

AUSTRALIA / JUDGMENT

Sweeten v Maher

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Industrial Court

New South Wales

Medium Neutral Citation:

Sweeten v Maher [2026] NSWIC 56

Hearing dates:

29 September 2026

Date of orders:

29 September 2026

Decision date:

29 September 2026

Before:

Taylor J, President

Decision:

- (1) The proceeding is dismissed pursuant to r 13.4(1) of the Uniform Civil Procedure Rules 2005 (NSW).
- (2) The applicants pay the respondent's costs.

Catchwords:

CIVIL PROCEDURE — Summary disposal — Dismissal of proceedings — Claims the subject of previously settled proceedings — Claims released by deed of settlement — Proceeding dismissed

Legislation Cited:

Industrial Relations Act 1996 (NSW), s 106

Uniform Civil Procedure Rules 2005 (NSW), r 13.4

Cases Cited:

Agar v Hyde (2000) 201 CLR 552; [2000] HCA 41

Batistatos v Roads and Traffic Authority of New South Wales [2006] HCA 27; (2006) 226 CLR 256

D'Orta-Ekenaike v Victoria Legal Aid [2005] HCA 12; (2005) 223 CLR 1

General Steel Industrial Inc v Commissioner for Railways [1964] HCA 69; (1964) 112 CLR 125

Haggerty v Sweeten [2023] NSWSC 850

Johnson v Gore Wood & Co [2000] UKHL 65; [2002] 2 AC 1

Kermani v Westpac Banking Corporation [2012] VSCA 42; (2012) 36 VR 130

Moore v Inglis (1976) 9 ALR 509; 50 ALJR 589

Paul Ernest Simmons v NSW Trustee and Guardian [2012] NSWSC 455

Rippon v Chilcotin Pty Ltd [2001] NSWCA 142; (2001) 53 NSWLR 198

Shaw v State of New South Wales [2012] NSWCA 102; (2012) 219 IR 87

Spencer v Commonwealth (2010) 241 CLR 118; [2010] HCA 28

Tomlinson v Ramsay Food Processing Pty Ltd [2015] HCA 28; (2015) 256 CLR 507

UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77

Walton v Gardiner [1993] HCA 77; (1993) 177 CLR 378

Category:

Principal judgment

Parties:

Benjamin Sweeten (First applicant)

Varvara Sellies (Second applicant)

Jennifer Maher in her capacity as the administrator of the Estate of the late Christopher Hylton Brown (Respondent)

Representation:

Counsel:

D Mahendra (Applicants)

T Maybury (Respondent)

Solicitors:

Taylor & Scott Lawyers (Applicants)

Velocity Legal (Respondent)

File Number(s):

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Nil

Ex-Tempore JUDGMENT (REVISED FROM TRANSCRIPT)

Introduction

Christopher Hylton Brown, a retired stockbroker, passed away on 19 January 2022. His death gave rise to a sizable estate of around \$12 million.

His death also gave rise to disputes between his extended family which have included claims, cross-claims, defences, cross-defences and applications of various kinds in, at least, two superior courts of record and two inferior courts.

In the present proceeding, Benjamin Sweeten (Mr Brown's nephew) and Varvara Sellies (Mr Sweeten's partner) (together, the applicants) seek to invoke the jurisdiction of a third superior court of record, this Court, under s 106 of the Industrial Relations Act 1996 (NSW) to declare unfair a contract (within the meaning of that section) they claim was entered into with Mr Brown prior to his death for the performance of renovation work in respect of a townhouse in which Mr Brown had resided, in consideration for a rent-free lease for three years.

By the notice of motion presently before the Court, Jennifer Maher, in her capacity as administrator of the estate of Mr Brown, contends that the proceeding should be dismissed on the basis that it seeks to relitigate claims that were the subject of settled Supreme Court and District Court proceedings.

For the reasons that follow, the proceeding should be dismissed.

Background

The factual background to this motion is complicated, the following is a summary to the extent it is relevant to the disposition of the motion.

The alleged unfair contract

In their application under s 106 of the Industrial Relations Act, the applicants allege that they entered into a part-oral part-written contract with Mr Brown prior to his death.

The gravamen of the terms of that contract are alleged to be that:

the applicants would perform renovation work at a townhouse at Darling Point, Sydney (the Townhouse) as directed by and to the satisfaction of Mr Brown; and

in consideration thereof, the applicants would be granted a rent-free tenancy in the Townhouse for the duration of the renovation work and for a three-year period following its completion, as well as a sum of money under Mr Brown's will.

They rely amongst other matters on a residential tenancy agreement dated 20 November 2021.

The respondent denies that any such contract was entered into and says that the alleged residential tenancy agreement was not in fact executed by Mr Brown and it is not a genuine document.

The Townhouse

At some stage prior to Mr Brown's death, the applicants began residing in the Townhouse and undertook renovation work. The nature and extent of that work is in dispute.

The applicants allege that they performed the work as directed and to the satisfaction of Mr Brown, and as a result entered into a three-year residential lease commencing 20 November 2021, all in pursuance of the terms of the alleged contract.

On 19 January 2022, while the applicants were residing in the Townhouse, Mr Brown passed away. As noted above, Mr Brown left a sizable estate; however, it did not include the Townhouse.

While the Townhouse had been the principal residence of Mr Brown and the late Catherine Brown (Mr Brown's former spouse, who predeceased him), by Ms Catherine Brown's will ownership in the Townhouse was transferred to trustees (comprising, Ms Catherine Brown's siblings, together the Trustees) to hold on trust for the benefit of Clare Brown (Mr Brown and Ms Brown's only daughter)—with Mr Brown receiving only a life estate in the Townhouse.

Supreme Court of NSW proceeding for possession of the Townhouse

On 29 March 2022, the Trustees, as registered proprietors of the Townhouse commenced proceedings in the Supreme Court seeking possession of the Townhouse from the applicants.

The applicants initially defended that proceeding on the basis that the three-year residential lease gave them the right to possess the Townhouse. In the alternative they sought an amount equivalent to three-year's rent. The applicants also cross-claimed for the cost of undertaking the renovation work.

The issues which fell for determination in that proceeding were:

“(1) Was a lease ever granted by [Mr Brown] to [the applicants]?”

- (2) If a lease or similar agreement did exist, did [Mr Brown] give to the [applicants] an interest in the property which persisted past the termination of his life estate?
- (3) If the answer to (2) is no, was an equitable lease or interest created between the [applicants] and the [Trustees]?

- (4) Was there any liability for the [Trustees] to pay the renovation costs of the [applicants] as claimed in the Cross-Claim?” [1]

These issues were not ultimately determined by the Court as the applicants reached a consent position, in that they agreed that orders be made for the Trustees to obtain possession of the Townhouse and for the cross-claim to be dismissed. The proceeding was dismissed by order of the court.

Supreme Court of Victoria proceeding in respect of Mr Brown’s will

Concurrently, on 16 July 2022, Mr Sweeten applied for a grant of probate in respect of Mr Brown’s will which nominated him as an executor. An objection was filed by Ms Clare Brown, including on the basis that Mr Brown lacked capacity to make the will. That proceeding was ultimately resolved on 5 September 2025 on the basis that Ms Maher had leave to apply for letters of administration and that the applicants would not pursue their application for probate. Notably though, that dispute was ongoing until that date.

The District Court proceeding for rent during the period following the death of Mr Brown

Following the Supreme Court proceedings, the Trustees commenced proceedings in the District Court alleging that the applicants had wrongfully occupied the Townhouse from 19 January 2022 to 9 March 2023, and seeking relief in the form of mesne profits, damages and payment of a sum equal to the value of the benefit they alleged the applicants received from wrongfully occupying the Townhouse.

The applicants defended the claim on the basis that they were at all material times entitled to possession of the Townhouse.

The applicants also filed a cross claimed seeking “damages”. That claim was pleaded as follows:

“1 Since in or around 2021 the [applicants] carried out work at the request of [Mr Brown] who was entitled to be in possession of the [Townhouse].

2 The [applicants] estimate the value of the works to be in excess of \$170,000 the further particulars of which have been previously provided to the [Trustees].”

The Trustees defended the claim on the basis that they did not admit that the applicants had carried out works at Mr Brown’s request, and denied the value of the works. The Trustees also pleaded, in the alternative, that any claim the applicants had regarding the works was not properly made against the Trustees.

The applicants subsequently filed a notice of motion seeking, among other things, that:

“1 That the estate of [Mr Brown] (Estate) be joined as the fourth defendant to the cross claim in these proceedings.

2 That these proceedings be stayed pending the outcome of the proceedings S PRB 2022 13942 currently on foot in the Supreme Court of Victoria (Victorian Proceeding).

3 That the [applicants] have leave to file and serve an amended cross claim.

4 That service of the amended cross claim be served on the Estate once orders are made in the Victorian Proceeding appointing an executor or administrator or other legal representative to the Estate.” (Emphasis in original.)

The settlement of the District Court proceedings

On 21 August 2024, the applicants and the Trustees resolved the District Court proceedings on terms contained in a deed of settlement (Deed).

The Deed contained the following relevant terms:

recital A provided the following definition of “Claim”:

“On 15 December 2023, [the Trustees] commenced proceedings against [the applicants] in the District Court of NSW, being proceedings with case number 2023/00455182 (the Claim).” (Emphasis in original.)

recital B provided the following definition of “Cross-Claim”:

“On 13 February 2024, [the applicants] filed a cross-claim against [the Trustees] in the proceedings commenced in the District Court of NSW with case number 2023/00455182 (the Cross-Claim).” (Emphasis in original.)

cl 1.1(b) broadly defined “Demand” as follows:

“Demand means any claim, demand, complaint, cause of action , cross-claim (and counter claim), action, suit or dispute for damages, debt, restitution, equitable compensation, account, injunctive relief or any other remedy, right (including the right to be considered) or relief, whether by original claim, crossclaim or otherwise whether arising at common law. in equity, under statute or otherwise whenever arising. whether known or unknown at the time of entry into this Deed, whether fixed or unascertained, actual or contingent and whether or not presently in contemplation of the Parties.”

cl 3.7 provided that:

“Benjamin and Varvara and each of them shall not bring any fresh proceedings against any person or entity, including any executor or administrator of the estate of [Mr Brown], in respect of the subject matter of the Cross-Claim.” (Emphasis added.)

cl 4.2 provided that:

“[The applicants] jointly and severally forever release and discharge [the Trustees] and the executor or administrator to be appointed to the estate of [Mr Brown] jointly and severally from any Demand relating to or arising from the Claim and/or the Cross-Claim referred to at Recitals A and B of this Deed, other than any Excluded Demand”. (Emphasis added.)

cl 4.4 provided that:

“Subject to compliance by [the Trustees] of their obligations under this Deed, this Deed may be pleaded as a full and complete defence by [the Trustees] and the executor or administrator to be appointed to the estate of the late [Mr Brown] and each of them to any action, suit or proceedings commenced, continued or taken by [the applicants] and each of them in relation to any of the matters the subject of the release in clause 4.2 above.”

For completeness, an Excluded Demand was defined as any demand in relation to a breach of the Deed, or “any Demand in respect of the costs orders made [in the Supreme Court proceedings] between the Parties”.

Each party consented to orders being made by the District Court as follows:

“1. Judgment for the [Trustees] against the [applicants] in respect of the [Trustees’] claim in the sum of [\$90,000.00].

2. The cross-claim be dismissed on the basis that the [applicants] and each of them are prevented from bringing fresh proceedings in respect of the subject matter of the cross-claim.
3. The [applicants] pay the [Trustees’] costs of the claim (excluding the cross-claim) agreed in the sum of [\$25,000.00].
4. The [applicants] pay the [Trustees’] costs of the cross-claim in the sum agreed in the sum of [\$25,000.00].”

The present proceeding

In this Court, the applicant contends that the alleged contract with Mr Brown is unfair because:

it allowed the Trustees to obtain the benefit of the works performed by the applicants without requiring them to honour the terms of the contract;

it failed to provide adequate protections for the applicants and exposed them to the “arbitrary and/or capricious decisions by the [Trustees]”;

it ought to have provided the applicants the benefit of the terms of the contract, including tenancy in the Townhouse;

it exposed the applicants to the actions of the Trustees and associated costs dealing with actions brought by the Trustees;

it allowed the Trustees to deny the existence of a residential lease and the entitlement of the applicants to reside in the Townhouse for the duration of the lease period;

it did not provide for the payment of adequate compensation to the applicants; and

the applicants at all material times as far as they were aware reasonably believed the contract they entered into with Mr Brown was a valid contract and relied on it to their detriment.

The applicants relevantly seek orders under s 106 of the Industrial Relations Act:

declaring the contract to be an unfair contract;

varying the contract such that the estate of Mr Brown pay the applicants an amount equivalent to market rent for three-years; and

for compensation for all costs that the applicants have been burdened with in maintaining their rights under the contract, including those incurred in relation to the Supreme Court proceedings, District Court proceedings and Federal Circuit and Family Court proceedings in bankruptcy.

The notice of motion

By notice of motion dated 16 June 2026, Ms Maher seeks an order pursuant to r 13.4(1) of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR) summarily dismissing the proceeding. In the alternative, Ms Maher applies for the proceeding to be permanently stayed pursuant to the Court's inherent or implied jurisdiction.

I understand the reason for the delay in filing the motion was caused by the parties awaiting the determination of Ms Maher as the administrator of Ms Brown's estate.

Submissions

Ms Maher's submissions

Ms Maher contends that the instant proceedings are vexatious and constitute an abuse of process.

Ms Maher submits that the applicants seek to relitigate claims that were the subject of the Supreme Court and District Court proceedings, namely their contention that they entered into an agreement with Mr Brown concerning the renovation works at the Townhouse, which have already been settled. She submits that these factual matters have already been subject to extensive litigation and resolved by settlement. In support of that submission, Ms Maher refers to the fact that the applicants are seeking, among other things, a sum equivalent to the value of three years' rent of the Townhouse (minus the rent value for the period they occupied the Townhouse) which is the same relief sought in the Supreme Court proceedings. Ms Maher also points to the fact that in support of the claimed variation to the alleged contract the applicants rely on the disputed renovations that they carried out which they say underpinned the agreement to allow them to occupy the premises rent free for three years.

Ms Maher submits that the present claims were previously contemplated by the applicants as early as June 2024, when they sought leave in the District Court proceedings to join the administrator of Mr Brown's estate as a party and to file an amended cross-claim, and therefore, it cannot be suggested that these claims only arose after the District Court proceedings

concluded.

Further, she submits that the application is contrary to the Deed and consent orders dated 21 August 2024 resolving the District Court proceedings.

The applicants' submissions

The applicants advance two contentions.

First, that the effect of the Deed is exaggerated by Ms Maher. On the applicants' submissions the central question to determining the motion is the scope of the protections provided by the Deed. The applicants submit that the Deed does not prohibit every future proceeding in respect of the Townhouse or Mr Brown, but only those "in respect of the subject matter of the Cross-Claim". Likewise, the applicants refer to the release in cl 4.2 of the Deed "relating to or arising from the Claim and/or the Cross Claim". The applicants submit that there is a clear distinction between the subject matter of the District Court cross-claim—being, on their construction, damages for renovation work valued in excess of \$170,000 against the Trustees—and a statutory proceeding against the estate for retrospective variation of a contract entered into by Mr Brown. However, the applicants submit that the Court need not finally determine the construction of the Deed on this motion, as it is sufficient that the applicants' construction is reasonably arguable. If construction of the Deed involves a real question as to the scope of "subject matter", "relating to", "arising from" and the express exclusion, then, on the applicants' written submissions, the proceeding cannot properly be described as clearly untenable or doomed to fail. Having said that, in his oral submissions, Mr Mahendra accepted that it was open to the Court to interpret the Deed on the basis of the content of the Deed and I will proceed to do so.

Second, the applicants submit that this proceeding is not an abuse of process. The applicants submit that there were objectively significant differences between the earlier proceedings and the present proceeding. They submit that the earlier proceedings were commenced against the applicants by the trustees, who held legal title to the Townhouse. On the applicants' submission, the present proceeding is the first proceeding directed to statutory relief against Mr Brown's estate in respect of Mr Brown's alleged personal bargain. The applicants submit that this is not a case where the present respondent (Ms Maher) has already borne the burden of defending the same claim to judgment and is now being required to do so again. The applicants concede that circumstance does not prevent an abuse finding as a matter of law, but say it is highly relevant to the practical question of unjustifiable oppression. They submit that no successive litigation oppression arises because the estate was not the plaintiff in either earlier NSW proceeding; Ms Maher did not defend those proceedings; and did not become administrator until after the present application had already been commenced.

Legal principles

The principles concerning summary dismissal under r 13.4(1) of the UCPR are well-established. Proceedings may be summarily dismissed if they disclose no arguable cause of action, are clearly untenable and are doomed to fail, if they are an abuse of process, or if they are frivolous and vexatious. [2] The jurisdiction is to be exercised with caution and only where the Court is satisfied that there is a high degree of certainty that the proceeding cannot succeed. [3]

It is also not controversial that a central and pervading tenet of the judicial system is that controversies, once resolved, are not to be reopened except in a few narrowly defined circumstances. The rules of law underpinning the need for finality in judicial proceedings can apply to persons other than the parties to the original proceedings. [4]

This principle of finality underpins the doctrine of abuse of process. A proceeding may be an abuse of process where: it is clearly doomed to fail; its continuance would be unjustifiably oppressive because it seeks to litigate anew a case already disposed of by earlier proceedings; or they otherwise bring the administration of justice into disrepute. [5]

The principles governing abuse of process are broader and more flexible than the doctrines of *res judicata* or estoppel, and involve a broad, merits-based judgment which takes account of public and private interests. [6] To establish an abuse of process in the context of multiple proceedings, it is not necessary that the parties to a later proceeding be identical to those in an earlier proceeding, or that the relief sought in the proceedings is different. [7] An abuse of process may arise where a party seeks to litigate claims which should have been litigated in earlier proceedings, or which ought reasonably to have been raised in earlier proceedings, even though they may not be precluded by an estoppel. [8]

Relevant considerations include whether multiple proceedings involve overlapping issues or subject matter, whether the party had a prior opportunity to litigate the issue, whether fresh evidence exists, and the extent of the oppression and unfairness occasioned by permitting further litigation. [9]

Consideration

At its heart, the present application under s 106 of the Industrial Relations Act seeks to resolve the same controversy raised in the Supreme Court and District Court proceedings: namely, was there an arrangement between the applicants and Mr Brown entitling them to a three-year rent-free residential lease over the Townhouse, or compensation equivalent to a three-year rent-free residential lease, or any compensation for the renovation works at all.

That controversy was squarely raised in the applicants' cross-claim in the Supreme Court proceeding whereby they sought orders for possession of the Townhouse or alternatively payment of an amount equivalent three-years rent.

Indeed, at the time the cross-claim was filed, and at all material times during that Supreme Court proceeding, it was the Supreme Court that had jurisdiction under s 106 of the Industrial Relations Act. The applicants have not demonstrated before me that they were unable to take such action against the estate at that time in that Court. In any event, they did not. Instead, the controversy was resolved by consent, and final orders were made by the Supreme Court.

That same controversy was also squarely raised by the applicants' cross-claim in the District Court whereby they sought damages in the amount of the value of the work to the Townhouse. Not only could the applicants have raised this controversy with the estate of Mr Brown in that proceeding, they did so by filing a notice of motion to join the estate of Mr Brown as a defendant to their cross-claim, although the proceeding was settled before such a motion was heard.

The same controversy is raised in this proceeding. The applicants' central contention in this Court is that their contract with Mr Brown is unfair because the lease had no effect and because the applicants received no compensation for their renovation work. In fact, the present proceeding only arises because of their lack of success in the Supreme Court and District Court proceedings. If the applicants had submitted their previous cross-claims for judicial determination and succeeded, then this present proceeding would not have arisen.

The District Court proceeding was settled by the Deed and consent orders made by the Court. The Deed was not only in favour of the Trustees, but also the administrator of the estate of Mr Brown. This is, no doubt, because, as the Trustees identified in their defence to the cross-claim, the litigating finger ought to have been pointed at the estate of Mr Brown, and not at the Trustees. It is not surprising the Trustees sought to protect the administrator of the estate of Mr Brown. The Trustees held the Townhouse for the benefit of Ms Clare Brown. Ms Clare Brown was the principal beneficiary under Mr Brown's will, and was at that time in a dispute with the first applicant in the Supreme Court of Victoria in relation to that will.

As the applicants identify, the scope of the protections in the Deed is relevant to the disposition of this motion. Clause 3.7 protects Ms Maher against any proceeding "in respect of the subject matter of the Cross-Claim". Clause 4.2 releases Ms Maher from any demand "relating to or arising from the Claim and/or the Cross-Claim". A further element of the Deed was consent orders dismissing the cross-claim, and with it, the notice of motion to join the estate.

I reject the applicants' submission that there is a clear distinction between the subject matter of the cross-claim and this proceeding. This proceeding is another cause of action seeking to vindicate the applicants' grievance that they did renovation work for Mr Brown and were not compensated to the extent that the applicants consider themselves to be entitled.

The applicants' submission construes cl 3.7 too narrowly. Clause 3.7 does not merely prevent the applicants from bringing the same causes of action, or seeking the same relief as were advanced in the cross-claim. Clause 3.7 uses broad language by providing that the applicants shall not bring fresh proceedings against any person or entity, expressly including any administrator of Mr Brown's estate, "in respect of the subject matter of the Cross-Claim". The question is therefore not whether the present statutory claim under s 106 is juridically identical to the claims previously

made by the applicants, but whether it is in respect of the subject matter of those claims. In that regard, “subject matter” must be construed in light of the fact that it was to apply to fresh proceedings including against the administrator of the estate. Any other construction of “subject matter” would render the clause otiose, especially given the cross-claim was a poorly drafted document that failed to meaningfully identify the legal cause of action and failed to address the appropriate defendant. The latter must have been accepted by the applicants when they sought to amend the cross-claim to join the estate, and ultimately, when they agreed to have it dismissed with costs.

This proceeding is in respect of the same subject matter, namely, whether there was an arrangement between the applicants and Mr Brown entitling them to a three-year rent-free residential lease over the Townhouse, and whether, in light of intervening circumstances, they are entitled to compensation instead of such lease.

To the extent to which the respondent contends that the release—by containing the definition of “Excluded Demand”—does not extend to a release in respect of the claims being made in this proceeding in respect of the costs of the Supreme Court proceeding, I reject that argument. In doing so, I accept Ms Maher’s submissions in three respects:

First, I construe the deed—in particular the definition of “Excluded Demand”—as intending to only preserve the rights of the Trustees to pursue the Supreme Court costs.

Second, as Ms Maher’s counsel identified, cl 3.7 of the Deed is independent of, and does not pick up, the defined expression “Excluded Demand”, but rather covers fresh proceedings generally.

Third, and further to the second, cl 4.4 provides the ability of the administrator of Mr Brown’s estate to plead the Deed as a full and complete defence to any action, suit or proceedings to be taken by the applicants in relation to any matters subject to the release in cl 4.2 of the Deed. I accept accordingly Ms Maher’s submission that cl 4.4 provides a further basis to reject the proposition.

I reject also the applicants’ submission that this present proceeding does not relitigate matters settled or determined in the previous proceedings.

This proceeding is not simply a case where, with the benefit of hindsight, the applicants could have formulated and pursued a further claim against Mr Brown’s estate in earlier proceedings. The applicants took actual steps to join Mr Brown’s estate to the District Court proceedings and amend their cross-claim, including seeking a stay of the District Court proceedings until an executor or administrator was appointed. The estate was to be joined to a proceeding which sought to ventilate the grievance which is squarely in dispute in this proceeding. It was open for the applicants at that time to seek to settle the proceedings with the Trustees while seeking to maintain them against the estate. It was also open for the applicants to seek to enter into a deed which did not release Mr Brown’s estate. They did neither of those two things.

There needs to be finality to litigation. There have now been now two sets of proceedings each of which have resolved by consent concerning the same essential disputed facts, the second on a basis which expressly contemplated that no claim would be brought against the estate. In those circumstances it is not in the interest of justice to allow a third set of proceedings in respect of the same dispute.

The fact that the claim could have been pursued in some form or other in earlier proceedings but was not, does not, of itself, render this proceeding an abuse of process. However, applying what the Lord Bingham of Cornhill referred to as “a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case”, [10] I am satisfied that Ms Maher has demonstrated that this proceeding meets the high bar required to be summarily dismissed on the basis that it is an abuse of process. I come to that view notwithstanding that Ms Maher was not a party to those earlier proceedings and, in that regard, refer to the relevant legal principles set out above. [11]

Orders

The Court makes the following orders:

The proceeding is dismissed pursuant to r 13.4(1) of the Uniform Civil Procedure Rules 2005 (NSW).

The applicants are to pay the respondent’s costs of the proceeding.

Endnotes

1.

Haggerty v Sweeten [2023] NSWSC 850 at [51]

2.

General Steel Industrial Inc v Commissioner for Railways [1964] HCA 69; (1964) 112 CLR 125 at 128-129 (Barwick CJ); Batistatos v Roads and Traffic Authority of New South Wales [2006] HCA 27; (2006) 226 CLR 256 at [15] (Gleeson CJ, Gummow, Hayne and Crennan JJ); Shaw v State of New South Wales [2012] NSWCA 102; (2012) 219 IR 87 at [30]-[32] and [134] (Barrett JA, Beazley, McColl and Macfarlan JJA agreeing).

3.

Agar v Hyde (2000) 201 CLR 552; [2000] HCA 41 at [57] (Gaudron, McHugh, Gummow and Hayne JJ); Spencer v Commonwealth (2010) 241 CLR 118; [2010] HCA 28 at [24] (French CJ and Gummow J); PaulErnest Simmons v NSW Trustee and Guardian [2012] NSWSC 455 at [62] (Hammerschlag J).

4.

D'Orta-Ekenaike v Victoria Legal Aid [2005] HCA 12; (2005) 223 CLR 1 at [34]-[38] (Gleeson CJ, Gummow, Hayne and Heydon JJ).

5.

Walton v Gardiner [1993] HCA 77; (1993) 177 CLR 378 at 392-394 (Mason CJ, Deane and Dawson JJ); UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77 at [1] (Kiefel CJ, Bell and Keane JJ), [62] (Gageler J) and [92] (Nettle and Edelman JJ).

6.

Tomlinson v Ramsay Food Processing Pty Ltd [2015] HCA 28; (2015) 256 CLR 507 at [25] (French CJ, Bell, Gageler, Keane and Nettle JJ); UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77 at [62] and [68] (Gageler J), and at [7] (Kiefel CJ, Bell and Keane JJ).

7.

Tomlinson v Ramsay Food Processing Pty Ltd [2015] HCA 28; (2015) 256 CLR 507 at [17] (French CJ, Bell, Gageler, Keane and Nettle JJ); UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77 at [63] (Gageler J); Kermani v Westpac Banking Corporation [2012] VSCA 42; (2012) 36 VR 130 at 154 [97] (Robson AJA, Neave and Harper JJA agreeing) citing Moore v Inglis (1976) 9 ALR 509; 50 ALJR 589; Rippon v Chilcotin Pty Ltd [2001] NSWCA 142; (2001) 53 NSWLR 198 at 202-203 (Handley JA, Mason P and Heydon JA agreeing).

8.

Tomlinson v Ramsay Food Processing Pty Ltd [2015] HCA 28; (2015) 256 CLR 507 at [26] (French CJ, Bell, Gageler, Keane and Nettle JJ); UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77 at [39], [41] and [43] (Kiefel CJ, Bell and Keane JJ), [110]-[111] (Nettle and Edelman J) and [127] (Gordon J).

9.

Kermani v Westpac Banking Corporation [2012] VSCA 42; (2012) 36 VR 130 at 153-154 [97] (Robson AJA, Neave and Harper JJA agreeing).

10.

Johnson v Gore Wood & Co [2000] UKHL 65; [2002] 2 AC 1 at 31 (the Lord Bingham of Cornhill).

11.

Tomlinson v Ramsay Food Processing Pty Ltd [2015] HCA 28; (2015) 256 CLR 507 at [26] (French CJ, Bell, Gageler, Keane and Nettle JJ); UBS AG v Tyne [2018] HCA 45; (2018) 265 CLR 77 at [63] (Gageler J); Kermani v Westpac Banking Corporation [2012] VSCA 42; (2012) 36 VR 130 at 154 [97] (Robson AJA, Neave and Harper JJA agreeing) citing Moore v Inglis (1976) 9 ALR 509; 50 ALJR 589; Rippon v Chilcotin Pty Ltd [2001] NSWCA 142; (2001) 53 NSWLR 198 at 202-203 (Handley JA, Mason P and Heydon JA agreeing); D'Orta-Ekenaike v Victoria Legal Aid [2005] HCA 12; (2005) 223 CLR 1 at [34]-[38] (Gleeson CJ, Gummow, Hayne and Heydon JJ).

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