NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/06/2019 12:49:00 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged**:**	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
File Number:	NSD903/2019
File Title:	JACK DE BELIN v AUSTRALIAN RUGBY LEAGUE COMMISSION LTD ACN 003 107 293 & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Dated**:** 7/06/2019 12:59:00 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 122

Rules 36.01(1)(b); 36.01(1)(c)

NOTICE OF APPEAL

No. of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

On appeal from the Federal Court of Australia

JACK DE BELIN

Appellant

AUSTRALIAN RUGBY LEAGUE COMMISSION LIMITED (ACN 003 107 293) AND ANOTHER NAME IN THE SCHEDULE

Respondents

To the Respondents

The Appellant appeals from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.

2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your

Filed on behalf of (name & role of party) Jack de Belin, Appellant
Prepared by (name of person/lawyer) Anthony Graham Charles Gooch
Law firm (if applicable) Macpherson Kelley
Tel (02) 8298 9507 Fax (02) 8298 9599
Email Tony.Gooch@mk.com.au
Address for service Level 21, 20 Bond Street, Sydney, New South Wales, 2000 – DX 59 Sydney

absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:
Place: Level 17, Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Date: 2019

Signed by an officer acting with the authority of the District Registrar

The Appellant appeals from Orders 1 and 2 made on 17 May 2019 in the Federal Court in Proceeding Number NSD 309 of 2019 at Sydney, and from the judgment of the Federal Court given on 17 May 2019 in *De Belin v Australian Rugby League Commission Limited* [2019] FCA 688.

GROUNDS OF APPEAL

A. Restraint of trade

1. The primary judge erred in finding that the restraint of trade imposed by the Respondents through the introduction of the new rule 22A into the NRL Rules on 11 March 2019 sought to protect legitimate interests of the Respondents (at [15], [308], and [238]-[267]).

Particulars

The primary judge erred by:

(a) failing to find that it does not follow from the fact of the laying of a charge that a reasonable person would form the view that the person charged in fact has engaged in conduct, which conduct the police who laid the charge reasonably believe warrants the charge (being the effect of the Respondents' reason for the new rule as identified in Rule 22A(2));

(b) failing to apply when addressing (at [258]) *Mirror Newspaper Limited v Harrison* (1982) 149 CLR 293, the observations of Gibbs CJ (at 295) to the effect that it does not necessarily follow from the fact of the laying of a charge that a reasonable person would form the view that the person laying the charge in truth had reasonable cause for a suspicion that an offence had been committed, for example because the reasonable person would know that the person laying the charge might be proceeding on a mistaken view of the facts;

(c) failing to apply when addressing (at [258]) *Mirror Newspaper Limited v Harrison* (1982) 149 CLR 293, the observations of Mason J (at 300-301) to the effect that the ordinary reasonable reader would have in mind that a person charged with a crime is presumed innocent, guilt or innocence is a question to be determined by a court, and that not infrequently the person charged is acquitted;

(d) finding that it follows from the fact of the laying of a charge and reporting of it that a reasonable person may think that there is a reasonable and probable basis for the charge (at [260]);

(e) failing to find that the Respondents did not establish what legitimate protectable interest required that it was necessary for them to impose an automatic stand down rule for any player charged with a criminal offence punishable by a maximum penalty of 11 years imprisonment or more, but impose no such rule for any player

charged with a criminal offence with a maximum penalty of up to 11 years imprisonment;

(f) having (pursuant to s 136 of the Evidence Act 1995 (Cth)) admitted for a limited purpose only and not as to the truth thereof the evidence identified in Schedule A hereto, relying upon such evidence as to the truth thereof (at [154], [155], [157], [255]);

(g) admitting into evidence the portions of the Respondents' Affidavits identified in Schedule B hereto;

(h) finding on the basis of the admissible evidence that the views of sponsors, broadcasters, and fans were to the effect that the Appellant should be stood down from participation in the NRL Competition;

(i) accepting as an important consideration for the Board of the First Respondent on 28 February 2019 the "Negative Incident Impact Summary" and covering email (at [186]-[187]), without concluding that the assertion that up to 1.4 million fans may have been lost due to the impact of player behaviour had been derived from the "Net Promoter Score" was entirely speculative (as her Honour had found when rejecting the evidence of Mr Alavy at [36]);

(j) failing to take into account, when considering the position of broadcasters, the evidence that revenue payable to the Second Respondent for broadcasting rights had already been agreed and fixed for the period extending to the end of the 2022 Rugby League season (as found at [118]);

(k) failing to take into account, when considering the position of sponsors, the absence of evidence that any sponsor had withdrawn or had threatened to withdraw from any existing or potential sponsorship agreement by reason of the laying of a criminal charge against the Appellant; and/or

(l) concluding (at [257]) that the evidence established a clear and present danger to the legitimate interests of the Respondents.

2. Further or in the alternative, the primary judge erred in finding that the restraint of trade imposed by the Respondents through the introduction of the new rule 22A into the NRL Rules on 11 March 2019 did no more than was reasonably necessary to protect the legitimate interests of the Respondents (at [15], [308], and [226]-[307]).

Particulars

The Appellant relies on the particulars to appeal grounds 1 and 3.

Further, the primary judge erred by:

(a) failing to distinguish adequately or at all between the conduct of rugby league players other than the Appellant and the allegations against the Appellant;

(b) failing to distinguish adequately or at all between the reactions of sponsors, broadcasters and others to the conduct of rugby league players other than the Appellant and the allegations against the Appellant;

(c) failing to take into account that for each of the examples of allegations and charges described as forming the NRL's 'summer from hell' (at [131]), the only player to whom the automatic stand down rule was applicable was the Appellant, and the automatic stand down rule could not have had the effect of disassociating the NRL from each of the other examples;

(d) concluding (at [231]) that the effect and severity of the restraint upon the Appellant was ameliorated;

(e) concluding (at [232]) that it had not been established that the value of any playing contract negotiated for the Appellant in the future would be significantly impacted by reason of his having been stood down;

(f) concluding (at [234]) that the restraint imposed upon the Appellant by Rule 22A would not have the effect of substantially impairing his career, having elsewhere

concluded that, *inter alia*: (i) the restraint imposed on the Appellant strikes at his essential interest in being able to play in the NRL Competition and in being able to be selected for representative and related competitions (at [228]); (ii) the restraint on the Appellant's essential interest has particular weight given the limited window of time in which a player may play professionally at the elite national level of the game (at [229]); (iii) elite rugby league players need to continue to play in order to maintain their skills (at [229]); (iv) it was common ground that the Appellant could miss one or two NRL seasons (at [229], [286]); (v) it was the evidence of Mr Greenberg that if a player does not play for a year or two this might adversely affect his playing career (at [229]); and (vi) it was the evidence of Mr Greenberg that losing one or two seasons of the Appellant's career was a significant period given the limited life span of the career of an NRL player (at [397]);

(g) finding (at [236]) that the Appellant had led no evidence as to the position which his Club or the NSW Rugby League would have taken to his representative selection as a consequence of the charge laid against him had Rule 22A not applied to him, having at the same time concluded that it was not contentious that the Appellant represented New South Wales in all three State of Origin games in 2018, and that his ability to qualify for such selection in 2019, expectation of a bonus paid by his Club and of payments of $90,000 or more if he did so, were not challenged;

(h) failing to take into account (when concluding (at [237], [304(2)]) that Rule 22A did not prevent the Club and the Appellant from performing their respective obligations owed under their Playing Contract) that (i) Rule 22A prevented the Appellant from carrying on his trade and (ii) in most restraint of trade cases the restraint was contained in a contractual provision;

(i) concluding that Rule 22A did not relevantly operate upon the Appellant retrospectively (at [282]), when Rule 22A(6) expressly rendered the rule retrospective in its operation upon the Appellant;

(j) failing to conclude that Rule 22A had the potential to defeat the operation and effect of the Appellant's Playing Contract (which expires in 2020), when it was common ground that the standing down of the Appellant from the NRL Competition could continue until the end of the 2020 season (at [229], [286]);

(k) concluding (at [302]-[303]) that the operation of Rule 22A so as to ban the Appellant automatically (without exercise of discretion) and without a right to be heard was reasonably necessary to protect the Respondents' interests;

(l) failing to take into account or properly take into account the limited (if any) impact that the new rule could have in achieving a disassociation between the Respondents and the Appellant's charge in circumstances where the Appellant only has a high public profile through his involvement in the NRL; at the time when the restraint was imposed he had been charged for a number of months and had already been the subject of extensive media reporting; he is continuing to train with his NRL club; and is continuing to be paid by his NRL club.

(m) failing to take into account or properly take into account that a reasonable person ought to know that the Appellant is presumed to be innocent and that guilt or innocence is a question to be determined by a court and that not infrequently a person charged is acquitted (in circumstances where the Appellant has pleaded not guilty and strongly refutes the allegations), and ought to know that permitting the Appellant to continue to ply his trade in the circumstances does not mean that the Respondents are acquiescing in or indifferent to the alleged offence;

(n) failing to take into account or properly take into account the presumption of innocence, where the Respondents are acting to regulate the ongoing trade of elite

Australian rugby league players in their field of endeavour and where there is no risk to the public arising from a person in the position of the Appellant continuing to ply their trade while a criminal charge is pending and they are presumed to be innocent; and or

(o) failing to find that having regard to the above matters and the drastic consequences visited upon the Appellant by the imposition of a restraint, *inter alia*:

(i) which struck at his essential interest in being an elite level rugby player in circumstances where he has a limited window of time in which he may play professionally;

(ii) for an indeterminate period but which could easily be one or two NRL seasons;

(iii) immediately, automatically, and in the absence of consideration or bargaining or consultation;

(iv) after he had entered into his employment contract;

(v) where he is prevented from playing football for any other code;

(vi) where there has been no finding of any fault, and where he is presumed innocent and has pleaded not guilty and strongly refutes the allegations made against him; and

(vii) where he has no right of hearing or review for potentially the remainder of his contract,

then to the extent that the Respondents have a legitimate interest to protect, they have not discharged their burden of establishing that the new rule goes no further than is reasonable necessary to protect any such interest, there are other steps which they could have taken to protect any such

interest, and/or the imposition of the new rule otherwise does more than is reasonably necessary to protect any such interest.

3. Further or in the alternative, the primary judge erred in finding that the restraint of trade imposed by the Respondents through the introduction of the new rule 22A into the NRL Rules on 11 March 2019 was not against public policy (at [308], and [305]-[307]).

Particulars

The primary judge erred by:

(a) finding that the evidence did not establish that there was no proper consultation with the Rugby League Players Association (**RLPA**) for the purposes of the Collective Bargaining Agreement (**CBA**) about the new rule before it was imposed;

(b) failing to find that the imposition of the new rule was in breach of the CBA because the RLPA did not agree to the rule; and/or

(c) failing to find that as a matter of public policy the Court should strive to give effect to the presumption of innocence, and where a body is acting to regulate the ongoing trade of a person in their field of endeavour and there is no risk to the public arising from that person continuing to ply their trade while their charge is pending and they are presumed to be innocent, it is contrary to public policy to prevent the person from performing their trade for an indeterminate period in the manner of the new rule.

For one, some or all of these reasons, the primary judge ought to have found that the restraint was invalid because it is against public policy.

B. Unconscionable conduct

4. The primary judge erred in concluding that the Appellant's claim for damages on this ground must fail (at [392]).

5. The primary judge erred in concluding that the Appellant failed to establish the factual premises upon which the Respondents were alleged to have breached s21 of the *Australian Consumer Law* (**ACL**) (at [404, and [382]-[403]).

Particulars

The primary judge erred in failing to:

(a) bring to account the unequal bargaining power of the Appellant and Respondents in and about the introduction of Rule 22A, to which Her Honour ought to have had regard pursuant to s22(1)(a) of the ACL;

(b) conclude that the Appellant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the Respondents, in accordance with s22(1)(b) of the ACL;

(c) find in accordance with s22(1)(d) of the ACL that the introduction of Rule 22A involved unfair tactics on the part of the Respondents, subsisting in (i) the absence of consultation as to the terms and effect of Rule 22A (ii) the extreme haste with which the Rule was implemented (iii) the presentation to the Appellant on 27 February 2019 of a choice either to stand down voluntarily or to be stood down from the NRL Competition (iv) the express object when introducing Rule 22A on 11 March 2019 of ensuring that the Appellant did not take his place on the field as and from the commencement of the 2019 competition three days later (v) the Respondents' reliance upon the flawed Negative Incident Impact Summary (vi) the absence of consideration of alternative forms of the rule and (vii) the absence of consideration of the comparable disciplinary provisions of other sporting codes;

(d) have regard to the extent to which the Respondents' conduct towards the Appellant was inconsistent with its conduct in similar transactions between the Respondents and Rugby League players over many years prior to the introduction of Rule 22A, in accordance with s22(1)(f) of the ACL;

(e) have regard to the inability of the Appellant to negotiate the terms of Rule 22A, his Playing Contract and/or registration with the First Respondent, in accordance with s22(1)(j) of the ACL.

The primary judge ought to have declared that the Respondents acted unconscionably towards the Appellant within the meaning of s21 of the ACL and ordered that there be an inquiry as to damages in respect thereof.

ORDERS SOUGHT

1. Appeal allowed.
2. Set aside the orders made by Perry J on 17 May 2019.
3. A declaration that Rule 22A of the NRL Rules was and is invalid and of no effect.
4. A declaration that the Respondents' introduction and implementation of Rule 22A constitutes an unlawful restraint of the Appellant's trade.
5. A declaration that the Respondents' introduction and implementation of Rule 22A constitutes unconscionable conduct with the meaning of s21 of the ACL.
6. Order that there be an inquiry as to damages.
7. Order the Respondents pay the Appellant's costs of the appeal and of the proceedings in the Court below.

SCHEDULE A TO NOTICE OF APPEAL

Evidence admitted pursuant to s136 of the *Evidence Act,* not as to the truth of the matters stated

Affidavit

1. AS Abdo 2.4.19 (85 paras): 28-30, 43, 50-52, 54, 60, 76, 78 (part "This opinion … [8] of Exhibit AA1.") .
2. AS Abdo 2.4.19 (22 paras): 4, 8-9, 11 (part "During that conversation … tarnished any further."), 11, 13-14, 17 (part "Each of these …currently taking place."), Exhibit AS2 [6], 20.
3. T Greenberg: 74-75, 82, 94, 108 (first and third sentences), 109 (part "as to the damage …" to end.), 111 and exhibit TG2, 113(d), 113(e), 113(g) (second sentence), 113(j) (second sentence), 113(l) (part "The significant … supporters and participants").

SCHEDULE B TO NOTICE OF APPEAL

Evidence wrongly admitted over Appellant's objection

Affidavit

1. AS Abdo 2.4.19 (85 paras): 21-24, 41-42, 44, 48-49, 61, 67, 69-72, 81, 85.
2. AS Abdo 2.4.19 (22 paras): 7 (first sentence), 10, 15, 16 (first 2 sentences), 20.
3. BT Campbell: 13, 14 (second sentence), 15, 16 (second sentence), 17-19, 20 (first sentence), 21, 23 (second sentence).
4. T Greenberg: 69 ("…to express…outstanding"), 99, 120.

Appellant's address

The Appellant's address for service is:

Place: c/- Macpherson Kelley, Level 21, 20 Bond Street, Sydney, New South Wales, 2000

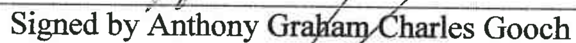
Email: Tony.Gooch@mk.com.au

The Appellant's address is 33 Robertson Street, Coniston NSW 2500.

Service on the Respondent

It is intended to serve this application on both Respondents.

Date: 7 June 2019



Signed by Anthony Graham Charles Gooch

Lawyer for the Appellant

This Notice of Appeal was settled by Arthur Moses SC, Yaseen Shariff and Timothy Kane.

Schedule

No. of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

Appellant

Appellant:	Jack de Belin

Respondents

Second Respondent:	National Rugby League Limited (ACN 082 088 962)

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD309/2019

ST GEORGE ILLAWARRA RUGBY LEAGUE FOOTBALL CLUB PTY LTD and another/others named in the schedule
Applicant

AUSTRALIAN RUGBY LEAGUE COMMISSION LTD ACN 003 107 293 and another/others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE PERRY

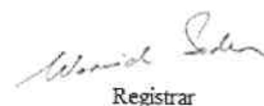
DATE OF ORDER: 17 May 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The application is dismissed.
2. The applicant is to pay the costs of the respondents as agreed or assessed.

Date that entry is stamped: 17 May 2019



Registrar

Prepared in the New South Wales District Registry, Federal Court of Australia
Level 17, Law Courts Building, Queens Square, Telephone 02 9230 8567

Schedule

No: NSD309/2019

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent	NATIONAL RUGBY LEAGUE LTD ACN 082 088 962

MISCELLANEOUS ACTION

Applicant	JACK DE BELIN
Respondent	AUSTRALIAN RUGBY LEAGUE COMMISSION LTD ACN 003 107 293
Second Respondent	NATIONAL RUGBY LEAGUE LTD ACN 082 088 962