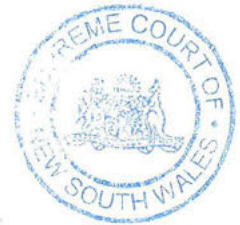


FILED

22 MAY 2023



NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2023/00088354

TITLE OF PROCEEDINGS

Appellant **CRAIG CHARLES FINNISS**

Respondent **STATE OF NEW SOUTH WALES**

PROCEEDINGS IN THE COURT BELOW

Title below Craig Charles Finnis v State of New South Wales
Court below District Court of New South Wales
Case number below 2021/172686
Date[s] of hearing 15, 16, 17, 20, 21 and 22 February 2023
Material date 22 February 2023
Decision of Neilson J

FILING DETAILS

Filed for **CRAIG CHARLES FINNISS** appellant
Filed in relation to whole decision below
Legal representative Adam Court, Court Legal
Legal representative reference AJC:020147
Contact name and telephone Adam Court, [REDACTED]
Contact email [REDACTED]

HEARING DETAILS

This notice of appeal is listed for directions at

14/6/23 at 9:00am

TYPE OF APPEAL

Negligence – Personal Injury – Assessment of damages

DETAILS OF APPEAL

- 1 This appeal is brought pursuant to s127(1) of the *District Court Act 1973*
- 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 17 March 2023
- 4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

Liability

- 1 The primary judge erred in failing to address the case of the appellant and the duty of care.
- 2 The primary judge erred in failing to properly identify the 'risk of harm' as required by s5B (1) *Civil Liability Act 2002*.
- 3 The primary judge erred in failing to address, or make any findings in accordance with, s5B *Civil Liability Act 2002*.
- 4 The primary judge erred making findings that disposed of the appellant's case, without identifying the risk of harm, whether the risk was not insignificant, what precautions a reasonable person in the respondent's position would have taken in the circumstances as required under s 5B *Civil Liability Act 2002*.
- 5 The primary judge erred in failing to properly deal with the question of causation under s5D *Civil Liability Act 2002*.
- 6 The primary judge erred in his findings as to a 'real cause'.
- 7 The primary judge erred in finding 5G *Civil Liability Act 2002* was a standalone provision and dispositive of the appellant's claim.
- 8 The primary judge erred in his findings on s5F and s5G *Civil Liability Act 2002* in circumstances where the appellant disavowed any duty to warn.
- 9 The primary judge erred in finding the defence under Part 1A Division 4 went beyond a duty to warn.
- 10 The primary judge erred in apportioning 25% to the respondent, and 75% of liability to the employer, namely Facilities First Pty Ltd.
- 11 The primary judge erred in his finding that Bronwyn Reynolds was employed by the employer, namely Facilities First Pty Ltd.
- 12 The primary judge failed to provide reasons or sufficient reasons.

Damages

- 13 The primary judge erred in finding the appellant's injuries constituted 33% of the most extreme case.
- 14 The primary judge erred in not accepting the medical evidence of the appellant with respect to Major Depressive Disorder
- 15 The primary judge erred in not finding that the appellant suffered from Major Depressive Disorder and had determined the medical issue on the basis of his own opinion.
- 16 The primary judge determined damages on the basis of medical opinions which were not supported by the accepted evidence.
- 17 The primary judge failed to afford procedural fairness.

MATERIAL FACTS - UCPR 51.18(2)

- 18 In respect of the grounds pleaded above, the primary judge should not have found the following material fact(s).
 - 18.1. That Bronwyn Reynolds' role as supervisor at Broadspectrum Pty Ltd carried over to Facilities First Pty Ltd, the employer.
 - 18.2. That Bronwyn Reynolds was employed by Facilities First Pty Ltd at any time.

ORDERS SOUGHT

- 1 Appeal allowed.
 - 2 Judgment against the appellant in favour of the respondent set aside, and in lieu thereof, verdict in favour of the appellant in the appellant's action below.
 - 3 Set aside any orders for costs made in the District Court, and in lieu thereof, order the respondent to pay the appellant's costs.
 - 4 In the alternative to orders 2 and 3 above, set aside the general damages assessed by the trial judge in the District Court, with this assessment to be substituted for the assessment made by this Court.
 - 5 Order the respondent pay the appellant's costs of the appeal.
- L\316450649.1

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

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

Signature



Capacity

Solicitor



Date of signature

22 Aug 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.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
Telephone	1300 679 272

PARTY DETAILS

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

FURTHER DETAILS ABOUT APPELLANT[S]**Appellant**

Name Craig Charles Finniss

Address

**Legal representative for appellant**

Name Adam Court

Practising certificate number



Firm

Court Legal

Address

Suite 2

57-59

Foamcrest

Avenue

NEWPORT

NSW

2016

Telephone



Email

**DETAILS ABOUT RESPONDENT****Respondent**

Name State of New South Wales

Address

Crown Solicitors Office

4/60-70

Elizabeth

Street

SYDNEY

NSW

2000