

Court juggles competing class actions

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Judge Ray Finkelstein's landmark decision to compel lawyers in competing, funded shareholder class actions to consider forming Australia's first litigation committee, driven by large institutional investors, has been welcomed by a class action expert.

Monash University's Vince Morabito called the ruling "the most important judgement by a single judge of the Federal Court that has ever been handed down on class actions in Australia".

The decision in the Centro Properties Group class action followed a battle between Maurice Blackburn (with funder IMF Australia) and Slater & Gordon (with US funder

Comprehensive Legal Funding) over which action should be stayed, if any, while the other was heard.

The court had never before encountered multiple, funded class actions, which Justice Finkelstein noted "share the same nucleus of operative facts".

Mr Morabito, whose research was cited in Friday's decision, said more competing claims were likely and, in the absence of legislation, what was needed was a "greater managerial role by the judge".

Justice Finkelstein informed his thinking with developments in the United States, where legislation has been passed to encourage the shareholders with the largest losses to act as lead plaintiffs in class actions.

"I propose to ignore altogether

the interests of the lawyers and litigation funders," Justice Finkelstein said, preferring an "independently selected litigation committee" to decide what was in the best interests of the group members.

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doubts over the conduct of Maurice Blackburn, saying its decision to side with opponent firm Freehills, representing Centro Properties Group, and change its class from "closed"

to "open" as a result, may adversely affect the firm's clients by making it harder to reach a settlement.

"Keeping a competitor at bay by limiting his opportunities is a very desirable outcome. This, I think, has the potential to put Maurice Blackburn in an unenviable position; one where there is a risk that its personal interest might end up in conflict with its duty to its clients," he said.

But Maurice Blackburn principal Andrew Watson denied the firm's conduct had been questioned in the proceedings and said Justice Finkelstein had "formed a view, frankly, that he wasn't entitled to form, given that the issue wasn't before him".

The firm's strategy had always been to have "an expeditious class closure"

after the class was opened to incorporate Slater's clients "so that we could then try to talk to the respondents about an expeditious resolution", Mr Watson said.

Slater & Gordon principal James Higgins said Justice Finkelstein had arrived at the heart of the dispute between the parties.

"We obviously welcome the finding that the respondents don't get to choose the lawyers for the plaintiffs, and that another way has to be found to ensure the claims are conducted as efficiently as possible in the interests of all shareholders of both groups."

The parties have two weeks to serve submissions on whether and how a litigation committee should be appointed.