

Case Alert

Shaping the future of insurance law

Revisiting historical sexual abuse settlements in NSW

***Magann v Trustees of the Roman Catholic Church of the Diocese of Paramatta* [2019] NSWSC 1453**

31 OCTOBER 2019

AT A GLANCE

- In 2007 the claimant, Mr Magann, entered into a deed of release with the Diocese regarding alleged historic sexual abuse. This matter involved Mr Magann seeking to rely on the amendments to the *Limitation Act 1969* (NSW) to remove the limitation period relating to child abuse actions.
- The Supreme Court's decision affirmed the "once and for all" effect of the deed, effectively extinguishing the defendant's liability regarding any cause of action arising from the matters contained in the deed.
- For insurers and institutional insureds, this is an important decision as there are likely to be further attempts by claimants to set aside settlement deeds where there is scope for an exploitation of a disadvantage argument.

Case overview

A recent decision of the Supreme Court of New South Wales in *Magann v Trustees of the Roman Catholic Church of the Diocese of Paramatta* [2019] NSWSC 1453 affirmed the "once and for all" effect of a 2007 deed of release (deed) between the applicant plaintiff (Magann) and respondent defendant (Diocese). The decision effectively extinguished the defendant's liability regarding any cause of action arising from the matters contained in the deed.

As NSW has not introduced legislation specifically permitting the rollback of earlier settlements in child sexual abuse claims, Mr Magann sought to rely on the amendments to the *Limitation Act 1969* (NSW).

These remove the limitation periods relating to child abuse actions, which, had the plaintiff's argument been upheld, would have allowed his previously statute barred claim relating to alleged sexual abuse by two Catholic priests in the 1980s and early 1990s. In response, the Diocese argued that the agreement reached between the parties by way of the deed, meant that no fresh cause of action ought to be allowed by Mr Magann regarding those allegations.

In reaching its decision, the Court considered the intention of the parties to the deed, which expressly extended to any future claim that Mr Magann may bring against the Diocese regarding the abuse he allegedly suffered.

Further, the Court considered that, at the time of the agreement, Mr Magann had the requisite capacity to enter into it and that the terms of the agreement were reasonable and were not unjust.

Finally, the Court determined that Mr Magann failed to establish that he suffered from any special disadvantage and that the Diocese had taken advantage of that disadvantage. These were the key elements necessary to establish unconscionable conduct on the part of the Diocese.

The implications

Whilst the defendant was successful in this case, there is no doubt that there will be further attempts by claimants to set aside settlement deeds where there is scope to support an unconscionable conduct argument.

These arguments are fact dependant, so each matter will involve the court carefully assessing the way in which negotiations were conducted and how the settlement was achieved.

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