



**Supreme Court of New Zealand
Te Kōti Mana Nui**

12 June 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**NEIL STUART JOHNSTON v CHRISTOPHER FREDERICK
SCHURR AND DEEM & SHEARER**

(SC 61/2012) [2015] NZSC 82

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

On 6 January 1999 Neil Johnston suffered serious brain injuries in a motorcycle accident. Christopher Schurr was appointed as the manager of Mr Johnston’s property by the Family Court under the Protection of Personal and Property Rights Act 1988 (the PPPR Act). Mr Johnston eventually recovered the capacity to manage his affairs and Mr Schurr was discharged as his manager in December 2003.

This appeal concerns two aspects of the way in which Mr Johnston’s affairs were looked after while Mr Schurr was his manager. The first is the non-finalisation of a relationship property agreement with Mr Johnston’s estranged wife, Christine Johnston. Shortly before the accident, Mr and Mrs Johnston had reached informal agreement as to the division of their relationship property. In the aftermath of the accident no agreement was finalised. When Mr and Mrs Johnston eventually reached a settlement in 2004 they did so on terms less favourable to Mr Johnston than those that had been proposed before the accident. It is Mr Johnston’s view that Mr Schurr, as his manager, and Deem & Shearer, as his solicitors, were at fault for not finalising a settlement of relationship property after his accident. The second issue concerns the actions of Mr Schurr in cancelling a number of life insurance policies which Mr Johnston held.

In the High Court Mr Johnston's claim against Mr Schurr was argued on the basis that he had breached the statutory duties imposed upon him by the PPPR Act. Duffy J held that the PPPR Act did not impose statutory duties capable of giving rise to a claim in damages and she therefore dismissed the claim against Mr Schurr. She further held that after the accident Deem & Shearer had not been acting for Mr Johnston and thus did not owe him a duty of care. For this reason the claim against Deem & Shearer was also dismissed.

Mr Johnston challenged this decision in the Court of Appeal. He was unsuccessful, with that Court upholding the conclusions of Duffy J. The Court of Appeal declined to amend the statement of claim so as to include a claim of negligence against Mr Schurr.

In the Supreme Court Mr Johnston claimed to be entitled to damages against Mr Schurr and Deem & Shearer for the difference between the cost to him of the settlement which he eventually reached as to the division of relationship property and the corresponding cost he would have incurred under either the settlement proposed before his accident or on slightly different terms which were later proposed by Mrs Johnston's solicitors. As against Mr Schurr, Mr Johnston contended that he had a claim in tort for breach of statutory duty and furthermore, that the Court of Appeal was wrong to refuse to entertain a claim in negligence. Mr Schurr opposed both contentions. With respect to Deem & Shearer, Mr Johnston argued that his retainer with them survived his accident and that they had therefore owed him a duty of care to either finalise a relationship property settlement or apply to the Family Court to confer the power to do so upon a property manager. He contended in the alternative that even if the retainer had been terminated, his relationship with Deem & Shearer had been sufficiently proximate to give rise to a duty of care and that this duty had been breached.

The Supreme Court considered that the claim against Mr Schurr could be argued on another and uncontroversial basis: namely, the High Court's jurisdiction to supervise Mr Schurr as an officer of the Court by reason of his appointment as a manager under the PPPR Act and a fiduciary for Mr Johnston by reason of his control of Mr Johnston's property. The Court issued a minute asking for parties' submissions as to this and has concluded that under this supervisory jurisdiction, as modified by the terms of the PPPR Act, Mr Schurr would be liable to Mr Johnston for losses caused by the exercise of his powers if he acted in bad faith or with a lack of reasonable care. Given this, there is no need for a determination in respect of the claims in tort because, given the standard imposed by the PPPR Act, the availability of claims for breach of statutory duty or negligence would not affect the outcome of the appeal.

In a unanimous decision the Supreme Court has allowed the appeal in part. The judgments of the High Court and Court of Appeal in relation to the insurance issue are set aside. There are insufficient findings of fact upon which the Supreme Court can assess whether Mr Schurr is liable to Mr Johnston for surrendering the life insurance policies. That question is

therefore to be determined in the High Court. In all other respects, however, the appeal is dismissed. The Supreme Court has concluded that Mr Schurr's obligations did not go beyond acting in accordance with the orders made by the Family Court, the terms of which excluded the power to deal with relationship property matters. The claim against Deem & Shearer is also dismissed. The Supreme Court has held that the retainer between Mr Johnston and Deem & Shearer came to an end after Mr Johnston's accident. Subsequently to this, Deem & Shearer did not owe Mr Johnston a duty of care to finalise a division of relationship property and, to the extent that there was a more limited assumption of responsibility on the part of Deem & Shearer, there was no breach of an associated duty of care.

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