# Financial advisor held to be negligent

The recent judgement of Bankier v HAP2 Pty Ltd [2019] QSC 101 further clarifies the duty owed by a financial advisor and the level of warnings required to ensure that their client understands the full impact of a financial decisions to their personal circumstances and future goals/objectives. The plaintiff was injured in a car accident in 1997 and in or about 2002 was awarded approximately $2 million in damages for the injuries she suffered and for her future economic loss, medical expenses and other associated matters. Approximately $1.1 million of the award related to future medical and associated expenses. Mr Avery, a financial advisor, was engaged by the plaintiff in or about 2002. The total amount available for investment was $1,184,600.

The plaintiff alleged that Mr Avery should have provided the plaintiff with the following warnings about three matters considering that the award of damages was intended to provide for the plaintiff's future medical expenses and income requirements:

1. Spending money in excess of her estimated living expenses;
2. Borrowing money for investments; and
3. Starting a business in 2007.

The Court held that at paragraph 130 that the advisor's warnings about the plaintiff's spending (including the starting of the business) were *"low-key"* and that there *"had been no connection made between spending, the dissipation of her essential capital resource and the effect that would have on her future"*. His Honour held that had appropriate warnings been given by the advisor as to the plaintiff's spending habits, that she would have changed her way and reduced her spending accordingly.

With respect to the advice to borrow money to buy investments, the Court:

- accepted the opinion of the defendant's expert with respect to the purchase of agribusiness investments that *"whilst it was a marginal investment, it was not necessarily negligent to recommend it"* citing that the investment was only 8% of the plaintiff's overall portfolio; and

- accepted that the advisor recommended that the plaintiff finance an amount to acquire a property in Palm Beach (rather than purchasing outright) which caused the plaintiff to incur unnecessary interest expenses.

As for the advice provided by Mr Avery in 2007 when the plaintiff approached him about starting a business, the Court held that the advisor failed to provide a clear warning to the plaintiff as to the adverse effect on her capacity to afford the rental expenses in circumstances that annual rental costs increased from $27,000 to $60,000. The Court held that the advisor had breached his duties to the plaintiff with respect to the purchase of the Palm Beach property or the lease of the business premises[1]. The Court invited the parties to make submissions as to the loss suffered by the plaintiff.[2] For legal advice or assistance in relation to this issue, contact Callun using the contact details below.

1. The Court concluded that the agribusiness investments were not of significance given that they represented a small proportion of her assets.
2 His Honour understood that the calculation of loss based on the above findings was $637,508.

**Callun Blurton**

A Solicitor with more than decade of litigation experience, Callun focuses on professional negligence and indemnity disputes across many professions.


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