

"concealment by fraud in the common law ... (reads) ... or moral turpitude". His Honour says further down, "I have not found ... (reads) ... my conclusions". But this important, "In doing so I have steadily ... (reads) ... such as an allegation of fraud".

What our learned friends have to do is they have to persuade you that if this case goes forward to trial, they have a realistic prospect, an arguable case of making out there's been fraudulent concealment applying a Briginshaw test of a document which is admitted to have been discovered. We say looking at the matter objectively that's a hopeless proposition. It's never going to happen at trial and it's a good reason to stop the case here and now.

Just while I'm dealing with these authorities about what fraud means in the concealment context, we've set out in our outline at para 59 a decision from the New South Wales Court of Appeal of Justice Mahony where, to be fair, he took a slightly more relaxed view of fraud in the section than did Justice Batt in Daraway. He said, "There must be a consciousness that what's ... (reads) ... of proper standards".

Just pausing there for a moment, it's important that in this area of the application we're not looking at whether or not there was an act of misfeasance in public office in 1980. We're looking at whether acts of concealment involved lack of conscience and wrong-doing. So there has to be evidence first of

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