

MEDIA RELEASE

15 SEPTEMBER 2022 – MELBOURNE, AUSTRALIA

Federal Court Upholds James Mawhinney's Appeal of 20-year Ban on Procedural Fairness Ground, Awards Indemnity Costs – Mayfair Prepares for High Court on Remittal Decision

The Federal Court of Australia has overturned James Mawhinney's 20-year ban on dealing in financial products, which resulted from an Australian Securities and Investments Commission proceeding against Mayfair 101 in August 2020.

The court found that "a fundamental denial of procedural fairness to Mr Mawhinney" had occurred and allowed the appeal.

However, the Full Bench of the Federal Court – Justices Jagot, O'Bryan and Cheeseman – remitted the case back to the lower court, a decision that Mr Mawhinney's legal team has begun preparing to contest in the High Court. The court also reinstated the previous interim financial product fundraising injunction until a decision in the lower court is reached.

"I am grateful that the court has upheld our appeal on the basis of a denial of procedural fairness," said Mr Mawhinney. "This is a significant step forward for our noteholders who have had their lives turned upside down by ASIC's misguided enforcement actions."

"However, we are concerned that the matter has been remitted, giving ASIC a second chance to run a new case which it should have got right first time. We have begun preparing an application for special leave to the High Court. In the meantime, we have 570 investors who have been left out of pocket by a regulator who brought a case which the court found untenable."

The court also found, "the approach of ASIC below placed the primary judge in a difficult position, effectively causing the denial of procedural fairness."

The decision to overturn Mr Mawhinney's 20-year ban followed appeal proceedings heard over five days in late August 2022. The Full Court held that Mr Mawhinney was denied procedural fairness in the original trial heard by Justice Anderson in the Federal Court, where it was found Mr Mawhinney had contravened the Corporations Act and ASIC Act despite ASIC not alleging any contraventions had been committed.

At the trial below, ASIC informed the primary judge that no contraventions needed to be found in order for the Court to impose a life ban against Mr Mawhinney. On appeal ASIC acknowledged it mistakenly advanced the position that the court did not need to find contraventions.

ASIC's case on appeal was rejected by the Full Court, which referred to ASIC's argument as "absurd". The court stated that, "ASIC put a legal legally incorrect case," and, "ASIC was acting under what it now accepts to be a mistaken view of the law."

The decision said, “ASIC’s position in the appeal is untenable. It does not matter that ASIC is able to trawl through the evidence and find something arguably capable of supporting the finding of contravention the primary judge made.

“The evidence referred to vast amounts of conduct, alleged, possible, potential, likely and otherwise. The idea that from that vast mass Mr Mawhinney’s counsel was meant to appreciate that the case he was meeting as was found by the primary judge at [392] is absurd.

“There is an unbridgeable forensic gap between a case based on apparent or prima facie illegality and a case based on actual illegality.”

Mr Mawhinney was awarded indemnity costs for the trial below. The judgment stated, “We acknowledge that ASIC ran one case and now will have to run another. We recognise that ASIC having done so cause the hearing below to miscarry and caused this appeal to be necessary.”

Mayfair 101 group had 570 investors who had invested more than \$210 million with the group when ASIC began its actions against the business in 2020.

Managing Partner of Roberts Gray Lawyers, Rhys Roberts commented, “This judgement is testament to the fact that ASIC’s case was flawed. Our grounds of appeal to the High Court are already in the process of being prepared. We are committed to clearing Mr Mawhinney’s name from this horrific situation and productively engaging with policymakers in due course to avoid disasters like this happening again.”

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