



Principal Registrar &
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Form 105 (version 7)
UCPR 51.16, 51.18, 51.20

NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2023/00088479

TITLE OF PROCEEDINGS

Appellant JULIE RIECHELMANN
Respondent DAVID TERANCE McCABE

PROCEEDINGS IN THE COURT BELOW

Title below David Terance McCabe v Julie Riechelmann
Court below District Court of New South Wales
Case number below 2018/00365976
Date[s] of hearing 14 - 8 February 2022; 21 - 24 February 2022; 20 - 24
June 2022; 1 - 2 August 2022; 8 December 2022
Material date 21/02/2023
Decision of Dicker SC DCJ

FILING DETAILS

Filed for Julie, Riechelmann, Appellant
Filed in relation to Decision in relation to Cross-claim

[include only if form to be eFiled]

Legal representative Moya de Luca-Leonard
De Luca-Leonard, Solicitor

Legal representative reference

Contact name and telephone Moya de Luca-Leonard

Contact email

HEARING DETAILS

This notice of appeal is listed for directions at 21Jun2023 09:00 AM

TYPE OF APPEAL

TORTS

Intentional Tort – trespass – assault – battery

[Select type of appeal from the list provided in section 6 of the Guide to preparing documents, available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.]

DETAILS OF APPEAL

1. This appeal is brought under section 127 of the *District Court Act 1973* (NSW).

2. This notice of appeal is not filed pursuant to leave to appeal.
3. The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondent on 20 March 2023.
4. The appellant appeals from part of the decision below in relation to the dismissal of the Cross-claim proceedings.

APPEAL GROUNDS

1. The Trial Judge fell into error in rejecting the Crossclaim in that he failed to fully address the case presented by the evidence and the Appellant's submissions.
2. The Trial Judge fell into error in rejecting the evidence of Melanie Wells in respect of her observations of the strangling of the Appellant by the Respondent given the corroboration presented by reason of:
 - (i) The evidence of Melanie Wells that the Respondent had been overly aggressive when she and the Respondent returned to the inside of the Respondent's unit after the initial exchange as presented on the video evidence
 - (ii) The Respondent's heavy intoxication and aggression on the night
 - (iii) The evidence that after the Respondent and Melanie Wells went back into the Respondent's unit after the initial exchange, the Respondent returned to the corridor of the first floor of the building and outside his unit
 - (iv) Melanie Wells leaving the unit building and running to the Police because of her fear and apprehension of an escalation of the violence after she had left the Respondent's unit
 - (v) The immediate complaint made by Melanie Wells to the Police of the Respondent having his hands around the Appellant's throat
 - (vi) The Appellant's lack of memory at the time of trial from a traumatic event
 - (vii) The Appellant's honesty and integrity in admitting , at the time of trial, the absence of memory after she was gripped by the Respondent
 - (viii) the Appellant's complaint to Jonathan Lavers that the Respondent had taken her by the throat and assaulted her
 - (ix) The Appellant's expressed intention at [325] that she intended to have the Respondent charged.
 - (x) The Appellant's complaint to Debra Hart-Waters that the Respondent had a very sore neck at [450] which corroborated her observations of redness on the neck and the complaints to her.
 - (xi) The recommendation of Debra Hart-Waters that the Appellant should seek medical help for her injuries at [451]

- (xii) The observation by Debra Hart-Waters that the Appellant was crying during her conversation the following day at [451]
 - (xiii) The Appellant's complaint to Debra Hart-Waters that the Respondent had tried to choke her at [450]
 - (xiv) The Appellant's account to Debra Hart-Waters that Melanie Wells had indicated that the Respondent had tried to choke the Appellant at [450]
 - (xv) That Debra Hart-Waters and the Appellant attended the Police Station to file a report at [451]
 - (xvi) The observations of Debra Hart-Waters the following day as to the redness around the Appellant's throat and of the Appellant wearing a scarf at [452], such observations corroborating the verbal complaints made to her.
 - (xvii) The observations of Debra Hart-Waters as to the change in demeanour of the Appellant after the incident at [454].
 - (xviii) The other injuries suffered by the Appellant as identified by the Appellant's General Practitioner at [490].
3. The Trial Judge impermissibly speculated at [620] that the redness around the neck would have progressed to bruising and the extent of the pressure required to cause bruising.
 4. The Trial Judge impermissibly speculated (and in the absence of cross examination on the topic) at [623] –[626] that the capacity of the Appellant to engage in activity after a traumatic event causing amnesia rendered it unlikely that she suffered amnesia or, by implication, a traumatic event.
 5. If the animosity of Melanie Wells and the Respondent was a relevant consideration in the assessment of her evidence as set out in [675] (a)-(d), the Trial Judge ought to have found that at the time of the incident, there was considerable animosity between Melanie Wells and the Respondent on the one hand, and the Appellant on the other which affected the assessment of the veracity of the report by Melanie Wells to the Police.
 6. The Trial Judge did not assess at [464] whether the difference between the Debra Hart-Water's account of observing redness to the Appellant's throat at [452] and the Appellant's recollection of the place of the bruising demonstrated on the photograph Exh G could have been explained by:
 - a. The redness abating over the days following the incident and not developing to bruising; or
 - b. inaccuracy in the Appellant's evidence as opposed to Debra Hart-Waters whose evidence was consistent with the recent complaint evidence and complaints of having a sore neck and throat at [450] and [451].

7. The Trial Judge ought to have found that Melanie Wells was a reliable witness as to her observations of the Respondent choking the Appellant.
8. The Trial Judge erred at [578]-[579] in determining the likelihood of an amnesic event as a result of strangulation by reference to irrelevant evidence, including the evidence of Mr and Mr Pussell (who were not witnesses to the strangulation), the video evidence (which was terminated before that event) and impermissible speculation (that a person who was alert and able to converse may not have suffered amnesia).
9. The Trial Judge erred in rejecting the complaints made by the Appellant to Jonathan Lavers and Debra Hart-Waters as being self-serving at[681](h) when:
 - a. The allegations were corroborated by the observations of redness and crying and conduct of Debra Hart-Waters in suggesting the Appellant seek medical attention
 - b. There was no suggestion to the Appellant in cross examination that the complaint to Jonathan Lavers was self-serving.
10. The Trial Judge erred in failing to address the submissions by the Appellant or, alternatively, failed to make findings that:
 - a. That an adverse inference should be drawn from the failure of the Respondent to challenge the assertion by Melanie Wells to Police on the night that she observed he had tried to strangle the Appellant;
 - b. That the Respondent's conduct and dealings after the incident with respect to witnesses and Police was consistent with an adverse inference against him that he had attempted to strangle the Appellant.
11. The Trial Judge ought to have found that the evidence of Debra Hart-Waters of the Appellant's complaints to her of choking and a sore throat and the observations of redness was consistent with choking by the Respondent.
12. The Trial Judge erred in finding the Respondent had not committed assault and battery against the Appellant by him choking her.
13. The Trial Judge ought to have found on the evidence that the Respondent had choked the Appellant on 2 separate occasions or, alternatively, on one occasion on the night.

ORDERS SOUGHT

1. Appeal allowed.
2. Order No 3 made 21 February 2023, the Cross-claim proceedings against the Respondent are dismissed.
3. Judgment for the Appellant against the Respondent on the Cross-claim.
4. The Respondent pay the Appellant's costs.

UCPR 51.22 CERTIFICATE

1 The right of appeal is not limited by a monetary sum

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

I have advised the appellants that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature of legal
representative

Name of legal representative

Moya de Luca Leonard

Capacity

Solicitor

Date of signature

19 May 2023

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
DX	DX 829 Sydney
Telephone	1300 679 272



PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANT**Appellant**

Name	Julie Riechelmann
Address [The filing party must give the party's address.]	c/- Ground Floor, Southpoint Tower, 13/19-21 Central Road Miranda NSW 2228
Frequent user identifier	Not applicable

Legal representative for appellant

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DETAILS ABOUT RESPONDENT**Respondent**

Name

David Terance McCabe

Address

