



18 February 2008

BY FACSIMILE: (02) 9210 6611

Corrs Chambers Westgarth
Solicitors
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000

Your Ref: PRM/JD/CATH 4300-9006837
Our Ref: ELL:114/04

Attention: John Dalzell/Paul McCann

Dear Sirs

ELLIS v HIS EMINENCE CARDINAL PELL & THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE ARCHDIOCESE OF SYDNEY & ANOR SUPREME COURT OF NSW 20308 OF 2004

We refer to your letter to the Court on Friday and to our previous correspondence including your letters of 15 January and 8 February 2008.

We apologise that we have not been in a position to respond earlier. You will understand that due to the matters we raised with you on 21 December 2007, we have not yet been in a position to obtain instructions from our client. It was the first anniversary of his son's death last week, and this appeared to be a particularly inappropriate time to be raising these matters with him.

However, the impending directions hearing and your letter to the Court have forced our hand somewhat.

Your letter of 15 February 2008

We note that this is the first time that you have referred to the view that the decision of the Court of Appeal had the effect of bringing an end to *the whole of the proceedings*. We had not appreciated that was the view you had taken, and had assumed that the reference in your letter of 18 December 2007 to the matter being concluded was limited to the High Court Special Leave Application, as referred to in your letter.

The sole matter before the Court of Appeal in Appeal No 40173 of 2006 was the decision of Patten AJ at first instance in relation to the Plaintiff's Notice of Motion dated 25 July 2005 seeking an extension of time. That the Court's decision and orders were so restricted is indicated at paragraph 7 of the judgment (see also paragraph 98 of the judgment of Patten AJ).

In the circumstances, we do not read into Order 4 proposed by Mason P at paragraph 199 an intention that the whole of the proceedings 20308 of 2004 against all defendants (including those aspects which do not require an extension of time under the *Limitation Act 1969*) be dismissed.

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It is accepted that those aspects of the plaintiff's claim which required an extension of time are dismissed. It will clearly be necessary for the plaintiff, should he wish to pursue the balance of the proceedings, to amend his Statement of Claim to excise those aspects. Given the contents of your most recent letter, it may also be necessary before the matter can proceed further for the parties to make an application to the Court of Appeal for clarification of its Orders.

Having only recently raised this issue with our client, we do not have instructions as to whether he intends to proceed with the balance of his claim, or any aspect of it. We also need to address with you the matters arising from our exchange of correspondence last December relating to your clients' claims for costs. Clearly these issues need to be addressed together.

Accordingly, we propose that the directions hearing be adjourned by consent for 8 weeks to 16 April 2008 to enable the parties to explore the possibility of resolving all outstanding issues in relation to the proceedings by agreement, including the outstanding matter of the orders for costs in favour of your clients.

We request that you write again to the Court withdrawing your letter of last Friday and substituting a request for an adjournment by consent.

Costs

We note that you assert that our client is employed by this firm. This is not accurate. Our client has undertaken work for this firm on a consultancy basis, as his health has permitted.

With regard to the matters raised in your letters of 15 January and 8 February:

- (a) Our client is presently being treated by a psychiatrist, Dr Phillip Funnell of the Wycombe Clinic, 144 Wycombe Road, Neural Bay, NSW, 2089. He has attended sessions with Dr Funnell twice weekly for some considerable time and this therapy is presently ongoing.
- (b) Our client has no objection to you contacting Dr Funnell directly. However, we imagine that patient confidentiality would prevent Dr Funnell disclosing any meaningful information to you.
- (c) We do not have a recent report or letter from Dr Funnell, nor does our client. Our client will make enquiries as to whether a report has been sent recently to his referring General Practitioner. If so, he will provide a copy to us. If not, please let us know whether you wish us to obtain a progress report from Dr Funnell for the purpose of advancing discussions towards settlement?

We look forward to your response.

Yours faithfully



David Begg
DAVID BEGG & ASSOCIATES



18/02/2008 11:59 612-9232-5388

DAVID BEGG AN ASSOC

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