



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT MILLHOUSE  
DEPUTY PRESIDENT O'NEILL  
COMMISSIONER BISSETT**

**C2022/8127**

**s.604 - Appeal of decisions**

**Appeal by Yang  
(C2022/8127)**

**Melbourne**

**2.00 PM, WEDNESDAY, 22 FEBRUARY 2023**

PN1

DEPUTY PRESIDENT MILLHOUSE: Thank you very much, parties, and good afternoon. We'll start with the appearances, thank you. Ms Yang, can you confirm you are present, for the purposes of the record, please. You're currently on mute, Ms Yang.

PN2

MS YANG: Yes, this is Yaping Yang, I'm the (indistinct) in this case.

PN3

DEPUTY PRESIDENT MILLHOUSE: Thank you, Ms Yang. Mr Mackie, you seek permission to appear for the first and second respondents?

PN4

MR MACKIE: that's correct, Commissioner.

PN5

DEPUTY PRESIDENT MILLHOUSE: And for the purposes of the record, we'll note that there's no appearance for the third respondent. Mr Mackie, you've filed written submissions dated 18 January, with respect to the question of permission by your clients to be legally represented.

PN6

MR MACKIE: That's correct.

PN7

DEPUTY PRESIDENT MILLHOUSE: The Full Bench has considered those submissions. Are there any matters that you would like to raise orally today, to supplement those submissions?

PN8

MR MACKIE: No, Deputy President. I can - if the Bench is interested, I can provide a response to the submissions of Ms Yang that have been provided; however, if there's no further questions for me, we're content to rely upon the submissions.

PN9

DEPUTY PRESIDENT MILLHOUSE: It's a matter for you, Mr Mackie. If you'd like to address us in response to the matters raised by Ms Yang, then it's open for you to do so.

PN10

MR MACKIE: Certainly. Well then, out of an abundance of caution, I think it's probably best that I do so. In response to the eight points that Ms Yang has stated, the first three are essentially that she's demanding evidence of the body corporate's internal processes; we say there's no requirement for us to do that prior to seeking leave. The fourth point is an allegation of conflict of interest; we deny that there is any conflict of interest. The interests of the body corporate and Mr Cohen are identical. In any event, the alleged conflict of interest is a matter for Mr Hunt and

his clients, not the appellant. The fifth point relates to fairness, which is already covered in our written submissions, and the sixth point relates to the cost.

PN11

There is a large volume of material in this matter; as we've submitted, having lawyers would streamline the process. In any event, the only parties occurring costs are my client, so if they wish to do that, that is a matter for them. The seventh point is that Mr Hunt shouldn't be allowed to make one set of written submissions for both respondents; we say that's not a known principle of law. The eighth point is that the allegations are not complex; we'd say there are 23 appeal grounds and approximately 6,800 pages of material. We say the matter is sufficiently complex that legal representation ought be granted.

PN12

DEPUTY PRESIDENT MILLHOUSE: Thank you, Mr Mackie. Ms Yang, you've filed written submissions concerning the question for the first and second respondents being granted legal representation in the appeal before us; Mr Mackie has just addressed the matters set out in your written submissions in response. Do you wish to raise anything further?

PN13

MS YANG: Yes, because actually, the respondent, first one, is the body corp. If they want to have the - some legal representative in this matter, they should have the minutes of the committee meeting. But the body corp never have the minutes about that, the approved any legal representative to appear in this matter, and actually, there's no authority from the body corp.

PN14

DEPUTY PRESIDENT MILLHOUSE: All right, thank you, Ms Yang. Anything else?

PN15

MS YANG: And from the Graham Cohen, because the barrister, the legal representative, they are the same - they are same for Mr Graham Cohen and the body corp. That means the body corp may pay all the legal fees to the legal representative from the body corp. That means the body corp will pay the legal fees for Mr Graham Cohen, the individual. It's not - it's a conflict of interest, and actually, the body corp never authorised the body corp to pay the legal fees for Mr Graham Cohen when individual.

PN16

DEPUTY PRESIDENT MILLHOUSE: All right, thank you, Ms Yang.

PN17

MS YANG: And for the third respondent is (indistinct) and I am the nominee of this one.

PN18

DEPUTY PRESIDENT MILLHOUSE: All right, thank you, Ms Yang. Ms Yang, Mr Mackie, thank you for your submissions. We've taken into account the matters that have been raised orally today and the written submissions advanced

by the parties in relation to the question of whether the first and second respondents should be granted permission to be legally represented for the purposes of the appeal today. Taking into account the matters set out at section 596(2), as we're required, we are satisfied that granting permission to the first and second respondents would enable the matter, on appeal, to be dealt with more efficiently, and it's for that reason that we grant permission, pursuant to section 596(2A) of the Act.

PN19

Can we turn now to the application that has been made by your clients, Mr Mackie, to admit further evidence. The Bench has, before us, submissions dated 21 February in which the first and second respondents sought to admit further evidence in the application, and you rely upon an affidavit of Mr Hunt in that regard. Would you like to address the Bench on that matter?

PN20

MR MACKIE: Very briefly. The affidavit that Mr Hunt annexes, an ASIC search, the deeds of appointment for the receivers and managers, and two letters from the receivers and managers. The most important of those letters is the second one, which was sent from the receivers to the appellant, and clearly states that the appellant has no employment or engagement with the third respondent. This material post-dates the decision under appeal and we say it's relevant to the granting of leave and the utility of the appeal.

PN21

DEPUTY PRESIDENT MILLHOUSE: All right, thank you, Mr Mackie. Ms Yang.

PN22

MS YANG: Yes.

PN23

DEPUTY PRESIDENT MILLHOUSE: The first and second respondents have sought to file additional evidence in relation to the appeal; that material has been served upon you and comprises of an affidavit of Mr Hunt, dated 21 February, together with exhibits PAU H1 to H4. Mr Mackie has filed written submissions on behalf of his client, which address the basis for why the Commission should exercise its discretion to admit that fresh evidence in the appeal. Do you have a response that you would like to raise in relation to that matter?

PN24

MS YANG: For the new affidavit in the same question, is the legal - legal representative - okay, because I'm not sure today, first thing is I'm not - I didn't know the - the barristers will appear here, I thought it's the lawyer, Peter Hunt, that will come here. So I think I need to - some time to understand what the barrister is talking about, and so I may be - it will be slow, but please bear with me and I'm not sure if I need interpreter or not to understand the barrister's talking. So now, regarding the affidavit you said, is that right?

PN25

DEPUTY PRESIDENT MILLHOUSE: That's right, an affidavit was filed.

PN26

MS YANG: It's filed, and I think it's filed yesterday; is that right?

PN27

DEPUTY PRESIDENT MILLHOUSE: Yes, that's correct.

PN28

MS YANG: Yes. And actually, it's filed yesterday and they are just opened that this - before this meeting.

PN29

DEPUTY PRESIDENT MILLHOUSE: All right.

PN30

MS YANG: Because I - yes, I did not check that, and it's about 27 pages.

PN31

DEPUTY PRESIDENT MILLHOUSE: All right.

PN32

MS YANG: Yes. I - I have not read that, so I think I will need time to read that, about the large of volume evidence.

PN33

DEPUTY PRESIDENT MILLHOUSE: The material that is attached to the affidavit of Mr Hunt appears, in large part, to be material that you may already have a copy of or which has already been addressed to you, and which concerns the appointment of receivers and managers in respect of the third respondent. Can you take a moment to open up the document, Ms Yang.

PN34

MS YANG: Yes.

PN35

DEPUTY PRESIDENT MILLHOUSE: You'll see that the affidavit of Mr Hunt is very short, of five paragraphs, and seeks only to - - -

PN36

MS YANG: Paragraph - which paragraph you want me to look at?

PN37

DEPUTY PRESIDENT MILLHOUSE: At the moment, I'm not inviting you to look at any particular paragraph, but rather to confirm that you have before you the affidavit of Mr Hunt, which is comprised of five paragraphs and is two pages in length.

PN38

MS YANG: Yes, I just received that. I saw it five minutes ago, before the meeting.

PN39

DEPUTY PRESIDENT MILLHOUSE: All right. And there are four exhibits which are attached to that document, marked PAU H1, H2, H3, and H4. Do you have a copy of those documents?

PN40

MS YANG: (Indistinct). Yes.

PN41

DEPUTY PRESIDENT MILLHOUSE: Now, the submissions that had been advanced by Mr Mackie today, on behalf of the first and second respondent relate to the question of whether the Commission, in this appeal, should receive that further material in order to consider the appeal before us. Now, new evidence on appeal is typically not admitted unless it is information that comes to light subsequent to the first instance decision, and bears upon the issues that need to be determined in the appeal. Now, the submissions made by the first and second respondent are that this material, which relates to the appointment of receivers and managers in relation to the third respondent, directly bears upon the issues that the Commission is required to determine in the appeal, and goes to the question of whether there is any utility in the appeal at all. The Commission would like your views on the question of whether that additional material which relates to the appointment of receivers and managers should be received by the Commission in the appeal proceeding before us.

PN42

MS YANG: Yes, actually, from the directions in - in November, from direction from the Fair Work that every party should submit all materials by 19 February - give me a second - yes. And the direction to send to every parties, we should submit all materials or evidence by 19 January, then the other party will have enough time to consider that, and like the - the first and the second respondent, they submitted the evidence yesterday. It's - we're saying give no time to me and to another parties to consider about that. It's unfair. So they have enough time to do that; 19 January to now is almost - it's around one month, but now they just give me - let me - I just know this evidence five minutes before this meeting. I think it's very, very unclear, and like this evidence is prepared by the professional legal - the lawyers and the barrister, I think I should have the chance to seek legal advice about new evidence.

PN43

DEPUTY PRESIDENT MILLHOUSE: All right. We understand the submissions that you've made with respect to complying with the deadlines for the filing of material. This material is new information that has only recently come to light in the days prior to, at, or around the date that the respondents were required to file their submissions in the appeal. So it's on that basis that the material has come to the Commission immediately prior to the appeal proceedings today. But we accept the submission that you've made, that you should have an opportunity to consider that material, so that you can provide the Full Bench with your responsive submissions. What we propose, Ms Yang, is to stand the matter down for 15 minutes, to enable you the opportunity to review the affidavit of Mr Hunt and the four annexures to which we have referred, and at which time we will then call the matter back on and invite you to provide your views in response.

PN44

MS YANG: I don't think so, because from the directions from the Fair Work now, the deadline is 19 January and we should have one month to respond. But now, give me just 15 minutes.

PN45

DEPUTY PRESIDENT MILLHOUSE: Ms Yang, the - - -

PN46

MS YANG: This - the - I - I provided my submissions, 19 January, and did not provide new evidence until now, and the first - first - they provide the submission late than the deadline, and now provide new evidence with 27 pages, and that's - that's the - they attempted to give me no time to consider that, and actually now, because the body corp has issued our three (indistinct) notice, and the bill to the bank, or I have taken all my money and our business, and the - away. They took - they changed the all locks, so I'm - I'm homeless now, and I have two kids, young kids, five and seven years old. We have slept in the car for the past 15 days, and we - we don't have money, and no time. Now you ask - I'm - I'm living in my friend's place. So I - I do not know how can I do that in 15 minutes.

PN47

DEPUTY PRESIDENT MILLHOUSE: Ms Yang, you've indicated to the Full Bench that you haven't yet had an opportunity to review those documents, but you're speaking about the circumstances that relate to the receivership and management of Sunrise. Now, it may be that upon review of the docs, you're satisfied that you have either identified or seen or been provided with these documents previously, such that the time allocated by the Full Bench today is sufficient for you to provide a response, and so we're going to proceed as has been suggested. The matter will be stood down for 15 minutes to enable you an opportunity to have a look at the documents and form a view about that. When we return, you'll be able to make your submissions at that point, in relation to the further evidence. We'll proceed on that basis. The matter's stood down for 15 minutes. We're adjourned.

**SHORT ADJOURNMENT**

**[2.17 PM]**

**RESUMED**

**[2.18 PM]**

PN48

DEPUTY PRESIDENT MILLHOUSE: Thank you. Ms Yang, have you had the opportunity to consider the 21 February correspondence in the affidavit of Ms Hunt? Are you in a position to provide a response to the question of whether the Commission should admit further evidence as sought by the first and second respondents on appeal?

PN49

MS YANG: Yes. I think the Commissioner should not admit the evidence because it wasn't ordered and the Commissioner gave the - gave them one month to respond to my evidence, but give me 15 minutes to respond to their evidence. I think it's extremely unfair to run this pattern, and now I have a look under the - I have tried my best to look at the evidence, but, actually, it's very

professional documents. I cannot understand the (indistinct) completely, and I think I need to seek legal advice.

PN50

DEPUTY PRESIDENT MILLHOUSE: All right. The way in which we intend to proceed is this. I'd like to give you the opportunity to further consider the affidavit of Mr Hunt and the annexures to which you've been referred. I'm going to ask Mr Mackie momentarily whether there are any additional submissions that he would like to make in support of his application to admit further evidence, and then the Full Bench will allow you the opportunity to file written submissions on the question. You'll be given two weeks to do so with the benefit of a transcript which will be ordered and provided to you. We anticipate that a transcript would be produced by Tuesday of next week and such that - - -

PN51

MS YANG: (Indistinct).

PN52

DEPUTY PRESIDENT MILLHOUSE: If I could just finish, Ms Yang, and then I'll invite your response. Thank you. Such that you'll be given two weeks to file written submissions in response to the question as to whether the Commission should admit further evidence by (indistinct) Tuesday. Now in those circumstances, I'd like to understand first from Mr Mackie whether there are any supplementary submissions that you would like to make in relation to the application to admit further evidence, or if you would like to address the proposal that the Full Bench has in relation to that matter that I've just described.

PN53

MR MACKIE: No. I have no supplementary submissions. Look, while, obviously, the – you know, the respondent's, you know, preference would be to continue with the matter today if we, at all, can, and we understand the approach that the Bench is proposing. So, we have nothing further to add.

PN54

DEPUTY PRESIDENT MILLHOUSE: Mr Mackie, just for the purposes of clarity, we would be proposing to proceed to hear Ms Yang's submissions in respect of the substantive matter on appeal and hear from the first and second respondents in relation to that matter once we've dealt with this preliminary issue in relation to the request for further evidence.

PN55

MR MACKIE: As in we'll continue to hear the substantive matter today.

PN56

DEPUTY PRESIDENT MILLHOUSE: Yes, that's right.

PN57

MR MACKIE: Good. Thank you. We'd be – yes, we're happy with that approach.

PN58

DEPUTY PRESIDENT MILLHOUSE: All right. Thank you, Mr Mackie. Ms Yang, is there anything you would like to say about the proposal that I've set out?

PN59

MR MACKIE: Yes. I think the Commissioner give them one month to respond to my evidence. So, I request the Commissioner can we form ours the same time to respond to the evidence. The four weeks.

PN60

DEPUTY PRESIDENT MILLHOUSE: The Full Bench has already determined that we'll grant you a period of two weeks, Ms Yang, from Tuesday at the point in time that you've received a written transcript of the proceeding today. So, that's the decision that's been made in relation to that matter, and I'd like now to move on to the next issue in relation to your appeal. The next issue relates to the name of the third respondent.

PN61

Mr Mackie has filed submissions on 21 February which identifies that the Commission should formally amend the name of the third respondent to Sunrise Creek Pty Ltd (Receivers and Managers Appointed). In the circumstances, it's the preliminary view of the Full Bench that the Commission ought to formally amend the name of the third respondent. Do you have anything to say about that matter, Ms Yang?

PN62

MS YANG: Actually, I have not received the document about that, and that's because just as somebody told me - - -

PN63

DEPUTY PRESIDENT MILLHOUSE: Somebody told you. Would you like to continue, Ms Yang?

PN64

MS YANG: Yes. And the (indistinct) our company had been (indistinct) and they come over to replace the old locks, and we have no place to live because this property is the only one property we have in Australia where now we are thinking (indistinct) actually we have the application in the QCAT now, and this one, we will be heard in May and – and of May, and we have another package (indistinct) just received our applications – that you schedule the cancellation, and if we can't have agreement and commence the conciliation, it's going to be good, but if there is no agreement in the conciliation, there will be adjudicator to be scheduled. So, I think we need to wait for the outcome from the QCAT and the BCCM applications.

PN65

DEPUTY PRESIDENT MILLHOUSE: All right. Thank you, Ms Yang. Mr Mackie, is there anything you'd like to say in response to Ms Yang's submissions, largely that one should wait for the outcome before making that formal change?

PN66

MR MACKIE: I'll just confirm my instructions. I'm not personally instructed in the QCAT matter, but my understanding is that the QCAT matter is not about whether or not receivers and managers have been validly appointed. They're about whether – I believe it's about – sorry. I'll just confirm this. The QCAT matter is actually about seeking an injunction to stop the body corporate, the second respondent, considering a motion to terminate its contract with the third respondent.

PN67

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN68

MR MACKIE: So, that doesn't actually have anything to do with whether or not receivers and managers have been appointed. Perhaps one way forward could be – and I'm – obviously it's a matter – of course it's a matter for the bench, and I'm alert to the, you know, statutory requirements about this, but perhaps this is a matter to which Ms Yang could address their written submissions.

PN69

DEPUTY PRESIDENT MILLHOUSE: All right. Ms Yang, we'll give you an opportunity to address that issue in the written submissions that you'll file two weeks from Tuesday, and the Full Bench will reserve its decision subject to receipt of that material from you. Before we move forward, for the purposes of the record, I'd just like to mark for identification purposes the affidavit of Mr Peter Anthony Eckhardt Hunt dated 21 February together with annexures PAUHIH4. We'll mark that document for identification purposes as document A.

**MFI #A AFFIDAVIT OF PETER ANTHONY ECKHARDT HUNT  
TOGETHER WITH ANNEXURES PAU, HI, H4 DATED 21/02/2023**

PN70

With those initial matters dealt with, Ms Yang, we confirm that we have read the submissions that you have filed in support of your notice of appeal document and would like to provide you with the opportunity to make any oral submissions that you would like to make to supplement what you've already put in writing in relation to the appeal.

PN71

MS YANG: Give me a second. Let me check on that one. Yes. I think on the – and even then we see with the (indistinct) to work for them. So, I think the workplace with (indistinct) would have lasted for the next underneath the six months and (indistinct) and because receiver asked me to do – receive for him – for them, I think so, and the Graham Cohen will be also the chairman for the body corp, and the bullying case will be - is (indistinct) for a long time, and, actually, because the body corp (indistinct) Adelaide because this bullying actually be heavier with the receiver had been appointed.

PN72

That's – this behaviour is also – for the receiver it's also a bully behaviour from the body corp because a bullying from the body corp, the receiver had been appointed. We lost the (indistinct) and we lost all our money, and the – we have

all (indistinct) the cash in the back. It's our personal money, but the receive just took them away.

PN73

DEPUTY PRESIDENT MILLHOUSE: All right. Well, those matters got to the appointment of the receive and manager in relation to Sunrise. Are there any oral submissions that you'd like to make which go directly to the decision of the Commissioner which is under appeal before us?

PN74

MS YANG: Yes. I think the bullying behaviour will last from the next few months. So, this appeal should be allowed.

PN75

DEPUTY PRESIDENT MILLHOUSE: All right. And in your notice of appeal, you set out at point 3 why you say it would be in the public interest for the Commission to grant permission for the appeal. Is there anything else that you'd like to say in relation to that matter?

PN76

MS YANG: For the public interest because – for the Commissioner Spencer make the original decision. She made a very significant legal error. Like, they thought the body corp is my employer. Actually, it's not. Sunrise. The worker pays in Sunrise. It's not the body corp. And the whole decisions – the – and the Spencer allowed the – Mr Peter Hunt to legal representative of Graham Cohen and the body corp without a form 53 because Graham Cohen never provide the form 3 to the Commission to say, okay, we – to think the permission to be legal representative in this matter, in the (indistinct) in the hearing, everything.

PN77

Never form 53, and anything else – give me a second, and, actually, in the process of the original decision, the Commissioner delayed of side the respondent in the body corp, but, actually, my original bullying case is a against Graham Cohen, the named person. Without named person, no bullying. So, it's not the body corp, but in the whole decision the Commissioner's side it's a body corp. No, it's not.

PN78

It's a legal error, and some – in the decisions, I seek – I sought some orders to the Graham Cohen, but the Commissioner Spencer amend my orders and think I am seeking – I was seeking orders about the chairman. No, not the chairman. It's Graham Cohen, the personal. In the whole process of the original, the Commissioner did not copy me in the correspondence when the Commissioner emailed with other parties.

PN79

It's included me, and why I'm not (indistinct) because why I would prepared to appeal. I asked the Fair Work Commissioner (indistinct) to provide a transcript about the case, and I noted there's some – there was some emails between the Commissioner Spencer and another party, and they didn't – the – Commissioner Spencer did not include me in the correspondence. And, like, the Commissioner Spencer's said was the first of the – for the first consideration, the – if the

temporary – temporary grant permission to the Mr Peter Hunt to legal present to the Body Corp.

PN80

Though, it's temporary, but it's not. It's a – it's a permanent permission because of legal means the rest of the process, the Commissioner Spencer just talk with Mr Cohen, the lawyer, it's not a temporary. So I think somebody – it's different to (indistinct).

PN81

I cannot see the sense in the (indistinct) to me. But it's different to what she did with (indistinct) what she said to me. And actually, because there is no Cohen and in the consolation but the – but the Commissioner said, 'Okay, you need to come', but it's not actually from the Commission. No named person, nobody, no named person, like can do the consideration who I should discuss of talk with me the building case and the (indistinct words) account that you reach our agreement. And for the – the same – the same one – the Commissioner (indistinct words) are Mr Pete Hunt to the present (indistinct) Body Corp in the (indistinct) they use the same lawyer and even the Graham Cohen never provide obligation to be legal representative.

PN82

Never. No (indistinct). In the formal (indistinct) the – Mr Peter Hunt is the provider. They just the one to legal representative of Body Corp. As in, the Body Corp (indistinct) there's no minutes or something the Body Corp. Also – also why is the Mr Peter Hunt to legal representative of the Body Corp is (indistinct) never. So we do not have the authority from the Body Corp to spend the Body Corp's (indistinct) to engage the lawyer in this matter.

PN83

So I think the Commissioner says so. The – she had no power to (indistinct) in our correspondence from the (indistinct) have legal to make her decision.

PN84

Actually, in this – in this – in the original (indistinct) I ask the – the (indistinct). I ask the Commissioner Spencer could you tell me the Mr Peter Hunt, the client, who is Mr Hunt the client? They only decided to please check for me, 53. I check that. It's Body Corp. And the Commissioner never answered me and refused to answer me until she needs you to (indistinct words). And after that, she emailed me and decide, okay, but the (indistinct) has been leased to the Body Corp. To the Mr Hunter, Peter Hunter. It including the Mr Graham Cohen. That's the first time the Commissioner Spencer (indistinct words) Mr Peter Hunt is the Mr Graham Cohen and the Body Corps' legal representative for the first time. It's the first time that she, the Commission answered my question. After, yes, she asked the question after she had made the decision. And regarding the – the (indistinct words) paragraph 5, the permission (indistinct) he do not – never ask me why there are object to (indistinct) of the Conservation Conference. Never asked me.

PN85

And for the answer 16 November 2022, Commissioner sends an email me, so ask me to (indistinct) email to direction it's called a direction for submissions. And she required two submissions regarding the dismissal, the application in the (indistinct) hours. And actually, in my – in and I think any common sense, and that you would – it's not very serious situation. If the Commissioner wants you dismissal application, it should be considered seriously. And it cannot be decided in two days. I know the normal time for that it would be three to four months. I check with some case. It's very harsh to consider to dismissing a application. And the normal time is four to six months. That's the Commissioner Spencer (indistinct) do it in two days to decide the right. And 18 November, I recently (indistinct) from the Commissioner Spencer. It's – it's (indistinct words) earlier than the (indistinct) of submission. The submission (indistinct) had not finished. The decision had came out.

PN86

This very unjust and unreasonable. I believe the Commissioner Spencer had no power to do so before make the decision before the (indistinct) of submission. And in the (indistinct) in the first (indistinct) for 41, the Commissioner Spencer signed. The applicant in my submission did not (indistinct) materials used my (indistinct words) submission. Actually, I never provided submission. I had (indistinct) that from in the email sent. It's not my submission and it's with that (indistinct) this - this email and this (indistinct) never had the – had a heading Submission, the word. But the Committee said it's your submission.

PN87

I cannot agree with that. And Ms Spencer had no power to do so and she made errors and in other (indistinct) matter (indistinct). And if we go to the decision 45, and the Body Corps representing (indistinct) and case (indistinct) because applicant did not attend the hearing because – but actually, the Commissioner's noted I've (indistinct) attend the conference and so actually, the conference and (indistinct) quite a different lawful meanings, I have otherwise, the Commissioner Spencer, my concern about that prior to the conference but the – Ms Spencer just ignore me, two, three days after the – after she (indistinct).

PN88

I was contactable and the (indistinct) not apply to this situation because I'm always contactable (indistinct) I can (indistinct) hearing refer to the decision 46, paragraph. There's a Body Corp recruitment (indistinct words) another case, Corra v Candeno and says, "This case sited the applicant has clearly demonstrated unwillingness to participate in the proceedings. But actually I always demonstrated (indistinct) parties (indistinct). I replied every email from the Commissioner Spencer and answer the calls from the – from the Commissioner Spencer.

PN89

And I have advised the Commissioner Spencer my concern about the legal representation. Prior to the conference but Commissioner Spencer did not answer me. Never answer me. Just ignore that and – the only – she asked me is three days, after she misses her decision.

PN90

And the Commissioner Spencer forced me to attend the conference without the named person. Without the named person, no good in case. And actually, the legal representative is (indistinct words) in each proceedings of their work. It's not extraneous matter. As Commissioner Spencer said in EPP in paragraph 53, I'm always actively communicating with the Commissioner and I think I cannot be forced to again to attend a conference of hearing without the named person that, the building matter cannot be solved in (indistinct) conference if a named person does not attend.

PN91

It's very unfair to both me to attend (indistinct) and conference, hearing with all Commissioner, if only the legal representation. And actually, I (indistinct) Graham Cohen. He is still the chairman of the Body Corp. Now, and for the next six months (indistinct) working for the Sunrise. The building (indistinct) continues to create a (indistinct) to our family to myself. (Indistinct words).

PN92

Yes, I think it can be worse now we are homeless. I have no money, but I think it can be worse. I don't know what will happen, but I think some more thing may happen. And (indistinct) in the arranging of proceedings, the Commissioner Spencer made many, many, many procedure errors. Errors of law. Secondly, errors of fact.

PN93

And that this (indistinct) had been harsh, unjust, unreasonable, and it is the whole original proceeding, the Commissioner did not (indistinct) the matter fairly.

PN94

Her decision is contrary to the weight of evidence. I am – I do not understand the Commissioner Spencer, she a very, very professional person in the Fair Work and in my opinion, she should understand everything as every procedures to run the case fairly, because I would hate to think fairness but the Commissioner Spencer made many, many errors. Errors of law. Error in fact.

PN95

And I don't know why. Something happened. That's why we come – and because of this one, the building conduct continues. It's (indistinct) large (indistinct words) no money and my kids cannot go to school because – because I have no money to prepare the lunch. I think - I don't know, I don't know what I can do. I think maybe that is the only way left to me because the bullying conduct, it continued.

PN96

DEPUTY PRESIDENT MILLHOUSE: All right, Ms Yang, thank you for taking us through your submissions.

PN97

DEPUTY PRESIDENT O'NEILL: Ms Yang, I just have one question. I understood you to say that the Commissioner didn't copy you into correspondence

that she sent to the other parties. What correspondence was that, and do you know the dates of it?

PN98

MS YANG: Give me a second, because - like you know why - my appeal book is over 6000 pages, it's not my - I amended it, but the most - I think, are around 6500 pages - I got them from the Fair Work library about that.

PN99

DEPUTY PRESIDENT MILLHOUSE: Yes.

PN100

MS YANG: Yes, and give me a second to try to find that one because I checked that and I noticed a few from respondents, the Commissioner did not copy me in that, but give me a second. Okay, there is - the Commissioner in the email 13 September 2022, that's one, and another one is 28 October 2022, and a third one is 26 October 2022. They are three emails I noticed the Commissioner did not copy me, but I'm sure there are more emails they did not copy me because actually, like you said, 6000 pages - documents. I'm not sure, I can't check that every page, but - - -

PN101

DEPUTY PRESIDENT O'NEILL: Are those three emails in the 6000 pages you sent?

PN102

MS YANG: Yes, yes, because the 6000 pages - after I received the decision from the Commissioner, I requested a transcript from the Fair Work and the Fair Work library forwarded these documents to me. So, I noticed there are some emails from the Commissioner they did not copy me.

PN103

DEPUTY PRESIDENT O'NEILL: Okay, thank you. They were emails to the first and second-named respondents, were they?

PN104

MS YANG: I don't think so, and I think the Commissioner - I can't (indistinct) parties, the Commissioner just, I think, emailed Mr Hunter with that formal confirmation she would be legally represented, yes. The Commissioner - in most of the correspondence, the Commissioner Spencer never emailed or copied Graham Cohen, (indistinct), in various correspondence. Most of them no Graham Cohen.

PN105

DEPUTY PRESIDENT O'NEILL: Thank you Ms Yang.

PN106

DEPUTY PRESIDENT MILLHOUSE: Thank you, Ms Yang, for your submissions. The Full Bench proposes to turn to Mr Mackie and invite him to make submissions on behalf of the first and second-named respondents and,

following that process, Ms Yang, we will return to you to see if you have any supplementary matters in reply that you would like to raise. Mr Mackie?

PN107

MR MACKIE: Thank you. Ms Yang filed an application for a stop bullying order under section 789FC of the Fair Work Act. As is normal practice, the Commission began by listing the matter for a conciliation conference to try to resolve the dispute. Ms Yang refused to attend. That seems quite clear from the material. It is not that Ms Yang did not know how or when these conferences were scheduled, she simply refused to go. Why did she refuse? Well, the answer appears to lie in ground 21 in the third sentence:

PN108

*I cannot be forced to attend a conference/hearing without the named person.*

PN109

That is, she wanted the matter to run in a very particular way and because it wasn't being run in the way she wanted it done, she was just refusing to interact.

PN110

Now, in a literal sense, Ms Yang was right. If she refused to attend a conference, no one was going to send the bailiffs around and physically compel her to attend. It was her application and whether she wanted to progress it or not was ultimately her choice and she made that choice. She chose not to attend and she chose not to progress the application. Unsurprisingly, that application was ultimately dismissed for want of prosecution.

PN111

The Bench will obviously be interested in the procedural history of this matter and it is spelt out in some detail in the decision itself, and I note that of the 23 grounds of appeal, none of them seem to allege that the procedural history is not accurate or is misrepresented in any way. It shows that the appellant had four opportunities to attend a conciliation conference. She was warned three times that failing to attend may result in her application being dismissed, but she still chose not to attend, and that meant that her matter could not progress.

PN112

In the circumstances, the Commission had little option but to dismiss her application for want of prosecution, and nothing has been raised in this appeal that suggests that decision was affected by appellable error. By way of an overview, that is the way that the respondents see this case - the first and second respondents, I should state.

PN113

What I will do now is I will step through each of the grounds of appeal as they appear in the notice of appeal. What I am doing, if it is of assistance, is that I am essentially summarising the points that we have made in our written submissions, which commence at page 51 of the digital court book, and I will be commencing with the leave to appeal issue, which begins at paragraph 20, which is page 55 of the digital court book.

PN114

As we say there, the appellant has referred to the authority of GlaxoSmithKline but hasn't explained how its criteria have been met. This is an applicant, as she then was, who was refusing to attend the Commission to progress her own case. It's hard to see how that involves legal or general application which would amount to satisfying the test for public interest.

PN115

We also refer, at paragraphs 23 to 27, about the appointment of receivers and managers, noting, of course, there's an outstanding issue regarding the acceptance of Mr Hunt's affidavit. In that material, of course, we refer to an email dated 17 February 2023 - last Friday - to the appellant from the receivers and managers and the covering email states in bolded text at the second line:

PN116

*You have no employment or engagement by the company.*

PN117

So that suggests - of course, the appellant may have been an employee in the past, and of course it appears to us that she was - but this suggests that she isn't any more, and noting, of course, that this issue of Mr Hunt's affidavit is still outstanding, I do note that the appellant keeps referring to her current financial situation and not having work, which does suggest she accepts that she is currently not employed by the third respondent.

PN118

That's what we say in relation to leave to appeal. I will now step through each of the 23 grounds of appeal, commencing at page 56 of the digital court book. It should be fairly obvious, but what I've attempted to do with the written submissions here, as you can see, with each ground, I have tried to summarise, using the appellant's own words, what the ground of appeal is. Obviously I've given it my best to be as accurate as possible. This is how we understand the grounds of appeal to function.

PN119

Ground 1 is:

PN120

*The Commissioner Spencer mistook the body corporate as my employer.*

PN121

Now, as the Bench has heard multiple times, the body corporate was not Ms Yang's employer; it was in fact the third respondent. However, Spencer C knew that because she says so at paragraph 2 of the decision under appeal. What the appellant is referring to is obviously a typographical error at paragraph where, on one occasion - and it appears one occasion only - Spencer C referred to the second respondent as 'the employer', but if we look through the rest of that decision, it doesn't refer to the second respondent as 'employer', it uses the word 'respondent' and, in circumstances where the Commission has shown that it clearly does in fact know who the employer was (at paragraph 2), that's not an error.

PN122

Ultimately, of course, even if it were an error, that has no relevance to the decision under appeal. The decision under appeal is, of course, to dismiss the application for want of prosecution in circumstances where the appellant was not attending conferences, and ultimately whether or not that was a factual error really has nothing to do with that decision. That's a theme which I will repeat many times when I step through these grounds of appeal.

PN123

Ground 2:

PN124

*Commissioner Spencer amended my application without my authority.*

PN125

There is no suggestion that she did that. There's no order amending the application, the F72. What the appellant is referring to is an email, which appears at paragraph 9 of the decision, which is simply reasons as to why leave for legal representation had been granted, and all it does is refer to Mr Cohen as the 'Chairman' instead of the Chairman instead of 'Mr Cohen'. That's all it does. There is no order amending the F72 and, in any event, that's not relevant to the appellant's refusal to attend conferences.

PN126

Ground 3:

PN127

*Deleted the named person Graham Cohen from my application.*

PN128

We say that didn't occur. The decision lists Mr Cohen as the first of the three respondents and, in any event, that is not a reason to refuse to attend conferences.

PN129

Ground 4:

PN130

*Permitted Matthews Hunt Legal to represent Graham Cohen and the body corporate in this matter. The Commissioner Spencer has no power to do so.*

PN131

The argument seems to be about the lodging of a Form F53. As we say in the written submissions, section 596(2) does not state that the power can only be exercised if a party is named in an F53 and, in any event, as is apparent from the decision, Mr Cohen was actually present, or would have been present, at all of these conciliations. Personally he would have been there. It's just that the appellant was refusing to treat him as being there unless he was communicated with via an email address of her choosing and, of course, that's not how this operates.

PN132

In any event, as the Commission stated at paragraph 36, if the appellant was unhappy about - if she believed that, you know, there was some issue involving representation and Mr Cohen, whether or not he was a respondent, still a named respondent, the appropriate course of action was to come to the conference and raise it so that it could properly be discussed. But what she did instead is it appears that she just simply kept asking the same question over and over again: 'Who are the respondents and who are the representatives?' She didn't clearly express at all what her concern was. That's not the appropriate course. The appropriate course was to go to the conference and, if necessary, explain her position to the Commission.

PN133

Ground 5:

PN134

*Allowed Matthews Hunt Legal to represent Graham Cohen and the body corporate at the same time.*

PN135

Section 596 contains no limitation on the number of parties that one lawyer may represent.

PN136

Ground 6:

PN137

*Graham Cohen did not lodge a Form F53.*

PN138

This appears to be a repeat of ground 4. We state that that's not a prerequisite to the exercise of power under 596 and, even if it was, that would not excuse the appellant's failure to attend conferences.

PN139

Ground 7:

PN140

*I have never received the notice that Commissioner Spencer gives her formal grant of permission.*

PN141

Having read the appellant's written submissions, I think this is a complaint that she wasn't given a formal order. That's not a ground of appeal.

PN142

Ground 8:

PN143

*Commissioner Spencer has no power to use submissions and correspondence from Matthews Hunt Legal to make her decision.*

PN144

Well, of course, she does. That's the point of section 596.

PN145

Ground 9 - as I've said in the written outline, to be honest, we suspect this is really what the heart of the appellant's complaint is:

PN146

*The Commissioner forced me to attend the conferences/hearings without the named person Graham Cohen present.*

PN147

Now, I won't step through this other than to say that's not correct. The appellant is proceeding on the basis that the Commission cannot communicate with Mr Cohen accept via one particular email address. That's not the case. Even if it were, it's not relevant to the appellant's failure to progress her case. She could, and should, if she wished to progress her case, attend the conciliation conference.

PN148

Ground 10:

PN149

*Commissioner Spencer did not explain the reasons for granting legal representation.*

PN150

She did. It's reproduced at paragraph 9 of the decision. Again we say that's not relevant.

PN151

Ground 11 - the appellant seems to interpret the Commissioner telling Matthews Hunt Legal, 'We do not have an F53 from you' as granting Matthews Hunt Legal permission to appear and, of course, they are not the same thing and, in any event, we would say this is not relevant to the decision.

PN152

Ground 12 seems to be essentially a repeat of the same point:

PN153

*Allowed Grant Cohen and the body corporate to be legally represented.*

PN154

Ground 13:

PN155

*Did not ask me whether I object to attending a conciliation conference.*

PN156

The appellant, unlike the respondent, was not making a jurisdictional objection to her own application. Further, this isn't relevant to her own actions.

PN157

Ground 14 - now this seems to be referring to an email from the Commission sent on 16 November 2022. I stepped through this when I set out the factual history of the case. If the Bench is interested, this chain of emails appears at page 80 of the appeal book. I'll just bring that up myself so I can ensure that my memory does not fault me at any position. This appears as a chain, so it goes over a number of pages, but at the very bottom of page 80 of the appeal book, we can see there's the email from Spencer C sent 16 November 2022. It begins on page 81 of the appeal book and it's essentially saying, 'The applicant did not attend today's conference. We attempted to contact her multiple times. She didn't respond. As we have said before, I am now going to consider dismissal for want of prosecution.'

PN158

Now, Ground 14 says, essentially, that, 'I didn't get enough time to put my submissions in', but if we look at page 82, it states:

PN159

*Parties are directed to confirm by 10 am tomorrow whether they seek to file any submissions. If they do, they should file them by 3 pm on Friday the 18th. If there is any difficulty meeting the Friday timetable for submissions, the parties should advise such by 10 am tomorrow.*

PN160

The applicant was expressly invited to tell the Commission if she needed more time and she didn't do that. So, we say ground 14 has no basis.

PN161

Ground 15:

PN162

*Commissioner Spencer issued her decision in relation to dismissal at 2.17 pm when she had invited the parties to file submissions by 3 pm.*

PN163

That is not an accurate representation of the events. I step through this in some detail in my written submissions at paragraphs 11 to 14 and again at paragraphs 46 to 48. In short, what occurred is that in response to this email, which the Bench may be looking at in the appeal book, where the Commission said, 'Everybody, tell me if you want to file submissions and, if you do, please file them by 3 pm', if you scroll up, we can see that what happens is the appellant replies to that email and she sets out in her email - we can see the second paragraph - what appears to be attempting to offer an explanation for her absence on 16 November 2022. So, in all the circumstances, that's a set of submissions.

PN164

Now, as I refer to in our written submissions, what the Commission then did is it, in fact, once it received written submissions from both sides, it wrote to both parties and said, in essence:

PN165

*Thank you, everyone, for giving me your written submissions. I've now got them. I'm now going to proceed to determine this matter on the basis of these submissions on the papers. If you do not wish me to do that, please advise.*

PN166

Again, the appellant didn't respond, so it's not surprising that the Commission proceeded on the basis of what it had received. The appellant had an opportunity to put in submissions. In our view, she did do that, regardless of whether she considered them submissions or not. And, if she wasn't happy with what the Commission - she knew what the Commission was intending to do and if she wasn't happy with it, she was expressly invited to raise it. So, in the circumstances, we say there is no issue with procedural fairness. That's our response to ground 15.

PN167

As to ground 16, the appellant is essentially saying that the Commissioner should not have treated her emails back as written submissions. In the circumstances - and I have taken the Bench to what she sent back - it is entirely appropriate for the Commission to treat it as a submission. It's hard to see what it was if it wasn't a submission. It is also worth noting that, yes, while the appellant eventually did reply and say, 'Oh, no, no, no, no, those aren't my written submissions in relation to this point, don't take it into account', she did that after the decision had been made. So, she sends this (audio malfunction) email in reply to a request for submissions, the Commission writes back and says, 'Thank you, everyone, for giving me your submissions, I'm now going to consider this.' She doesn't say anything. The Commission then issues a decision at 2.17 pm and then the appellant says, 'Oh, no, no, no, that wasn't my submission, you shouldn't take it into account.' That is not an appellable error, in our submission.

PN168

Ground 17 appears to be a repeat of ground 9.

PN169

Ground 18 argues that the decisions of *Morton v Peregrine Corporation Pty Ltd* ought be distinguished because in that case, somebody did not attend a hearing, as opposed to attending a conference. We say that, as far as that decision explains the basis for section 587(1), it remains applicable. The factual difference is of no significance.

PN170

Ground 19 is, in essence, saying, it seems to us, 'I was demonstrating a willingness to participate because I replied to every email.' Now, that may be so, but that's not the problem. The problem was that she was refusing to attend the conferences, and we can see in these replies to the Commission, they don't advance the matter, they are highly argumentative and, at times, they are quite openly aggressive. But the point here at paragraph 53 is that it's not sufficient - 53 of my submissions I'm referring to - is that it's not sufficient to just keep emailing the Commission if you're not going to attend the conferences that it is trying to get you to attend.

PN171

Ground 20 - we don't understand what this is referring to. We can't effectively respond to it.

PN172

Ground 21:

PN173

*I am always actively communicating with the Commissioner. I cannot be forced to attend a conference/hearing without the named person.*

PN174

Now, I referred to this right at the beginning of my oral submissions. This is why we say it appears that what the appellant was doing was just refusing to attend out of protest. She was say, 'In my mind, you're not making Mr Cohen attend, so I'm not going to attend either.' Ground 22 – and I paraphrase this – seems to be basically that a jurisdictional objection that the respondent raised ought not to have been decided in their favour. Of course it wasn't decided in their favour; it wasn't decided at all. That's not what the decision under appeal is about.

PN175

Ground 23 states that she is still working in the workplace at Sunrise and of course this turns on how of course this was written before the receivers and managers were appointed, and I won't repeat myself on those points. In essence, that is our oral submissions in response to the grounds of appeal. Are there any questions from the Bench or matters that I might assist with?

PN176

DEPUTY PRESIDENT MILLHOUSE: No questions. Thank you, Mr Mackie, for your submissions today.

PN177

MR MACKIE: Thank you.

PN178

DEPUTY PRESIDENT MILLHOUSE: Ms Yang, you have heard the submissions made by Mr Mackie. Are there any matters that you would like to respond to?

PN179

MS YANG: Okay. Regarding the letter, 15 November 2022, the Spencer C said that the parties are directed to confirm by 10 am tomorrow about that and they – if the parties seek to fail such submissions, they are required to do so by 3 pm on Friday, 18 November 2022. So this the guidelines the Spencer C said, but I don't know why. After that, I replied the emails – a few emails before 3 pm, 18 November, but the Commissioner issued her decision at 2.17 pm. It's early. It's very early than the paragraph she said.

PN180

I'm not sure if she - what she think about that. She thought no submissions or something? Why she decide to (indistinct) that did not attend of the deadline and

made a decision before the deadline. I think it's a very serious issues, like – issues, and actually I am always communicate with the Commissioner.

PN181

I think my question is very simple, like today the question is if Mr Peter Hunter can represent Graham Cohen and is a body corporate in the same time, like you told me at the very beginning, you said, 'Okay, I approve that. I grant you the legal representative', that's fine. It's easy. It's very easy. If the Spencer C tell me – or told me like you did today, but the Spencer C never answer that, never answer that. Is that a hard question? Is that difficult question? I think that's a – and I don't believe the Commissioner had the power to make the decision before 3 pm, the deadline she set.

PN182

We come back to the – give me a second. That's one and we want – I want to come back to the quantum one. Spencer C misinterpret the body corporate as my employee and Mr Mackie said it's a typographic error. Do you believe that? It's in the decision, it's a formal document. It's a legal document from the Fair Work. Go to this paragraph about the decision – in the paragraph 4, decision is:

PN183

*In the F73 employer/principal response, the Employer raised the following jurisdictional objections.*

PN184

To summarise, if employee did not raised the jurisdictional objection, it's from the body corporate, and the Commissioner already know, like, Mr Mackie's side in the paragraph 2; Sunrise is employee, so the Commissioner should not put employee here to raise the following jurisdiction, so I think it's not a typographical error, it's a legal error.

PN185

The Spencer C mistook the body corporate as an employee, so it's a fundamental error in this case because it's regarding what is the workplace for the body conduct. For the Spencer C amending the (indistinct) without my authority is in the decision. In the decision the Commissioner wrote that – amended that – and put them in their decision. It's not an error, it's there.

PN186

The Commissioner amended my orders I sought without my authority because I was – these orders I sought before the body corporate individually. Now the Commissioner amended my orders to the orders against the body corporate. It's different. It's quite different.

PN187

DEPUTY PRESIDENT MILLHOUSE: Are there any final remarks you would like to make in response? We have taken note of the matters you have raised in reply this afternoon.

PN188

MS YANG: So this case, the bullying did happen and will happen. It will continue and it will become worse.

PN189

DEPUTY PRESIDENT MILLHOUSE: Thank you for your submissions, Ms Yang. We will take into account those that you have made orally today, together with the material that you have provided in writing, as we will the submissions made by you, Mr Mackie. We just want to confirm the process from here. The Full Bench will order transcript of today's proceeding and provide that to the parties within the next four business days.

PN190

Assuming the transcript is produced by Tuesday next week, Ms Yang, you will have two weeks from that day to file any responsive submissions addressing the application by the first and second respondent to admit fresh evidence in the appeal proceeding before us having regard to the document that was marked for identification today as document A. Mr Mackie, the first and second respondents will be invited to advise whether they seek to file any responsive written submissions to anything that is filed by Ms Yang and, if so, have a period of one week to do so.

PN191

MR MACKIE: Thank you.

PN192

DEPUTY PRESIDENT MILLHOUSE: That process will be set out in an email from my chambers at the time that the transcript is circulated to the parties. A decision of the Full Bench in those circumstances is of course reserved. We thank you for the submissions that you have each made today and the Commission is now adjourned.

**ADJOURNED INDEFINITELY**

**[3.02 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

**MF1 #A AFFIDAVIT OF PETER ANTHONY ECKHARDT HUNT  
TOGETHER WITH ANNEXURES PAU, HI, H4 DATED 21/02/2023 .....PN69**