

### Relevant Principles

85 An appeal from the Master to a single judge of this Court is an appeal de novo. Rule 77.05(7) of the *Rules of the Supreme Court* provides:

"The appeal shall be by re-hearing *de novo* of the application to the Master but each party may, subject to any proper objections to admissibility -

(a) rely upon any affidavit used before the Master and upon any evidence given orally before the Master; ..."

86 Nevertheless, it is open to give weight to the Master's decision.<sup>13</sup>

87 In the present case, the firstnamed plaintiff appeared on the appeal in person. He put the appeal on the express basis that the claim was not correctly articulated by senior and junior counsel who appeared for the plaintiffs before the Master. Accordingly, I am invited by the plaintiffs to adopt a different framework of analysis than that considered and decided upon by the Master.

88 Conversely the defendants contend that I should give weight to the Master's decision and, in particular, the findings of fact made by him after extended argument and examination of the evidence over several days of hearing.<sup>14</sup>

89 In the event, I have sought to deal with the matter on the basis now put to me by the firstnamed plaintiff. This basis was elaborated in very detailed written submissions of some 117 pages. The central propositions were further elaborated in argument. I propose to deal with the matter on the basis that the case so elaborated is the case to be considered rather than that previously argued by legal representatives that the plaintiffs now disavow.<sup>15</sup> This is not to say, however, that I have not found the Master's reasons to be of assistance.

90 The defendants contended before the Master:

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<sup>13</sup> *Southern Motors Pty Ltd v Australian Guarantee Corporation Ltd* [1980] VR 187 at 190.

<sup>14</sup> Rule 23.04 of the Rules of the Supreme Court provides that on an application under Rule 23.01 evidence shall be admissible.

<sup>15</sup> The Master's reasons contain a detailed analysis of the pleadings at [2]-[25].