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Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Farrell v Super Retail Group Limited (Cross-claim) (FCA) - cross-claim seeking to have solicitors restrained from acting for the applicants dismissed

Cui v Salas-Photiadis (NSWSC) - order withdrawing caveat refused after parties let settlement go through in PEXA while the caveat was in place

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Summaries With Link (Five Minute Read)

Farrell v Super Retail Group Limited (Cross-claim) [2024] FCA 1189

Federal Court of Australia

Lee J

Solicitors' duties - a dispute arose between two senior employees of SRG and that company - the employees commenced separate proceedings, claiming that a binding settlement of the dispute had been reached - SRG and others cross-claimed, seeking to enjoin the applicants' solicitors from acting for them - SRG contended that there was the possibility of defamation actions by third parties against the applicants and their solicitors arising out of a purported "emergency disclosure" under s1317AAD of the *Corporations Act 2001* (Cth) and a related media statement made by the solicitors, and that the solicitors therefore had an interest in avoiding such liability - SRG also contended that the authorisation of the emergency disclosure may be found to have been repudiatory conduct that entitled SRG to terminate the applicant's employment, and the solicitors may therefore be liable in negligence for failure to advise - held: the Court has an implied jurisdiction to restrain legal representatives from acting in a particular case, as an aspect of its supervisory jurisdiction - the test is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a representative be prevented from acting in the interests of the protection of the integrity of the judicial process and the appearance of justice - the applicants had rationally formed the view that persons acting or purporting to act to promote the interests of SRG had suggested to at least one journalist that SRG believed they were engaged in some form of "shakedown" of a public company - it was against the background of such public suggestions that the solicitors for the employees had made the purported "emergency disclosure" and media statement - the approach to any conflict must be applied realistically to a state of affairs in assessing whether it discloses a real conflict of duty and interest and not to something theoretical or a rhetorical conflict - the possibility of defamation proceedings was no higher than a non-fanciful possibility - a more obvious conflict arose due to the fact that, despite advice given by the solicitors to the contrary, the media statement was expressly not a protected disclosure, meaning that SRG was not prevented, under Pt 9.4AAA of the *Corporations Act*, from enforcing contractual rights against the applicants in connexion with the media statement - however, although the solicitors had a reputational interest in having their advice not scrutinised, the Court was not convinced that this will cause any practical difficulty in the conduct of the case - cross-claim dismissed.

[Farrell](#)

Cui v Salas-Photiadis [2024] NSWSC 1280

Supreme Court of New South Wales

Hmelnitsky J

Caveats - the plaintiff entered into a contract to purchase a home from the second defendant, borrowing funds from a bank who was to be the incoming mortgagee - the first defendant lodged a caveat over the property, relying on an interest under a "charge" granted under a loan agreement relating to building work done by the first defendant - no participant in the PEXA



workspace noticed that the first defendant's caveat had been lodged - on settlement in PEXA, documents were lodged with Land Registry Services, and the funds were disbursed in accordance with the financial settlement schedule - the following day, the bank received a requisition from Land Registry Services informing it that the transfer and mortgage could not be registered because of the first defendant's caveat - the plaintiff sought an order that the caveat be withdrawn under s74MA of the *Real Property Act 1900* (NSW) - held: an equitable charge may or may not take the form of an equitable mortgage - the caveator's reference to a "charge" in the caveat did not necessarily invoke the definition of "Charge" in the *Real Property Act* - the caveat therefore did not fail sufficiently to specify the first defendant's claimed interest merely because it described a claimed equitable mortgage as a charge - under s7D of the *Home Building Act 1989* (NSW), an agreement which purports to grant security for the payment of the consideration payable under a contract to do residential building work is an "other agreement" within the meaning of that provision - the loan agreement here was therefore within the scope of s7D to the extent it purported to secure payment for residential building work - however, s7D left the balance of the loan agreement intact - the mere failure of the caveat to specify the amount secured is not a sufficient reason to set the caveat aside - the first defendant had demonstrated that it had a good arguable case that the caveat had substance - the balance of convenience favoured the continuation of the caveat until such time as the rights of the parties can be dealt with on a final basis, which would inevitably include a contest as to the parties' competing priorities - order under s74MA refused and matter listed for directions on the Real Property List.

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