

## NEWS

# Judge upsets class-action applecart

Report Nick Lenaghan

The multibillion-dollar class action industry is facing a dramatic shake-up after the Federal Court's unprecedented move to set up a US-style litigation committee to handle competing shareholder actions against stricken property giant Centro Properties.

Under judge Ray Finkelstein's revolutionary proposal, different sets of lawyers would in effect auction themselves to the committee of litigants, which would help in deciding which law firm ran the \$1 billion case.

In a judgement on a preliminary hearing on Friday, Justice Finkelstein also lifted the lid on the raw market forces at work as dominant players Maurice Blackburn and Slater & Gordon vie for supremacy in the emerging but lucrative shareholder litigation industry.

Those dynamics, warned Justice

### KEY POINTS

- ▶ A Federal Court judge has proposed a litigation committee to review class action lawyers.
- ▶ Justice Ray Finkelstein's proposal is part of the preliminary hearings before the Centro court case.

Finkelstein, could put a law firm in conflict with its clients' best interests as it sought to corner the market in litigation.

Monash University associate professor in business law Vince Morabito said Justice Finkelstein had broken new ground in the fast-evolving landscape of plaintiff law.

"It's never been done before, to my knowledge, in Australia. It's a very courageous judgement."

Maurice Blackburn and Slater are separately representing investors in Centro Property Trust and Centro Retail Trust, whose securities have plunged since it

revealed its struggles to roll over debt.

Centro is accused of making misleading statements to the market over its financial position and breaching its continuous disclosure obligations.

But the two actions have caused a separate headache for the Federal Court, which must decide whether they should be heard together or consecutively.

Instead, Justice Finkelstein has bypassed that problem, for now, by proposing a committee to advise the court on how to proceed, including which lawyers should run the case.

"I appreciate that this approach has the hallmarks of an auction process, but with lawyer-driven class actions there is no good reason why the case should not be auctioned," the judge said.

Maurice Blackburn's action is backed by litigation funder IMF

Australia, while publicly listed Slater has won support from Las Vegas-based Comprehensive Legal Funding.

Maurice Blackburn had joined opponents Freehills, representing Centro, in arguing for the court to stay the action by Slater while broadening its own claim to include its rival's group members.

Justice Finkelstein said Maurice Blackburn's stance could adversely affect its clients by making the case harder to settle, although it would benefit both the law firm and its funder in the legal market.

"Keeping a competitor at bay by limiting his opportunities is a very desirable outcome," the judge said. But it could create a potential conflict between Maurice Blackburn's own interests and its duty to its clients, he said.

The law firms are expected to respond to the judge's proposal at a hearing on October 29.

## IN BRIEF

### Judge slams ABCC

A senior Federal Court judge has blasted the Australian Building and Construction Commission over a coercion case against union officials, arguing the watchdog should have prosecuted the employer instead. Justice Jeffrey Spender gave leave for the parties to discontinue the case, saying it had been "misconceived, was completely without merit and should not have been brought". The judge said there was strong evidence that Queensland company Underground had entered into "fraudulent financial engineering", to portray employees as independent contractors in a "dishonest attempt" to evade income tax obligations.

Mark Skulley

### Permanent ban for Burnard

The Australian Securities and Investments Commission has permanently banned former Westpoint fund-raiser Neil Burnard from providing financial services. In May, a jury found Burnard guilty on nine criminal charges.