proposed scheme was that investors

(or buyers) would pay an upfront amount to secure an opportunity to buy a particular Lot at a price (in the case of Lot 1 for \$1 million). The balance of the purchase price of \$1 million, in the case of Lot 1, being \$849,999 (\$850,000 less the \$1 option fee), would not be paid in cash but would be paid by the buyer, by way of something called “trade dollars”, which would apparently be made available by an associate (perhaps Martinez) of APG, to the buyer. By all accounts, “trade dollars” are some form of barter transaction currency. It is not necessary for present purposes to delve into this opaque area because, as will appear later, the seller (or APG or QCPM) was not ever in a position to deliver the land anyway. The so-called secured opportunity was illusory.

On 26 August 2021, Sequeira emailed the plaintiffs about an “exciting” project called Avani, in Woy Woy on the Central Coast, for which he was doing the development finance for APG. The plaintiffs were initially going to invest in Avani, and made a payment of \$20,000 which, when they did not proceed, was allocated to The Meadows and Highlands Estate investments.

On 27 August 2021, there was a meeting on the Zoom internet platform, which was attended by the plaintiffs between Coutinho, Martinez and Sequeira. A conversation to the following effect took place:

Sequeira: Hi Beryl and Stan. This is Jude and his business partner, Ryan. Jude is leading various development projects that we think you might be interested in so I’ll let him tell you about it.

Coutinho: I am the director of Avondale Property Group (APG) and have a few pieces of land that I am about to settle on but I need investors to purchase the lots beforehand so I can settle. There is land in the Meadows area in Kangaroo Valley and also in Barrengarry. I am offering 1 acre lots for sale for only \$150,000 each but what you are essentially getting is your own piece of land that will be worth about \$1 million after the sub-division goes through. Anything above the \$150,000 will be paid under the contracts through what we call ‘trade dollars’ which Ryan’s company will deal with.

Martinez: But you won’t have to pay anything for the trade dollars, they just make up the purchase price. You’ll be issued trade dollars to show value in the land but they don’t cost you anything. All you pay is the \$150,000. We will give you an explanation about to how it all works later. [sic]

Sequeira: There are also 2 acre lots for sale at Meadows and Barrengarry, and 3 acre lots at Barrengarry.

Coutinho: We will be selling the 2 acre lots for \$250,000. We are not selling the 3 acre lots at present.

Martinez: The process is similar as that of buying the 1-acre blocks. That is, you will pay \$250,000 and anything above that will be paid under the contracts through trade dollars.

Coutinho: Yes, and these blocks of land will be worth about \$2 million after subdivision goes through.

Sequeira: Yes, and settlement will be occurring soon. We just need enough investor funds to purchase the land and then sub-divide. There are other developers who have been doing this recently who are sub-dividing and selling 1 acre blocks for about \$1 million which will be similar to these projects.

Mrs D'Cruz: That sounds good. How soon will you be settling?

Coutinho: I expect to settle on the purchase of the Meadows land in October 2021 and the Barrengarry land in November 2021 and then sub-division will happen after that. Obviously, if Council doesn't permit sub-division, you will get your money back with interest. I have already been talking to Council about getting the sub-division approved.

Mrs D'Cruz (who was cross examined briefly by Sequeira) says, and I believe her, that after the Zoom meeting they were left with the impression that if they contributed money upfront, they would obtain a lot in a subdivision which would subsequently be worth \$1 million. She says she trusted Sequeira's judgment as he was recommending the investment and was investing in it himself. She felt comfortable with proceeding and moving forward. After the Zoom meeting and a discussion with her husband, Mrs D'Cruz emailed Sequeira, relevantly:

Subject: Re:outcome

Dear Nigel

We thank you and your team for explaining the projects in detail to us.

We feel your team is very knowledgeable and we wish you all success in your projects.

After careful deliberations we have finally decided on the Kangaroo Valley project - Meadow project Lot# 13, 1 acre [sic]

Barranjoy Project Lot # 6 or Lot #5, 1 acre (in super, for our daughter). Please email us the proposed plan and layout.

...

Thank you for your time and efforts.

Kind Regards

Beryl

Consistently with their belief and trust in Sequeira, on 27 August 2021, Mr and Mrs D'Cruz signed the expression of interest form for two lots in The Meadows and emailed it to Sequeira.

On 29 August 2021, Sequeira emailed the plaintiffs the promotional material for Highlands Estate. It is in the same format, mutatis mutandis, as the material for The Meadows. It records that APG is offering a limited number of investors an exclusive opportunity to secure one of 19 parcels of land for \$150,000 to \$300,000. It, like The Meadows, is described as being a 3 minute drive from the Kangaroo Valley village centre. It incorporates the following:

The Investment Memorandum also incorporates the following table:

It also incorporates the following:

It includes:

The Highlands Estate Investment Memorandum contains a table in the same format of the one for The Meadows and an equivalent Expression of Interest form.

I will refer to The Meadows Investment Memorandum and the Highlands Estate Investment Memorandum collectively as the Investment Memoranda.

As I have said earlier, there are draft documents between Sequeira's company, ILIM Corp, and Great Southern for the purchase of a Lot in The Meadows.

On 30 August 2021, Sequeira emailed the plaintiffs a copy of that proposed contract. Mrs D'Cruz took comfort in the fact that Sequeira was personally investing. She did not completely understand how the trade dollars arrangement would work (but then, neither do I) but it looked to her like a great deal, which looked legitimate. She had a lot of trust in and respect for Sequeira.

On 31 August 2021, the plaintiffs made the first of sixteen payments to APG directly or to solicitors nominated by APG. The following schedule sets out the payments made. Payments totalling \$142,000 were mistakenly paid out of their superfund and were refunded, then paid again. All in all, the plaintiffs paid out the not insignificant sum of \$854,010.

On 12 September 2021, Martinez, on an APG letterhead, sent the plaintiffs an updated the The Meadows Investment Memorandum. It is not different in any material respect from the original memorandum, though some Lot numbers were changed. The following day Martinez sent an updated version of the Highlands Estate Investment Memorandum, also under cover of an email on APG letterhead.

On 13 September 2021, Martinez sent to the plaintiffs, once again, on APG letterhead, by email, various documents including a draft contract for sale of land (the Lot number is not specified, but the price is \$1,250,000 with a deposit of \$125,000).

The draft put and call option agreement resembles that earlier referred to between Great Southern and ILIM Corp, making provision for the use of "trade dollars" to pay the purchase price.

For present purposes, it is not necessary to detail the dealings between the plaintiffs and APG, Coutinho and Martinez between 23 September 2021 and 19 October 2021, suffice it to say that proposed contractual documents were provided to the plaintiffs via the Dropbox internet platform. Coutinho told Mrs D'Cruz that he had arranged a lawyer, Mr John Stonham (Stonham) of Stonham Legal Solutions, who could advise them on the contracts, and he (Coutinho) would cover their legal costs.

On or about 19 October 2021, Coutinho said words to the following effect to Mrs D'Cruz:

Meadows and Barrengarry will be settling after a week or so. Can you pay the balance of the money towards the purchase price for your lots asap please? Most of it needs to go to my solicitors' trust account because on settlement, all monies will be paid from the solicitor's trust account. I'll email you the bank account details.

At about the same time, the plaintiffs received an email from Coutinho requesting the transfer of \$664,000. He followed this up with a text message making the same request.

On 27 October 2021, Coutinho, on APG letterhead, sent the plaintiffs the following letter:

27th October 2021

Dear Stanislaus and Beryl,

We confirm that we have received the following payments from you:

Payments of \$10, \$100,000 & \$390,000 bringing a total of \$490,010 received in our Solicitor's Trust Account last week.

Payments of \$100,000 (receipt number 90a3421e-130e-4351-a697-0b654cc0a82a) & \$74,000 (receipt number 8d417c93-d0a7-410a-907c-e8f6adc13237) received in our account.

A total of \$664,010 was received in addition to the \$86,000 previously received.

Of the total \$750,000 received \$400,000 has been credited towards Townhouse 34 at Woy Woy and \$350,000 to Lots 10, 13 and 20 at "The Meadows" Kangaroo Valley.

There is also a \$10 credit to be applied.

We look forward to working with you on the above projects and on future endeavors. [sic]

Your sincerely,

Jude Coutinho

Shortly thereafter, a conversation between Mrs D'Cruz and Coutinho to the following effect took place:

Mrs D'Cruz: You have told me that Meadows and Highlands Estate are going to settle before Avani- Woy Woy. At this stage, please use all the money that Stanley and I transferred to you and KPA Solicitors for the settlement of Meadows and Highlands. Stanley and I are trying to come up with the money for the balance of the purchase price for Avani – Woy Woy.

Coutinho: Sure, that's fine.

Mrs D'Cruz says that in late 2021 she had a further conversation with Coutinho to the following effect:

Mrs D'Cruz: Stanley and I are not going to proceed with Avani so you can just apply the money we paid for Avani towards our purchase of Meadows and Highlands Estate.

Coutinho: Ok.

In late October 2021, things started to go pear shaped for the plaintiffs.

On 21 October 2021, Mrs D'Cruz called the solicitors acting for APG. The principal solicitor said to her "don't talk to me, deal with Jude".

Later she contacted Stonham, he told her that he did not know what "trade dollars" meant and would get back to her with further information.

In February 2022, Mrs D'Cruz sent text messages to Coutinho asking for an update on progress. There was an exchange of text messages.

On more than one occasion, Mrs D'Cruz asked for an update meeting, but no meeting took place until 28 April 2022, at which time Mrs D'Cruz says she informed Coutinho:

The project is too delayed. We thought settlement would have occurred ages ago for Meadows and Barrengarry. If you do not settle on both properties by 31 October 2022, we would like to withdraw from the projects and receive our investment back with interest.

She says that Coutinho said words to the following effect:

Ok. Settlement of Meadows and Barrengarry is going ahead shortly, it is just taking some time. Meadows is going to settle first and is really closing to settling. Settlement of Barrengarry before October 2022 will not be a problem. [sic]

Finally, in November 2022, Coutinho told her on the telephone that:

The Meadows and Barrengarry projects are not going ahead anymore, neither is the Avani project.

In about January 2023, she said she had a conversation with Sequeira to the following effect:

Mrs D'Cruz: Jude has not repaid us. How do we get our money back?

Sequeira: Ok. I suggest that you don't pressure Jude for payment as Jude may purposely make his company bankrupt. Maybe you should seek recovery from Jude via legal means.

Mrs D'Cruz: You also invested. Don't you want to get your money back?

Sequeira: I can't, as I am still acting as Jude's mortgage broker. I am assisting him with obtaining finance for another butcher shop.

Needless to say, the plaintiffs received none of their money back and have established that APG's solicitors hold none of it in their trust account. Where the money went is unknown. It is open to the Court to infer, so far as is necessary, and I do so infer, that it was not used towards acquiring The Meadows or Highlands Estate.

At all material times, prior to 28 October 2022, the registered owners of The Meadows appear to have been Vincent Winch and Louise Elizabeth Hird. There is no discernible connection between them and any of the defendants

On 11 August 2022, Great Southern lodged a caveat claiming an interest in The Meadows by virtue of a Contract for Sale of Land, dated 4 August 2021. No such contract is in evidence. However, the registered owners procured the issue of a lapsing notice to Great Southern, and the caveat lapsed on or about 13 September 2022. The land was transferred to Jordan Alexander Mawson and Jasmine Emma Mawson as joint tenants on 28 October 2022. Thus, on the evidence, the highest interest in The Meadows ever held by Coutinho and entities associated with him is an alleged uncompleted contract to purchase it.

At all material times, Highlands Estate has been owned by an entity called Wright Family Superannuation Pty Ltd. There is no discernible connection between that company and any of the defendants. There is no evidence of any dealings whereby APG and QCPM ever acquired any interest in Highlands Estate.

Course of the Proceedings

The following is a non-exhaustive description of the course of the proceedings. It is limited to presently relevant aspects.

The proceedings were commenced by Statement of Claim on 18 September 2023.

The first to fifth defendants filed appearances on 21 September 2023. An appearance on behalf of Sequeira was filed on 17 October 2023. On 11 December 2023, the first to fifth defendants filed a defence as did Sequeira. Sequeira's defence admitted parts of the Statement of Claim and denied other parts "on the basis that the pleadings were not properly pleaded" and the "involvement of the sixth defendant is not properly pleaded". Sequeira did not make any positive averments or otherwise traverse the substance of the claim.

The matter came before the Registrar in Equity on 13 December 2023, who ordered the defendants to serve their evidence in chief by 26 March 2024.

On 16 January 2024, the solicitor for the first to fifth defendants filed a Notice of Intention of Ceasing to Act and on 29 January 2024 filed a Notice of Ceasing to Act. Since then, there has been no solicitor on the record for those defendants.

The matter came before the Registrar again on 14 April 2024. The first to fifth defendants did not appear. The Registrar made orders extending the time for the defendants to serve their evidence to 13 June 2024 and for the plaintiffs to serve reply evidence by 25 July 2024. The matter was listed for directions on 31 July 2024.

The defendants did not serve any evidence.

On 30 July 2024, the Registrar adjourned the matter to 4 September 2024.

On 3 September 2024, the Registrar made orders for the defaulting parties to provide affidavits explaining their delay and adjourned the matter to 11 September 2024.

The defendants did not serve any affidavits.

On 11 September 2024, the solicitor for Sequeira filed a Notice of Intention of Ceasing to Act, and on 19 September 2024 filed a Notice of Ceasing to Act. Since then, there had been no solicitor on the record for Sequeira.

On 26 September 2024, the plaintiffs filed a Notice of Motion seeking orders that the defendants' defences be struck out and for judgment, or that the matter be referred to a judge for damages to be assessed, or, alternatively, that the matter be listed for final hearing.

The matter was before the Court for directions on various subsequent occasions.

On 5 November 2024, the Registrar listed the matter (including the plaintiffs' motion) for hearing on 24 and 25 February 2025 and made the Usual Order for Hearing under Practice Note SC EQ1, which contains orders for the preparation of a court book and for the filing and serving of outlines of submissions, chronologies, objections to evidence and lists of authorities.

On 2 December 2024, the plaintiffs discontinued against Martinez.

The plaintiffs complied with the Usual Order for Hearing. None of the defendants still being sued did.

On 21 February 2025, my Chambers received, by email, a request by Sequeira for leave to appear remotely (because he had carer responsibilities for his wife), together with an affidavit sworn by him on 21 February 2025. He was informed by return email that he could make the application at the commencement of the hearing. He did so and I granted him leave to appear remotely, which he did.

APG, QCPM and Coutinho were called outside of Court but did not appear.

Sequeira is the only defendant who appeared to defend. Because of his appearance, the Court did not strike out his defence, notwithstanding his default in compliance with orders and directions. He represented himself. He is articulate and to my observation (from his oral submissions) commercially astute. He cross-examined Mrs D'Cruz briefly, suggesting to her that he never gave the plaintiffs financial advice, which she disputed. Otherwise, he did not challenge her evidence.

APG, QCPM and Coutinho

Given their failure to comply with orders and directions of the Court and their failure to appear at the hearing, it is appropriate that their defences be struck out pursuant to subsection 61(3) of the CPA (which I so order), and that the Court proceed to trial in their absence.

The plaintiffs' claim can be distilled into the following:

Coutinho, APG and QCPM led them to believe that:

they, and/or companies associated with Coutinho, APG or QCPM had the right to acquire, and then develop and exploit The Meadows and Highlands Estate, and would complete the purchase of those properties in about October or November 2021;

if the plaintiffs paid the amounts specified in the Investment Memoranda they would get, or have the right to get, without paying any more, a one or two acre Lot in The Meadows or Highlands Estate, and the value of a one acre Lot would be more than \$1 million and a two acre Lot would be worth around \$2 million; and

the money which the plaintiffs paid over would be used to complete the purchase of The Meadows and Highlands Estate and settlement of those purchases were imminent.

what they were led to believe was misleading or deceptive, because:

Coutinho, APG and QCPM did not have the right to acquire, and then develop and exploit The Meadows or Highlands Estate, and the purchase of those properties was never going to, and did not, complete;

despite the plaintiffs paying over the money, they did not get, or have the right to get, Lots in The Meadows or Highlands Estate, at all, let alone without having to pay any more money, and the Lots concerned would not have had the values attributed to them; and

the money paid over was not used to complete the purchase of The Meadows and Highlands Estate and the settlement of those purchases was not imminent. (Indeed, it never happened.)

Coutinho was a person involved in the contraventions; and

because of what they were led to believe, they paid their money over to APG, lost it, and thereby suffered loss and damage.

Reference to the factual narrative set out earlier in this judgment reveals that the plaintiffs' case has well been made out.

The conduct of the defendants was in the course of raising money for a commercial enterprise and was in trade or commerce.

I find not only that the representations in the Investment Memoranda were made by APG and QCPM, but that they were made by Coutinho himself. This conclusion flows from the nature of the participants, the character of the transactions which those memoranda intended to induce and the contents of the memoranda themselves: *Butcher v Lachlan Elder Realty Pty Ltd* (2004) 218 CLR 592; [2004] HCA 60 at [40]-[46] ("*Butcher v Lachlan Elder Realty*"). At all material times, Coutinho was the sole director of APG and QCPM; the sole shareholder in QCPM; and from 19 October 2021 he was the sole shareholder in APG. Sequeira told the plaintiffs that Coutinho needed investors to purchase Lots and he was assisting him in arranging finance and investors. Coutinho's statements (in the context also of what Sequeira said and Coutinho did not disavow) at the Zoom meeting on 27 August 2021 amount to an adoption of the proposals being pushed by both Investment Memoranda.

The plaintiffs were not young people, they had sold a property in Doncaster and had some money to spare. The Investment Memoranda held out that there was a valuable investment opportunity on offer. Information about the investment was in Coutinho's and Sequeira's knowledge and none of it in the plaintiffs'. In this regard it is apt to note that in Sequeira's 26 August 2021 email to Mrs D'Cruz he said "Feel free to contact me if you're interested to discuss this project in detail."

As to the making of the representations asserted by the plaintiffs, one need barely go further than to refer to the statements in the Investment Memoranda that:

Once your investment deposit and EOI form have been received the parcel of land will be secured and your introducer/referrer will be notified.

At this point you are now secured and the balance of your investment is to be paid within 14 days by which time a detailed conceptual engineering and town planner masterplan will be provided to illustrate the entire project and more specifically the one acre parcels of land.

Added to this, is the statement in The Meadows Investment Memorandum:

From a \$150,000 investment in August 2021, 13 investors have the opportunity to secure a parcel of land in an exclusive subdivision in which the value of the completed and developed land lots will be in excess of \$1 million.

and in the Highlands Estate Investment Memorandum:

For an investment from \$150,000 in August 2021, 19 investors have the opportunity to secure a parcel of land in an exclusive subdivision for a fraction of the completed value of \$1.25 to \$2.5 million each. In addition investors will also receive 10% p.a. payable six monthly during the term of the project.

These statements convey that for their money, the plaintiffs would secure the right to obtain lots in the developments, and that their money would be used to acquire the land and develop it.

As to the imminence of settlement, at the Zoom meeting, Sequeira said settlement "will be occurring soon" and then Coutinho said "I expect to settle on the purchase of The Meadows in October 2021 and the Barrengarry land [meaning Highlands Estate] in November 2021". On 19 October 2021, Coutinho told them that settlement was going to be "after a week or so" and he asked them to pay the balance of their investment contribution.

I find that the statements made by Coutinho at the Zoom meeting on 27 August 2021 were in his own right and also on behalf of APG and QCPM. The statements he made were in the first person and not qualified by him as being made on behalf of APG and QCPM, and were to the same effect as those made in the Investment Memoranda and complained about.

As to falsity, the plaintiffs were never secured, no company associated with Coutinho had any right to acquire or develop, and no such company ever did. Settlement was not imminent. The properties were never, in the hands of the plaintiffs, going to be worth \$1 million or \$2 million.

The statements that the plaintiffs would get the right to acquire Lots in The Meadows or Highlands Estate, that the money paid over would be used to purchase those properties, and that settlement was imminent, were statements as to future matters, which by the operation of s 4 are misleading because Coutinho, APG and QCPM had no reasonable basis for making them and led no evidence to the contrary.

As to loss and damage, the plaintiffs undoubtedly paid over their money because of what they were led to believe, starting with what was said in The Meadows Investment Memorandum, and continued by Coutinho, APG and QCPM through to the time the plaintiffs made their last payment.

The initial representations made by way of The Meadows Investment Memorandum were reinforced by:

Coutinho at the Zoom meeting on 27 August 2021;

the Highlands Estate Investment Memorandum;

the provision of the updated Investment Memoranda on 12 and 13 September 2021;

the provision of draft contractual documents; and

various requests by Coutinho for money

and had a continuing individual and collective impact on the plaintiffs.

I find that Coutinho was a person involved in the contraventions. It is inconceivable that he did not know that his companies had not secured any right to acquire or develop The Meadows or Highlands Estate, and that settlement was not imminent. I find that he had knowledge of the representations and of their falsity: see *Yorke v Lucas* (1985) 158 CLR 661 at 677; [1985] HCA 65 (“*Yorke v Lucas*”). I find that he was directly knowingly concerned in, or a party to, the contravention.

Sequeira

Sequeira sought to read his affidavit.

This was opposed by the plaintiffs because it was late and the plaintiffs would have been prejudiced if they had to deal with it. I rejected the affidavit. Sequeira had more than ample opportunity to serve his evidence. I informed Sequeira that I would treat it as submission.

The tenor of the affidavit is that:

he met Coutinho in mid-2021, who informed him about properties he was selling in the Kangaroo Valley area and was looking for investors or buyers for Lots he was selling, and Coutinho requested Sequeira to refer potential investors and buyers to him;

his role in this matter was strictly limited to introducing the plaintiffs to Coutinho and he had no further involvement in discussions, arrangements or transactions between them, or in financial arrangements or money transferred between them;

he was not involved in drafting, witnessing or approving any financial agreements or documentation and at no time received any funds, commissions or financial benefit from the plaintiffs or Coutinho in relation to the lots;

he did not provide any financial advice to the plaintiffs and any information he relayed to them regarding the Lots were provided to him directly by Coutinho. He did not verify, alter or supplement the information, he merely passed it on;

there are no documents that suggest that he gave any financial advice or made any representations about the financial or investment potential of the properties; and

he was not present during any property inspections by the plaintiffs, had no role in advising them on the due diligence process or any valuations of the properties and the plaintiffs' decision to proceed was made independently of his involvement.

Sequeira made oral submissions that:

he was a mere conduit for Coutinho and his companies, and was a mere introducer;

he merely passed information which came from Coutinho and he never verified any of it;

he told Mrs D'Cruz on the telephone that they needed to do their own due diligence;

he had no involvement in any inspections of the properties;

the plaintiffs' decision to proceed was made independently of his involvement;

he never gave, and cannot give, financial advice to the plaintiffs, and never gave them any financial planning document; and

all his correspondence to the plaintiffs included the following disclaimer (which he apparently read onto the transcript):

this email and its attachments are not intended to constitute any form of financial, taxation, legal, other professional advice or recommendation and should not be relied upon as such. We recommend you that you seek your own independent legal or financial advice before proceeding with any decision.

I reject Sequeira's submissions that he was a mere conduit for Coutinho and his companies, and was a mere introducer. He associated himself with and affirmatively accepted the truth of what was said in the Investment Memoranda and made statements in his own right to the same effect, see *Yorke v Lucas* at 616; *Butcher v Lachlan Elder Realty* at [115]-[124]; see also *CH Real Estate Pty Ltd v Jainran Pty Ltd* [2010] NSWCA 37; (2010) 14 BPR 27,361 [98410].

In the initial conversation with Mrs D'Cruz, he told her that he had purchased a Lot in The Meadows and so had others, and he was assisting Coutinho with arranging finance and investors to ensure he had the money to settle on the purchase. He said he knew the ins and outs of the development projects. I again refer to the statement in his 26 April 2021 email "Feel free to contact me if you're interested to discuss this project in detail". The statement that he had purchased a Lot himself was obviously intended to have persuasive effect on them.

His 26 August 2021 email to the plaintiffs, enclosing The Meadows Investment Memorandum referred to his purchase and gave additional information including as to when DA Approval would be given. The email made no mention of him merely passing on information and contained no disclaimer of the kind he said all his correspondence included.

At the Zoom meeting, on 27 August 2021, unprompted, he said settlement would be occurring soon and referred to "we".

The plaintiffs' email to him on the same day referred to "you and your team" and reflects, no doubt reasonably, a clear perception on the part of Mrs D'Cruz that she was being told things by Sequeira in his own right.

Sequeira's email to the plaintiffs on 29 August 2021 including the Highlands Estate Investment Memorandum contains no disclosure of the type he asserts all his correspondence included.

He forwarded his own proposed contract to them, also without any disclaimer of the kind he asserts all of his correspondence included.

I reject his submission that he told Mrs D'Cruz on the telephone that they needed to do their own due diligence. It was not put to her and there is no material in evidence consistent with it.

His submission that he had no involvement in any inspections of the properties is not to any point in the case.

I reject his submission that the plaintiffs' decision to proceed was made independently of his involvement. To the contrary, I find that his conduct materially contributed to inducing the plaintiffs to invest. He introduced them to the projects, told them that he himself was an investor, passed on the Meadows Investment Memorandum, spoke in his own right at the Zoom meeting and sent them his own proposed contract. I find that the plaintiffs trusted him and relied on what he said: see *Henville v Walker* (2001) 206 CLR 459; [2001] HCA 52 and *I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd* (2002) 210 CLR 109; [2002] HCA 41.

Whatever he told Mrs D'Cruz was with the plain implied intent that it would be passed on to Mr D'Cruz and relied on by both: *Milner v Delita Pty Ltd* (1985) 61 ALR 557 at 574.

There is no evidence to suggest that he gave them financial planning advice, but this too is not to any point in the case.

As I have said, there is no correspondence in evidence (and I was not taken to any by him) which includes any relevant disclaimer.

On his own say so, he had no reasonable basis for saying that settlement would be occurring soon because he made no enquiries himself.

Although Sequeira placed no reliance on it, it is apt to draw attention to the fact that the Investment Memoranda contained a disclaimer. There was misleading conduct beyond the Investment Memoranda in any event. Moreover, the plaintiffs were not challenged on Mrs D'Cruz's evidence on reliance. There is no evidence that the plaintiffs were aware of the disclaimers. There is no evidence that the disclaimers erased the proscribed effect of the contravention: *ACCC v Glaxo-SmithKline Consumer Healthcare Australia Pty Ltd* [2019] FCA 676; (2019) 371 ALR 396. The presence in the Investment Memoranda of disclaimers did not affect the causal relationship between the conduct complained of and the damage suffered: see *Butcher v Lachlan Elder Realty* at [37]-[40].

Conclusion

I make the following orders:

the defences of the first, second and fourth defendants are struck out; and

judgment for the plaintiffs against each of the first, second, fourth and sixth defendants for \$854,010, together with pre-judgment interest, pursuant to section 100 of the CPA, read with Practice Note SC Gen 16, on the amounts paid over by the plaintiffs from the date of payment of each amount to the date of judgment, except for the amount of \$20,000 paid for Adani upon which interest is to be calculated from the date upon which that amount was allocated to The Meadows or Highlands Estate.

The plaintiffs are to bring in Short Minutes of Order reflecting this outcome.

I provisionally order that the defendants are to pay the plaintiffs' costs of the proceedings. This order will solidify seven days after the delivery of this judgment, unless any party notifies the other parties and my Associate in writing that some other order is sought, specifies it and provides brief grounds, in which event, the order will not take effect and I will make directions for the determination of costs.

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