

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE OFFICE OF THE REGISTRY**

No. *MISS* of 2015

BETWEEN:

CLAYTON UTZ (A FIRM)

Applicant

and

CHRISTOPHER ANTONY DALE

Respondent

APPLICATION FOR SPECIAL LEAVE TO APPEAL

- 10 1. The Applicant applies for special leave to appeal from the judgment of the Court of Appeal of the Supreme Court of Victoria (proceeding S APCI 2014 0141) given on 23 July 2015.

Grounds

2. The Court of Appeal erred in failing to find, and ought to have found, that the Respondent should not be permitted to 'split' his case by embarking upon evidence in relation to a principal issue but also allowing him to call further evidence after the Applicant in relation to that issue.
3. The Court of Appeal erred in finding that:
- 20 a. the privileges against self-incrimination and self-exposure to a penalty are available to a plaintiff with respect to the issues arising in his or her case; and
- b. the Respondent had not waived the privileges against self-incrimination and self-exposure to a penalty with respect to issues arising in his case by commencing the proceedings and voluntarily participating in the police interview.
4. The Court of Appeal erred in finding that there was no evidence before the primary judge that the statements made by the Respondent in the police interview were

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Filed on behalf of: the Applicant

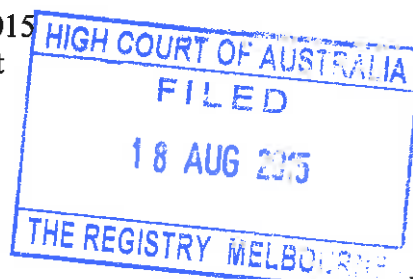
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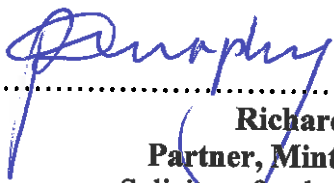
incriminating in circumstances where the transcript of the interview in evidence before the primary judge contained statements that properly construed tended to incriminate and expose the Respondent to a penalty.

5. Orders sought

The Applicant seeks the following orders:

1. The appeal be allowed.
2. The orders of the Court of Appeal of the Supreme Court of Victoria (proceeding S APCI 2014 0141) made on 23 July 2015 and the orders of the Supreme Court of Victoria made on 19 November 2014 (proceeding SCI 2011 4655) be set aside and the following orders be made in lieu thereof:
 - (a) the Respondent's summons dated 10 July 2014 be dismissed; and
 - (b) the Respondent pay the Applicant's costs of the appeal in the Court of Appeal of the Supreme Court of Victoria (proceeding S APCI 2014 0141) and the Applicant's costs of the summons dated 10 July 2014 in the Supreme Court of Victoria (proceeding SCI 2011 4655).
3. The Respondent pay the Applicant's costs of this appeal.
4. Such further orders or other relief as this Court deems appropriate.

DATED: 18 August 2015


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Richard Murphy
Partner, Minter Ellison
Solicitors for the Applicant

To: The Respondent, c/- O'Donnell Salzano, Level 4, Bank House, 11-19 Bank Place,
Melbourne Vic 3000.

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

The Applicant's solicitor is: Minter Ellison, 525 Collins Street, Melbourne 3000.