

**HUNT & HUNT LAWYERS v MITCHELL MORGAN NOMINEES PTY LTD & ORS (S95/2012)**  
**HUNT & HUNT LAWYERS v MITCHELL MORGAN NOMINEES PTY LTD & ORS (S270/2012)**

Court appealed from: New South Wales Court of Appeal  
[2012] NSWCA 38

Date of judgment: 15 March 2012

Application referred into a Full Court/granted: 7 September 2012

In 2005 Mr Angelo Caradonna (also known as Antonio or Tony Caradonna) and Mr Alessio Vella entered into a business venture to sell tickets to a boxing event (a bout between Anthony Mundine and Danny Green, and a dinner to be hosted by Joe Frazier). In aid of that venture they opened a joint bank account (“the joint account”) which required both signatures to effect withdrawals. Mr Caradonna later obtained the certificate of title to a property owned by Mr Vella and used it (without Mr Vella’s knowledge) to apply for a loan from Mitchell Morgan Nominees Pty Ltd and Mitchell Morgan Nominees (No.2) Pty Ltd (together, “Mitchell Morgan”). Mr Caradonna then forged Mr Vella’s signature on various documents, including a loan agreement and a mortgage on the property. Mr Caradonna’s solicitor (who was also his cousin), Mr Lorenzo Flammia, misrepresented to Mitchell Morgan’s solicitors, Hunt & Hunt, that he had witnessed Mr Vella signing the required documents. On 19 January 2006 the mortgage was registered and Mitchell Morgan lent \$1M, which was paid into the joint account. On the same day, Mr Caradonna withdrew \$1M from that account by forging Mr Vella’s signature on cheques. In May 2006 Mr Vella discovered Mr Caradonna’s fraud. Mr Vella then sued (inter alia) Mitchell Morgan, which cross-claimed against Hunt & Hunt. By the time of the trial, both Mr Caradonna and Mr Flammia had gone bankrupt.

On 3 July 2009 Justice Young ordered that the loan agreement be cancelled, the mortgage be discharged and Hunt & Hunt pay Mitchell Morgan 12.5% of \$1M (plus interest). This was after finding that the mortgage had secured nothing, as it was expressed to secure all monies payable by Mr Vella to Mitchell Morgan (which amounted to nothing because the loan had been fraudulent). His Honour found that Hunt & Hunt had been negligent and that, to safeguard against fraud, it should have prepared a mortgage which referred to a stated amount. Justice Young held, on Mitchell Morgan’s cross-claim, that Hunt & Hunt had been a concurrent wrongdoer with Mr Caradonna and Mr Flammia. His Honour then apportioned the liability to Mitchell Morgan (for the \$1M it had lent), at 72.5% for Mr Caradonna, 15% for Mr Flammia and 12.5% for Hunt & Hunt.

On 15 December 2011 the Court of Appeal (Bathurst CJ, Giles, Campbell & Macfarlan JJA, Sackville AJA) unanimously allowed Mitchell Morgan’s appeal. Their Honours held that, although the fraud of Mr Caradonna and Mr Flammia had caused a loss to Mitchell Morgan, the negligence of Hunt & Hunt had caused a loss of a distinctly different nature. That loss resulted from Mitchell Morgan’s lack of security over the property, which was due to the deficient mortgage. The Court of Appeal found that the fact that the mortgage would not have existed but for the fraud did not make the fraudsters jointly responsible (with Hunt & Hunt) for the loss caused by Hunt & Hunt’s negligence. Their Honours therefore held that Hunt

& Hunt's liability should not have been limited to a portion of Mitchell Morgan's loss.

On 15 March 2012 the Court of Appeal (Macfarlan JA & Sackville AJA) ordered Hunt & Hunt to pay Mitchell Morgan damages of \$2.3M including interest. Their Honours found it appropriate to calculate interest (on \$1M) based partly upon the (high) rates contained in the loan agreement, as Hunt & Hunt had been aware of those rates when preparing the mortgage.

In matter number S95/2012, the following ground of law was referred into the Full Court so that it may be argued as if it were on appeal:

- The Court of Appeal erred in finding that the part of the Respondent's claim to damages that related to interest in the period 19 January 2006 to 5 September 2006 ought to be compensated by reference to the rates of interest specified in the loan document forged by Mr Caradonna, rather than interest pursuant to section 100 of the *Civil Procedure Act 2005* (NSW).

In matter number S270/2012 the ground of appeal is:

- The Court of Appeal erred in failing to find that Mr Angelo Caradonna and Mr Lorenzo Flammia were concurrent wrongdoers within the meaning of s 34(2) of the *Civil Liability Act 2002* (NSW) with the Appellant in respect of the damage or loss suffered by the Respondents as a result of the Appellant's breach of duty.