



HIGH COURT OF AUSTRALIA

3 April 2013

HUNT & HUNT LAWYERS v MITCHELL MORGAN NOMINEES PTY LTD & ORS

[2013] HCA 10

Today a majority of the High Court allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales, which held that the loss caused to the first and second respondents (together "Mitchell Morgan") by the negligent drafting of a mortgage by the appellant ("Hunt & Hunt") was distinct from the loss caused by two fraudsters who induced Mitchell Morgan to advance money on the security of the mortgage.

On the basis of a fraudulently obtained certificate of title and forged documentation presented by the fraudsters, Mitchell Morgan advanced a sum of money to a bank account. The money was advanced on the security of a mortgage over a property. One of the fraudsters withdrew the money using forged cheques and then closed the account. Hunt & Hunt, a firm of lawyers, acted for Mitchell Morgan on the transaction and drafted the mortgage.

Mitchell Morgan sought compensation from Hunt & Hunt. In the Supreme Court of New South Wales, Hunt & Hunt was held to have drafted the mortgage negligently, causing the loss claimed by Mitchell Morgan. However, the primary judge held that the conduct of each of the fraudsters was also a cause of that loss. Hunt & Hunt, together with each of the fraudsters, was therefore a concurrent wrongdoer and, under s 35(1) of the *Civil Liability Act 2002* (NSW), the loss was apportioned between them according to what the primary judge considered was just.

The Court of Appeal allowed Mitchell Morgan's appeal from that decision and held that Hunt & Hunt was wholly responsible for Mitchell Morgan's loss. The Court held that the loss suffered by Mitchell Morgan due to Hunt & Hunt's negligence was different from the loss suffered due to the fraudsters' conduct. Therefore, the fraudsters did not cause the loss claimed by Mitchell Morgan against Hunt & Hunt and they were not liable as concurrent wrongdoers in respect of it. By special leave, Hunt & Hunt appealed to the High Court.

A majority of the High Court held that the loss suffered by Mitchell Morgan was its inability to recover the money advanced. While Hunt & Hunt's negligent drafting of the mortgage was a cause of that loss, Mitchell Morgan would never have needed to take a mortgage had it not been induced by the fraudsters to enter into the transaction. The fraudsters' conduct was a material cause of the loss Mitchell Morgan suffered. The majority reinstated the primary judge's conclusion on apportioning loss between the concurrent wrongdoers.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*