Supreme Court of NSW Court of Appeal

Decisions Reserved as at 31 March 2023

	Number	Case Name	Heard	Issues	Judgment Below
1	2021/204042	Dwyer v Volkswagen Group Pty Ltd	30/03/2022	TRADE PRACTICES – the appellant brought representative proceedings on behalf of some 83,000 persons who purchased Volkswagen vehicles in which a Takata driver side airbag was installed between 2007 and 2018 – the appellant claimed that his vehicle was not of acceptable quality because, by reason of the installation of the Takata airbag, the vehicle was not free from defects and was not safe – primary judge found in favour of the respondent – whether primary judge erred in failing to find that the appellant's vehicle was not of acceptable quality at the time of the supply to the appellant, within the meaning of s 54 of the Australian Consumer Law – whether primary judge erred as to certain factual findings – whether primary judge erred by importing a negligence or fault standard into a strict liability regime – whether primary judge erred by rejecting certain expert evidence – whether primary judge ought to	*Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia* [2021] NSWSC 715

				have held that the appellant was entitled to damages under s 272 of the ACL	
2	2021/262212; 2021/17031; 2021/258153	Anchorage Capital Master Offshore Ltd v Bakewell; Banco Bilbao Vizcaya Argentaria SA v Sparkes	5/08/2022	CORPORATIONS – the proceedings arose from the collapse in April 2016 of Arrium Limited and a number of its subsidiaries – the respondents were respectively the Group Treasurer and the CFO of the Arrium Group at all material times – the proceedings concerned a claim by the appellant banks against the respondents for misleading or deceptive conduct in relation to certain misleading statements said to be contained in or made by virtue of a number of drawdown notices issued by the Arrium entities, pursuant to facility agreements in 2016 – the respondents were alleged to have been responsible for causing the drawdown notices to be executed and issued – primary judge found in favour of the respondents – whether primary judge erred as to the correct legal test for insolvency – whether primary judge erred as to certain factual findings – whether primary judge erred as to his conclusion on misleading or deceptive conduct – whether primary judge erred as to his findings on causation – whether primary judge erred as to his findings on loss and damage	*Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025
3	2022/65750	Creak v Ford Motor Company of Australia Ltd	10/08/2022	CONTRACT – Appellant entered into a deed of settlement with the Respondent – under the deed the Appellant accepted inter alia that he would cease production and supply of a range of Ford vehicles and parts that are not manufactured with the authority of the Respondent or its related bodies corporate – Respondent sought injunctive relief against	*Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq)* [2022] NSWSC 83

				the Appellant for breach of a settlement of proceedings – primary judge found that deed of settlement was valid and the Appellant was bound by its terms – primary judge found that Appellant had failed to adhere to the terms of the deed – primary judge entered judgment for the Respondent – whether primary judge erred in construing the deed of settlement – whether primary judge erred in finding that the restraint of trade doctrine did not apply to the deed – whether primary judge erred in finding it was open to the Respondent to recover damages which it had incurred in other proceedings – whether primary judge erred in making orders for injunctive relief	
4	2022/134465	Verde Terra Pty Limited v Central Coast Council	1/09/2022	LAND AND ENVIRONMENT – development consent for golf course and waste management facility in 2008 – subsequent consent orders made for remediation of land in 2014 – application for alteration of 2008 development consent – whether there is an existing or approved development on the site - whether further EIS required - whether development was within meaning of cl 35 of Schedule 3 of Environmental Planning and Assessment Regulation 2000	*Verde Terra Pty Ltd v Central Coast Council; Central Coast Council v Environment Protection Authority (No 9)* [2022] NSWLEC 29
5	2022/118789	Cooper v DPP	13/09/2022	ADMINISTRATIVE LAW (judicial review) – termination of Drug Court program for applicant – whether primary Court failed to condition mandatory considerations under ss 10(1)(b) and 11 of Drug Court Act – whether erred by taking into account irrelevant considerations	*Lower decision not available on Caselaw*
6	2021/252548	Macquarie Units Pty Ltd v	21/09/2022	EQUITY – equitable remedies – recission in aid of rights at law –Second Appellant is	*Nassif v Sun* [2021] NSWSC 990

		Sunchen Pty Ltd		director and shareholder of Third Appellant – Second Respondent is director and shareholder of First Respondent – Second Appellant and Second Respondent entered into a joint venture to purchase and develop three resort business at Cairns, Queensland – Second and Appellant and Second Respondent incorporated Third Respondent for purposes of funding joint venture – on incorporation of Third Respondent, 50% of issued share capital was held by Third Appellant with the remaining 50% held by the First Respondent – Third Appellant's shares subsequently transferred to First Appellant, which is another company controlled by Second Appellant – issue arise as to Second Appellant's ability to meet his share of the financing obligations for the joint venture prior to the purchase of the relevant assets at Cairns – First Respondent subsequently acquired 50% of First Appellant's shares in Third Respondent in order to reduce Appellants' burden of financing obligation – purchase of the Cairns assets by Third Respondent was completed – Second Appellant provided no funds to the joint venture personally – Second Respondent arranged for transfer to First Respondent of First Appellant's remaining 25% shareholding in Third Respondent for nil consideration pursuant to compulsory acquisition clause in Third Respondent's Shareholders' Agreement – transfer of shares executed without proper authority – Appellants commenced proceedings seeking declarations that share	

				transfer was void and of no effect, and liable to be rescinded in equity – in the alternative, Appellants sought equitable compensation – Respondents contended that Appellants had no standing to bring proceedings, that Shareholders' Agreement granted right to enact transfer, that Appellants had unclean hands, and that defence of laches applied – primary judge found in favour of Respondents and dismissed Appellants' claims with costs – whether primary judge erred in finding that share transfer had been carried into legal effect – whether primary judge erred in upholding defence of laches – whether primary judge erred in various findings of fact, including that value of shares was not established	
7	2022/123736	Flanagan v Bernasconi	18/10/2022	TORT (Professional negligence) – The Respondent provided the Appellant with insurance brokering services in respect of insurance products – in 2012 the Appellant took out a homeowner's insurance policy with Vero – in 2013 the swimming pool at the Appellant's property was substantially damaged – the Appellant made a claim on the Vero policy with respect to the pool damage – the claim was rejected on the basis that the policy excluded events involving swimming pools – the primary judge found that the pool damage occurred as a result of the swimming pool having been left empty and defects in the pool valves – the primary judge held that the Appellant had failed to take reasonable precautions in circumstances where she left the swimming pool empty and did not take	*Flanagan v Bernasconi* [2022] NSWSC 381

				steps to repair or refill the swimming pool – whether the primary judge erred in failing to find that the policy the Appellant would have obtained but for the Respondent's breach of duty would have responded to the pool damage that was the subject of the Appellant's claim – whether the primary judge erred in failing to find that the Respondent bore the burden of proof as to whether the damage was caused by a defect in an item or a failure to take reasonable precautions – whether the primary judge erred in finding that the loss was caused by a defect in an item – whether the primary judge gave insufficient weight to effect of heavy rain on pool damage – whether the primary judge erred in finding that the Appellant failed to take reasonable precautions – whether the primary judge erred in concluding that the cross-respondent would have taken out insurance cover of a kind that did not contain the exclusion that appeared in the Vero policy – Whether primary judge erred in making various factual findings, failed to take into account evidence, or gave insufficient weight to evidence – Whether primary judge erred in finding hat the cross-respondent was not reckless	
8	2022/309126	Lahoud v Willoughby City Council	19/10/2022	PROCEDURE – joinder – refusal of motion to join Willoughby Local Planning Panel to judicial review proceedings in LEC – whether UCPR 59.3(4) mandates joinder of body which was "responsible for the decision" being reviewed – whether necessary to join when decision made by first respondent as a consequence of the Panel's decision -	*Lahoud v Willoughby City Council* [2022] NSWLEC 125

				whether joinder necessary to bind the Panel to outcome from proceedings – whether Panel ought to have been joined to enable applicant to seek interrogatories against the Panel	
9	2022/14029	Carpenter v Morris	24/10/2022	CONTRACT – Partnership – First Appellant and First Respondent extracted granite from the Grandee Quarry – From 1996 to 2003, quarrying undertaken for a business conducted by Second Appellant in partnership with Second Respondent – Second Appellant extracted granite from the Quarry from 2003 to 2014 – Granite mined at Quarry falls into two categories in terms of its grade, being first and second grade rock, there being greater demand for the former – Quarry situated on two adjacent parcels of land upon which granite boulders, overburden, and other material extracted from the land or disturbed during quarrying operations were piled (Stockpiles) – Stockpiles largely consisted of second grade rock – Under mining agreement First Respondent entitled to quarry, remove and sell the granite, and required to pay annual rent plus royalties in respect of the two lots – Proceeds of the sale of granite was distributed in various ways, including in order to make monthly payments to First Respondent, the amount of which varied from month to month – Appellants sought an order requiring repayment of 50% of those monthly payments as money had and received – Appellants claimed for breach of an oral quarrying agreement with the Respondents insofar as First Respondent failed to make payment to Appellants in respect of certain	*Carpenter v Morris* [2021] NSWSC 1700

				sales, and in respect of sales made from the Stockpile – Appellants claimed First Respondent repudiated oral agreement insofar as he was not ready, willing or able to perform his obligation to sell the Stockpile due to his lack of authority to do so without permission of the owners of the lots on which the Stockpile is situated – Whether primary judge erred in failing to order damages with respect to monthly payments – Whether primary judge erred by failing to apply Commonwealth v Amann Aviation (1991) 174 CLR 64 in respect of damages vis-à-vis the Stockpiles – Whether primary judge erred in allowing the difficulty in assessing damages bar all relief to the Appellants with respect to the Stockpiles – Whether primary judge erred in making various factual findings – Whether primary judge erred in rejecting certain evidence – Whether primary judge erred in failing to imply a term into the agreement – Whether primary judge erred in failing to find that the Appellants were entitled to damages for breach of contract, or quantum meruit for the work done in exposing he rock faces for future mining	
10	2022/136307; 2022/140758	Scenic Tours Pty Ltd v Moore	26/10/2022	TRADE PRACTICES – the Respondent brought representative action claiming compensation and damages arising out of a European river cruise – the Respondent claimed against the Appellant that contrary to consumer guarantees, the Appellant did not provide a “once in a lifetime cruise” in all-inclusive luxury – primary judge held that it was reasonable for group members to rely on	*Moore v Scenic Tours Pty Limited (No 4)* [2022] NSWSC 270

				the skill and judgment of the Appellant – primary judge found that the s 61(3) defence was not established by the Appellant – the primary judge upheld the group members' claim of an entitlement of damages pursuant to s 267(4) of the Australian Consumer Law in respect of the monies they paid for return airfares to embark on the cruise and for distress or disappointment – the primary judge awarded damages pursuant to s 267(3) of the ACL by way of lost value – whether the primary judge erred in failing to find that the group members did not rely on, or that it was unreasonable for the group members to rely on, the skill or judgment of the Appellant – whether the amounts awarded for reduction in the value of the Services with respect to Cruises 3, 4, 6, 7, 8 and 11 were excessive – whether the primary judge erred in preferring the Respondent's valuations and failed to give adequate reasons for this preference – whether the amounts awarded for distress and disappointment were excessive – whether the primary judge erred in awarding damages for the cost of airfares to those group members for whom the sole purpose of incurring the airfares was to take the Cruise	
11	2022/119934	Ritchie v Insurance Australia Ltd	31/10/2022	INSURANCE – representative action in respect of losses suffered as a result of bushfire caused by sparks from a power cutter to cut steel – "Welding Endorsement" exclusion clause in policy for "spark producing equipment" - whether the power cutter was a "spark producing equipment" – whether spark was produced by contact with certain	*Ritchie v Advanced Plumbing and Drains Pty Ltd* [2022] NSWSC 330

				materials rather than the equipment	
12	2022/112930	Commissioner of Police, NSW Police Force v Merrell	1/11/2022	ADMINISTRATIVE LAW (other) – respondent convicted of three offences under s91H(2) of Crimes Act 1900 (NSW) for possessing child abuse material – each offence arose of identical material being stored on three separate USB drives – respondent not a registrable person under Child Protection (Offenders Registration) Act 2000 (NSW) if a single offence committed – s3A(5) provides that single offence includes a reference to more than one offence of the same kind arising from the same incident – meaning of the phrase "arising from the same incident" – whether primary judge erred in not finding respondent a registrable person	*Merrell v Commissioner of NSW Police* [2022] NSWSC 337
13	2022/35553	Farriss v Axford	3/11/2022	TORTS (negligence) – First appellant is the lead guitarist in the band INXS – First appellant hired a boat through the third respondent belonging to the first respondent – First appellant sustained injuries to his left hand as a result of an accident on the boat – Appellants allege that the injuries were caused by the respondents' failure to take care – Primary judge held that there was no failure by the respondents to warn or instruct because the first appellant was aware of the relevant matters prior to the accident – Primary judge found that the exercise of reasonable care on the part of the respondents did not require any of them to arrange for additional componentry to be installed prior to the accident because the probability that harm would occur if care was not taken was low – Whether primary judge	*Farriss v Axford (No 3)* [2022] NSWSC 20

				erred by failing to find that the respondents ought to have taken precautions and that failure was a breach of their duties of care which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached their duty of care by failing to warn or instruct the first appellant which caused the appellants' loss – Whether primary judge erred by failing to find that the respondents breached the statutory guarantee in s 61 of the Australian Consumer Law which caused the appellant's loss	
14	2022/134398	Lim v Lim	3/11/2022	SUCCESSION – The Appellant and the Respondent are adult children of the deceased – probate of the deceased's executed will dated 2019 was granted to the Appellant as executor – the Respondent brought proceedings seeking revocation of probate of the 2019 will and an order that probate of an earlier will made by the deceased in 2011 be granted to him – the Respondent alleged that the deceased did not have testamentary capacity when she executed the 2019 will and she did not know and approve its contents – the primary judge found that the Appellant did not discharge the burden of establishing testamentary capacity at the time the deceased executed the 2019 will – the primary judge held that the grant of probate of the 2019 will should be revoked and there should be a grant of probate of the 2011 will – whether the primary judge erred in holding that the deceased did not have testamentary capacity – whether the primary judge erred in holding that the facts displaced	*Lim v Lim* [2022] NSWSC 454

				the presumption of knowledge and approval by the deceased of his will while ignoring the effect of the revocation and attestation clauses and the evidence of the interpreter – whether the primary judge erred in holding that the deceased did not know and approve the contents of the will – whether the primary judge erred in finding that the deceased did not comprehend the claims upon her bounty – whether the primary judge erred in finding that the fact that the deceased decreased the amount of provision to the Respondent was evidence of lack of testamentary capacity	
15	2022/144781	Synergy Scaffolding Services Pty Ltd v Alelaimat	11/11/2022	WORKERS COMPENSATION – Personal injury – The First Respondent was paid by DJ's Scaffolding Pty Limited (represented by the Second Respondent) for work as a sub-contracting truck driver delivering and collecting scaffolding materials to the Appellant – The First Respondent was injured when he was struck by a falling scaffolding bench caked in cement while he assisted in dismantling scaffolding he had been directed to collect – Appellant alleged that the proceedings were statute barred by the Limitation Act 1969 (NSW) – Primary judge held that claim was not statute-barred, insofar as it was unclear that the First Respondent knew that his injury was caused by the fault of the Appellant, as opposed to DJ Scaffolding – The First Respondent alleged that the Appellant should be considered to be in the position of his employer and to owe the Respondent a non-delegable duty of care – The Appellant conceded that it owed the First	*Alelaimat v Synergy Scaffolding Services (No 3)* [2022] NSWSC 536

				Respondent a duty of care, however alleged that it had not assumed the role of employer and was not responsible for the system of work on the site – Primary judge found that the Appellant owed a duty of care to the First Respondent to ensure that the system of work for dismantling the scaffolding was safe, that the Appellant breached that duty, and that therefore the Appellant was liable in damages – Primary judge awarded various heads of damages amounting to $1,356,533.39 – Whether primary judge erred in failing to find that the First Respondent's claim was statute barred – Whether primary judge erred in finding that the Second Respondent was not liable to the First Respondent in negligence – Whether primary judge ought to have held that the Appellant was not liable to pay damages in respect of medical expenses paid for by the Second Respondent – Whether primary judge erred in failing to find contributory negligence against the First Respondent – Whether primary judge erred in finding a causal link between the accident and the resultant level of disability – Whether primary judge's award for non-economic loss was manifestly excessive	
16	2022/92292	The Cleaning Doctor NSW Pty Ltd v Fonseca	23/11/2022	EQUITY – Trusts – Second Appellant was registered proprietor of a property in Bardwell Valley, the deposit for the sale of which was paid by the Second Respondent, with the remainder financed by a loan from Perpetual Trustees Victoria Ltd, secured by a registered mortgage over the property – Second Appellant transferred the Bardwell Valley	*The Cleaning Doctor NSW Pty Ltd v Fonseca* [2022] NSWSC 253 (Williams J)

				property to the Second Respondent who discharged the mortgage obtained by the Second Appellant and took out a mortgage in his own name – Second Appellant alleged that First Respondent was to hold the property on trust for him – Second Appellant alleged in the alternative that a resulting trust was presumed from the transfer of the Bardwell Valley property to the Second Respondent for no or "false" consideration – Second Respondent transferred the property in 2015 to Goodman Court Pty Ltd – Second Appellant alleged that this constituted a breach of the trust – Primary judge found no express trust, and no implied or resulting trust – Primary judge found no proprietary estoppel – Primary judge found that consideration was paid by virtue of the discharge of the mortgage – First Appellant alleged that the First and Second Respondents withdrew $2,695,078 from its bank account in the period of 2009 to 2012 – Second Appellant claimed to be entitled to repayment of the money as money had and received and claimed damages for fraud, deceit and misleading or deceptive conduct, and damages for conversion – Primary judge found that First Appellant was not the legal and beneficial owner of the money in the account but rather of a chose in action – Primary judge found that the First Appellant failed to discharge its onus of proving that the withdrawals from the account were made without the authority of the First Appellant – Whether primary judge erred in failing to find that the Bardwell Valley property was held on	

				trust for the Second Appellant by the Second Respondent – Whether primary judge impermissibly reversed the burden of proof with respect to the First Appellant's claims – Whether primary judge erred in making various factual findings	
17	2022/114516	Resilient Investment Group Pty Ltd v Barnet	24/11/2022	CORPORATIONS – winding up - tax refund after placed into liquidation – refund arose out of "tax offsets" as first respondent was an "R&D entity" for purposes of relevant tax legislation – whether refund was a circulating asset which required employee entitlements to be satisfied first – whether certain identified employees were employees of first respondent rather than second respondent	*In the mater of Spitfire Corporation Ltd (in liquidation) and Aspirio Pty Ltd (in liquidation)* [2022] NSWSC 340
18	2022/96995	Taylor & Wilkinson v Stav Investments Pty Ltd	1/12/2022	CONTRACT – Breach of contract and misleading and deceptive conduct – First Appellant was founder, director and CEO of Yatango Mobile – Second Appellant was Chief Financial Officer and company secretary of Yatango Mobile – Yatango Mobile was an online reseller of mobile phone plans provided to Yatango Mobile on a wholesale basis by Optus – Sales were made through an online platform promoted as unique which allowed users to customise their mobile phone plans – The directors of the Respondents in each matter were approached to invest in Yatango's business – In 2013 each of the Respondents were incorporated and entered into share sale agreements with Yatango Mobile for $750,000 – In 2014 the Respondents each invested a further $262,500 in Yatango Mobile – First and Second Appellant gave personal warranties	*Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208

				as to the ownership of the intellectual property used in Yatango Mobile's business – Respondents alleged that First and Second Appellants made representations as to IP Ownership, Yatango Mobile's assets, the valuation of the Yatango Mobile business, and the roll-up of the Respondents' shares in Yatango mobile --Yatango Mobile went into liquidation in 2015 – Respondents complained as to breaches of the warranties given by Appellants – Respondents complained of misleading and deceptive conduct and that, but for the misleading or deceptive representations, the Respondents would not have entered into the share sale agreements – Whether primary judge erred in finding a no transaction case – Whether primary judge failed to provide sufficient reasoning for the conclusion that there was a no transaction case – Whether primary judge failed to take into account evidence in reaching conclusion that there was a no transaction case – Whether primary judge erred in concluding that the business of Yatango Mobile was not a going concern because it did not own the intellectual property — Whether primary judge erred in assuming that the claims made by the respondent extended beyond the contractual warranty claim – Whether primary judge erred in categorising the "Pre-Contract Roll-Up Representations" as a representation as to a future matter – Whether primary judge erred in finding that Respondent would not have entered into share sale agreements but for the Pre-Contract Roll-Up Representations	

19	2022/266023	Ahern v Aon Risk Services Australia Ltd	3/02/2023	COSTS – the Appellants were the owners of a home that was damaged by fire – the Appellants discovered they were grossly under insured and commenced proceedings against their insurance broker the First Respondent for professional negligence – the parties reached settlement however they could not agree on the quantum of the Appellants' costs to be paid – the parties applied for review of the assessor's determination – the Appellants filed a summons instituting an application for leave and an appeal against the review panel's decision regarding the costs assessment – the First Respondent filed a notice of motion seeking orders that the Appellants' summons be dismissed on the grounds it was incompetent because it was out of time – the Appellants applied for an extension of time – whether the primary judge denied the applicant natural justice or procedural fairness – whether the primary judge erred in failing to determine the summons on a final basis pursuant to the notice of motion – whether the primary judge applied the wrong legal test that there must be a strongly arguable case for leave – whether the primary judge erred in determining whether leave should be granted – whether the primary judge erred in determining that any re-assessment of the legal costs must be carried out by the Court – whether the primary judge erred in criticising the Appellants' submissions as inadequate – whether the primary judge erred in refusing an application for an extension of time and	*Ahern v Aon Risk Services Australia Ltd* [2022] NSWSC 702

				dismissing the summons – whether primary judge erred in determining that the Appellants' claim for interest was not arguable	
20	2022/219923	Jaken Properties Australia Pty Limited v Naaman	7/02/2023	EQUITY – Trusts – Subrogation – The First Appellant was the trustee of the Sly Fox Trust – The initial trustee of the Sly Fox Trust was Jaken Property Group Pty Ltd (JPG), now in liquidation – In 2016, the Respondent obtained a judgment in the Supreme Court for $3.4 million against JPG – The Court determined that JPG was entitled to be indemnified from the assets of the Sly Fox Trust and that the Respondent was subrogated to JPG's right of indemnity – Second Appellant alleged that there was little or nothing of the assets in the Sly Fox Trust available to satisfy the judgment debt – Respondent alleged that to the extent that the Trust was unable to meet the debt, this was brought about by the Second Appellant directly or indirectly causing the First Appellant to enter into impermissible transactions – Respondent alleged that First Appellant, as successor trustee of the Sly Fox Trust, owed a fiduciary duty to JPG not to deal with the assets of the Trust in a way that diminished JPG's right of indemnity – Respondent alleged that he was subrogated to JPG's right to enforce that fiduciary duty – Respondent alleged that the Second Appellant was the de facto and shadow director of the First Appellant and the architect of the impugned transactions – Respondent alleged that the First Respondent undertook various transfers of land or properties for no	*Jake Properties Australia Pty Ltd v Naaman* [2022] NSWSC 517

				commercial purpose and for no consideration – Primary judge held that the impugned transactions were impermissible and in breach of trust – Whether primary judge erred in holding that the Respondent was entitled to sue the First Appellant as successor trustee of the Sly Fox Trust for breach of fiduciary duty by the First Appellant to JPG, and the Second, Third, Fourth, Fifth, Sixth and Seventh appellants for knowing assistance – Whether primary judge erred in finding that various transfers of land were voidable transactions – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that the First Appellant breached orders made by Rein J by consent on 18 June 2014 – Whether primary judge erred in making declarations	
21	2022/83362	Gan v Xie	7/02/2023	TRADE PRACTICES – misrepresentations made to invest in an investment trading platform trading virtual investments – appellant unable to with withdraw investment - whether erred in finding that the "MFC line platform" was not a pyramid scheme with meaning of s45 of Australian Consumer Law (ACL) – whether credit findings were infected by mistaking the Mandarin translator with the interpreter at trial – whether erred in failing to dispense with notice regarding tendency and coincidence evidence – whether erred in not admitting conduct after 2016 as tendency evidence - evidence	*Lower Court decision not available on CaseLaw*
22	2022/225708	Payne v Liccardy	9/02/2023	TORT (negligence) – the Appellant owed and operated a pontoon which was the subject of a marine accident – the Appellant charged a	*Liccardy v Payne trading as Sussex Inlet Pontoons Pty Ltd* [2022] NSWDC 246

				fee to a group which included the First Respondent for the charter of the pontoon for a day including the provision of a master for the pontoon – the First Respondent was injured when he dove off the moving pontoon and, while re-boarding, his leg came into contact with the motorised propellor – the Second Respondent was the master of the pontoon at the relevant time – the primary judge found that at no time did the Second Respondent provide a safety briefing to the group and took no steps to guide or assist the First Respondent when re-boarding the pontoon – the primary judge held that negligence of the Second Respondent was established – the primary judge held that the Appellant should be held vicariously liable for the Second Respondent's negligence as he was the Appellant's authorised agent, if not his employee, in relation to the marine accident – the primary judge rejected the claimed defences of contributory negligence and intoxication – whether the primary judge erred in failing to find that the First Respondent had been guilty of contributory negligence – whether the primary judge erred in rejecting the Appellant's defence in relation to intoxication under s 50 of the Civil Liability Act 2002	
23	2022/252874	Stokes v Toyne	10/02/2023	PROCEDURE – strike out application – whether Anshun estoppel should operate to prevent the District Court proceedings from continuing – whether significant connection between relief in earlier Supreme Court proceedings – whether forensic decision	*Toyne v Stokes* [2022] NSWDC 292

				made not to adduce evidence as to damage - whether erred in refusing leave to cross-examine witnesses – whether respondent's evidence was relevant to explaining the manner in which the earlier litigation had been conducted – whether erred in accepting respondent's evidence on the basis it was unchallenged – whether erred in finding that earlier proceedings could not have addressed damages as it was impossible to quantify at that stage	
24	2022/261766	The Property Investors Alliance Pty Ltd v C88 Project Pty Ltd (in liquidation)	13/02/2023	EQUITY - Rectification - Appellant is a real estate agent retained by the First Respondent to sell apartments in a development in Carlingford - The Appellant sold 317 apartments and received $10 million in commission, with some $18 million outstanding -Appellant brought proceedings to recover the sum owed, and the Respondent failed to file a Commercial List Reply - Appellant applied for summary judgment; Hammerschlag J (as his Honour then was) gave judgment in favour of the Appellant for $18 million with interest - Respondent sought to set aside the statutory demand for the judgment sum - In May 2022, the Respondent went into liquidation, and the Appellant sought leave under s 500(2) of the Corporations Act 2001 (Cth) to proceed against the Respondent - Appellant sought rectification of the agency agreement on the basis of mutual mistake and a declaration that, under the terms of that agreement, it has an equitable charge over 27 unsold	*The Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022] NSWSC 1081

				apartments – The liquidator of the Respondent opposed the relief sought and contended that any equitable charge would be void for illegality pursuant to s 49(1) of the Property and Stock Agents Act 2002 (NSW) - Primary judge dismissed Appellant's claim for rectification - Primary judge held that the caveat clauses in the agency agreement did not grant an implied equitable charge - Whether primary judge erred in failing to find that the agency agreement created an equitable charge - Whether primary judge erred in failing to find that the Appellant and the Respondent had a common intention that the monies secured by the charge included commissions for units previously sold by the Appellant - Whether primary judge erred in declining to draw a Jones v Dunkel inference - Whether primary judge erred in drawing an inference against the Appellant that it did not adduce into evidence notes or drafts of the agency agreement	
25	2022/119549	Tzavaras v Tzavaras & Sons Pty Ltd	14/02/2023	CONTRACT – an issue arose in the proceedings below as to the construction of a mortgage document, in relation to what currency the principal and interest was payable in – a further issue arose as to whether the mortgage was invalid, as an issue arose as to whether the lender unconscionably exploited the borrowers – primary judge found in favour of the respondent – whether the primary judge erred by denying the appellants procedural fairness and the right to be heard – whether primary judge erred as to certain factual findings –	*In the matter of Tzavaras & Sons Pty Ltd* [2022] NSWSC 359

				whether primary judge erred by rejecting certain evidence	
26	2022/314994	DXC Eclipse Pty Ltd v Wildsmith	15/02/2023	CONTRACT – restraint of trade - non-competition covenant in securities purchase agreement - whether erred in reading down reference to “Microsoft Dynamics 365 technologies” to April 2018 rather than future versions of software – whether erred in disregarding the reference to “future, successor or derivative products, services or technologies” in construing covenant – whether business of Will Thirty Three Pty Ltd was competitive with the Sable 37 business – whether business of Sentient Dynamics was competitive with the Sable 37 business – whether covenant against solicitation of employees was unreasonable -	*Lower court decision not available on Caselaw*
27	2022/180699	Sweeney v He	16/02/2023	EQUITY – Trusts and trustees – The Second Respondent purchased a property in Bomaderry, NSW – The Appellant and the First Respondent (the Appellant’s wife, and the Second Respondent’s mother) resided in the property until 2017 when the First Respondent vacated the property but the Appellant remained – The Second Respondent brought proceedings in NCAT to terminate the Appellant’s tenancy – A warrant for possession was issued to remove the Appellant from the property – The Appellant alleged that the property was held on trust by the Second Respondent for him and the First Respondent in equal shares in accordance with an oral agreement – The Appellant alleged that all payments by him were mortgage repayments and not rent – Primary	*Sweeney v He* [2022] NSWSC 655

				judge dismissed the Appellant's claim and found that the legal and beneficial interest in the property was held by the Second Respondent absolutely – Whether primary judge erred in finding that payments were for rent rather than mortgage repayments – Whether primary judge erred in making various factual findings – Whether primary judge failed to give adequate reasons – Whether primary judge erred in making certain findings as to credit	
28	2022/214958	183 Eastwood Pty Ltd v Dragon Property Development & Investment Pty Ltd	17/02/2023	EQUITY – Agency – Ostensible authority – Appellant is the trustee company of the Eastwood Unit Trust through which investment was made in a residential unit development in Eastwood – 46 of the 100 units in the Unit Trust were held by a company of which Mr Scott Chan was the sole director and shareholder – Without the knowledge or approval of the true officeholders of the Appellant, Mr Chan caused the lodgement of an ASIC Form 484 which informed ASIC that Mr Chan had become the sole director and secretary of the Appellant, and this appeared on ASIC's searchable register – The true officeholders were aware of the actions of Mr Chan and drafted an agreement for the sale of units to Mr Chan's company – Mr Chan did not pay the amount due under the agreement – Mr Chan convinced the Respondent to pay $1.67 million in return for the promise of the transfer of title to 19 units in the Unit Trust – The ASIC register was then corrected and the police informed of the fraud – Primary judge held that Mr Chan was held out by the	*Dragon Property Development & Investment Pty Ltd v 183 Eastwood Pty Ltd* [2022] NSWSC 910

				Appellant as possessing authority to bind the company to contracts like that with the Respondent – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding that the Appellant was under a duty to monitor the correctness of the ASIC register and correct any false information therein – Whether primary judge erred in finding that the Appellant had impliedly ratified Mr Chan's conduct through its silence – Whether primary judge erred in awarding expectation damages when the respondent pleaded reliance damages	
29	2021/318239	Young v Director of Public Prosecutions	22/02/2023	JUDICIAL REVIEW – dismissal of appeal from the Local Court by the District Court – procedural fairness – failure of Local Court to provide hearing loop for hearing – whether proceedings miscarried where the applicant was unable to fully participate – failure of legal representative to cross-examine – failure of police to discover material	*Lower decision not available on Caselaw*
30	2022/281148	Parkview Constructions Pty Ltd v Owners of Strata Plan 90018	2/03/2023	PRACTICE AND PROCEDURE – buildings defects dispute - whether there were separate causes of action for each alleged breach of warranty contained in s18B of the Home Building Act 1989 (NSW) – whether s18C and s18D confer separate causes of action – whether there is only cause of action for all of the alleged breaches of the Act - whether amendments to claim to introduce new claims were statute barred	*Owners of Strata Plan 90018 v Parkview Constructions Pty Ltd* [2022] NSWSC 1123
31	2022/229896	Mt Owen Pty Ltd v Parkes	3/03/2023	WORKERS COMPENSATION – The Appellant is the proprietor and occupier of a coal mine the subject of a workplace accident	*Parkes v Mt Owen Pty Ltd* [2022] NSWSC 909

				– the Appellant engaged the Second Respondent to provide mining services including hire of labour – the First Respondent was employed by the Second Respondent and his labour was hired to the Appellant – during the course of this employment, another worker Mr Kemp (employed by the Second Respondent) caused the track on which the First Respondent was standing to elevate, resulting in the latter's leg being crushed between the track and an inspection platform – the primary judge found that there is no doubt that the Appellant owed the First Respondent the host employer's duty as described in TNT Australia Pty Ltd v Christie (2003) 65 NSWLR 1 (TNT) – the primary judge was satisfied on the balance of probabilities that Mr Kemp, at all material times, was the employee of Mt Owen pro hac vice – the primary judge held that liability for damages should be apportioned between the Appellant and Second Respondent on the basis that the former bears 80 percent and the latter 20 percent – whether the primary judge erred in finding that the circumstances of the case were covered by TNT and the Appellant owed the First Respondent a duty as described in that decision – whether the primary judge erred by giving undue weight to various factors – whether the primary judge erred in failing to apply various principles of construction	
32	2022/383325	Next Generation (NSW) Pty Ltd v	6/03/2023	LAND & ENVIRONMENT – the appellant sought a declaration that Part 4 of Chapter 9 of the Protection of the Environment	*The Next Generation (NSW) Pty Ltd v State of New South Wales* [2022] NSWLEC 138

		State of New South Wales		Operations (General) Regulation 2022 (NSW) (the Regulation) was invalid and of no effect – the primary judge held that the appellant had not established that the Regulation was in excess of the legislation power or regulation making power – whether the primary judge erred in failing to conclude that the Regulation was invalid	
33	2022/363122	Khatib v Director of Public Prosecutions	6/03/2023	ADMINISTRATIVE LAW – judicial review of District Court following appeal from Local Court – jurisdictional error – procedural fairness – failure to give reasons for being satisfied beyond reasonable doubt that complainant did not consent alleged touching – whether erred in giving direction under s293A of Criminal Procedure Act 1986 (NSW) as to inconsistencies – whether magistrate put words into the mouth of the complainant – failure to afford opportunity to speak – whether alleged touching met legal definition of sexual touching under s61HB of Crimes Act 1900 - bias	*Lower Court decision not on Caselaw*
34	2022/299298	Hartnett v Bell; Hartnett v Deakin-Bell	7/03/2023	PROFESSIONAL NEGLIGENCE (legal) – The Appellant (a solicitor) charged his (now deceased) mortgagee client (the First Respondent) $288,601.03 for acting in uncontested possession proceedings to enforce a $30,000 mortgage – the Second Respondent as mortgagor (on behalf of the estate of his deceased mother) brought a claim that the Appellant ought to be ordered to disgorge or pay back what are said to be excessively charged legal fees that were borne by the Second Respondent as mortgagor – the primary judge considered this	*Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204

				an appropriate case for the Court to exercise its inherent supervisory jurisdiction to require the Appellant to pay to the Second Respondent the sum of $311,356.47 – whether the primary judge erred in holding that the supervisory jurisdiction of the Court extended to empowering the Court to order the Appellant to pay the mortgagor an amount which represented the difference between the undisputed amount paid by the mortgagee to the Appellant and the amount of costs which were assessed between the mortgagee and mortgagor in separate proceedings – whether the primary judge's discretion miscarried	
35	2022/142224	Khattar v Fayad; Fayad v Khattar	9/03/2023	CONTRACTS – Interpretation and termination – Following the settlement of probate proceedings concerning the estate of the Appellant's late brother, the Respondents alleged that the Appellant had an obligation under a Deed of Agreement to cause Hills Shoppingtown Pty Ltd to complete a development owned by it, including the strata sub-division and to transfer the unencumbered interest in 20 Units in the development to a trust known as the GK3 Trust which, under the Agreement, would eventually be controlled by the Respondents – The Trust was not a party to the Deed – The Respondents alleged that the Appellant did not do so and was thus in breach of her obligations under the agreements – A Deed of Acknowledgement was executed following the failure to transfer the Units to the Trust pursuant to which the Appellant acknowledged her breach and agreed to pay	*Khattar v Hills Shoppingtown Pty Ltd (subject to a Deed of Company Arrangement)* [2022] NSWSC 363

				monthly payments and organise the transfer of the Units – The development was not completed, nor was the strata plan registered, nor were the Units transferred to the Trust – The Respondents treated the breaches as repudiatory, accepted the repudiation and elected to terminate the Deed of Agreement – The Respondents sought to recover damages for loss of bargain struck under the Deed of Agreement under which the Units had an agreed value of $15 million – Whether primary judge erred in finding that debate about what was to be included in the deceased's estate was at the heart of the probate proceedings – Whether primary judge erred as to the proper construction of the Deed of Agreement – Whether primary judge erred in finding that the Appellant had breached the Deed of Agreement – Whether primary judge erred in finding that it was open to the Respondents to accept the repudiation – Whether primary judge erred in finding that the Respondents, as opposed to the Trust, suffered loss and damage – Whether primary judge erred in finding that the Appellant did not raise the contention that the proceedings were improperly "construed" (sic: constituted) – Whether primary judge erred in making various factual findings	
36	2022/248686	Bronger v Greenway Health Centre Pty Ltd	14/03/2023	LAND AND ENVIRONMENT – Civil Enforcement – The Appellant sought declarations and consequential orders to restrain the use and occupation by the Respondent of a lot in the Greenway Plaza shopping complex – The Appellant alleged	*Bronger v Greenway Health Centre Pty Ltd t/as Greenway Plaza Pharmacy* [2022] NSWLEC 91

				that the Respondent was operating a retail pharmacy (that is, a shop) in breach of s 4.3 of the Environmental Planning and Assessment Act 1979 (NSW) and the conditions of the complying development certificate – Primary judge concluded that the Appellant did not prove that the Respondent was conducting a retail pharmacy – Whether primary judge erred in finding that the subject premises were not a shop and were therefore not prohibited as commercial premises under the Fairfield LEP 2013 – Whether primary judge erred in failing to find that the subject premises were used contrary to the restriction to a "medical pharmacy" in the Occupation Certificate and were thus being used contrary to ss 6.9(1)(a) or 6.3(2) of the Environmental Planning and Assessment Act 1979 (NSW) – Whether primary judge erred in finding that the repealed Pt 4A, as opposed to Pt 6, of the Environmental Planning and Assessment Act 1979 (NSW) applied to the Occupation Certificate – Whether primary judge erred in not finding that the use of the subject premises as a shop was independent of the "medical centre" use in accordance with the reasoning in Baulkham Hills Shire Council v O'Donnell (1990) 69 LGERA 404 – Whether primary judge erred in failing to apply the reasoning as to dual purposes in Abret Pty Limited v Wingevarribee Shire Council (2011) 180 LGERA 343 – Whether primary judge erred in making various factual findings	
37	2023/3565	Augusta Pool 1 UK Ltd v	14/03/2023	PROCEDURE – representative proceedings concerning construction and partial structural	*Williamson v Sydney Olympic Park Authority & Ors* [2022] NSWSC 1618

		Williamson		failure of building known as “Opal Tower” – limiting of applicant’s contractual entitlement to funding commission and adverse insurance costs to 25% of gross settlement amount – whether Civil Procedure Act 2005 empowers a Court to review or set the funding commission payable – whether erred in proceeding on the basis that the litigation funder had an evidentiary onus to call expert evidence – whether ought to have relied upon contractual rights and lack of objection by group members – whether erred in finding that there was a lack of disclosure of funding agreement	
38	2022/246531	Owners of Strata Plan 92450 v JKH Para 1 Pty Ltd	15/03/2023	BUILDING AND CONSTRUCTION – separate questions answered – external cladding installed on residential unit block said to be combustible - whether failure to establish breaches of s18B(1)(b), 18B(1)(c) or 18B(1)(e) of Home Building Act 1989 (NSW) – whether erred in not finding that cladding was combustible for the purposes of AS1530.1 – whether failed to establish loss – whether breach de minimis	*Strata Plan 92450 v JKN Para 1 Pty Ltd* [2022] NSWSC 958
39	2022/312270	Blue Op Partners Pty Ltd v De Roma	16/03/2023	TORTS (Negligence) – Personal Injury – Occupiers liability – The Respondent was injured when she tripped over the uneven margin of a sunken utility pit lid on the footpath – The Respondent claimed that the sunken configuration and heigh discrepancy of the utility pit was a trip hazard for pedestrians – The Respondent sought damages for personal injury, alleging public liability against the Appellant, being the Ausgrid Operation Partnership – The Appellant alleged that the injuries occurred as	*Lynda Gabriel de Roma v Inner West Council & Ausgrid Operator Partnership* [2022] NSWDC 425

				a result of the materialisation of an obvious risk within the meaning of ss 5F and 5G of the Civil Liability Act 2002 (NSW) – The Appellant alleged that the Respondent was contributorily negligent – Primary judge found that the Appellant was liable in negligence – Primary judge assessed damages in the sum of $354,142.38 with a discount for contributory negligence of 20% -- Whether primary judge erred in placing weight on certain evidence – Whether primary judge erred in finding that the Appellant owed the Respondent a duty of care in circumstances where her harm was suffered from an obvious risk as defined in s 5F of the CLA – Whether primary judge erred in finding that the duty of care extended to warning pedestrians of height differentials of between 6mm to 10mm – Whether primary judge erred in finding that the duty of care was breached – Whether primary judge erred in finding in the absence of evidence that the Appellant ought to have been aware of the difference in surface heights – Whether primary judge erred in finding in the absence of evidence that the burden of taking precautions was small – Whether primary judge erred in finding that causation was established	
40	2022/362538	Truong v Director of Public Prosecutions	17/03/2023	ADMIN LAW – judicial review of District Court decision following appeal from Local Court – procedural fairness – failure to inspect false documents – failure to permit the applicant to call relevant evidence – alleged perversion of justice by police officers – misconduct by presiding magistrate	*Lower Court decision not on Caselaw*

41	2022/273229	Chief Commissioner of State Revenue v Meridian Energy Australia Pty Ltd	21/03/2023	TAX- Landholder duty- Dutiable transactions - Respondent sought a review pursuant to s 97(1)(a) of the Taxation Administration Act 1996 (NSW) of an assessment made by the Appellant in respect of the acquisition by the Respondent of 100% of the shares in GSP Energy Pty Ltd (GSP) for over $160 million - The amount of duty was $7,979,740 calculated on land holdings and goods valued by the Appellant in the amount of $145 million -GSP was the operator of three hydro-electric power stations in NSW and the lessee of the land on which the power stations were situated - GSP's access to the water required for the operation of the power stations was pursuant to Water Agreements entered into with the State Water Corporation - Respondent contended that the interest in the power stations which it acquired was an innominate sui generis property interest created by a statutory vesting order that could neither be classified as land nor goods, and thus the leases were worth less than $2 million, and accordingly were not a relevant acquisition -Appellant contended that the power stations where fixtures, and therefore part of the leased land which would thus have a value greater than $2 million - Primary judge concluded that the power stations were an in nominate sui generis interest in land and that the leases were thus not a relevant acquisition - Whether primary judge erred in finding that power stations were an innominate sui generis property interest - Whether primary judge ought to have found that the power	*Meridian Energy Australia Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 1074

				stations were fixtures - Whether, alternatively, primary judge should have found that those parts of the power stations installed prior to the vesting order were goods and the parts installed after the vesting order were fixtures - Whether primary judge erred as to the allocation of the residual value of the water agreements	
42	2022/317384	Tourist Accommodation Pty Ltd v Independent Liquor and Gaming Authority	24/03/2023	ADMINISTRATIVE LAW – The Appellant challenged two related decisions made by the Respondent refusing the Appellant's applications to increase the gaming machine threshold of the Flemington Hotel – The Appellant alleged that the Respondent misconstrued the evidence before it, denied the Appellant natural justice, and misconstrued its powers under s 36(3) of the Gaming Machines Act 2001 (NSW) – Primary judge held that the Respondent did not fail to appreciate that the plaintiff was willing to make a monetary payment as a positive contribution within the meaning of s 36 of the Act – Primary judge held that the Appellant was not denied procedural fairness insofar as the Respondent did not provide the Appellant with an opportunity to accept an increase in the monetary payment required to satisfy the Respondent of the positive contribution element necessary for approval of the application – Primary judge held that the Respondent did not misconstrue its powers under s 36 of the Act – Whether primary judge erred in finding that the Respondent accorded procedural fairness to the Appellant – Whether primary judge ought to have found	*Tourist Accommodation Pty Ltd v Independent Liquor and Gaming Authority* [2022] NSWSC 1277

				that failure to notify the Appellant of the threshold monetary sum amounted to a denial of procedural fairness – Whether primary judge ought to have found that, in taking into account an irrelevant consideration, the Respondent misconstrued its powers under s 36(3)(e) of the Act	
43	2022/260573	Caterjian v Parfit Investments Pty Ltd	24/03/2023	LAND LAW-Action for possession of land - First Respondent was a provider of finance and Second Respondent was its director - Respondents alleged First Respondent loaned the First Appellant $250,000 pursuant to a facility agreement for the purpose of a business investment - Respondents alleged that Second Appellant executed a written guarantee of the First Appellant's obligations - Appellants granted a second mortgage over their property in Bexley to secure their obligations under the facility agreement and under a guarantee and indemnity agreement - Respondents alleged that First Appellant defaulted on payment of the principal and interest due under the facility agreement - Respondents sought possession of the Bexley property in order to exercise power of sale - Alternatively, Respondents sought restitution of the principal sum and interest - By cross-claim Appellants disputed that the advance was made and that the Second Appellant was bound by her guarantee; and alleged unconscionable conduct and/or misleading and deceptive conduct - Primary judge held that Respondents were entitled to judgment for possession in order to exercise its power of sale - Whether primary judge erred in	*Parfit Investments Ptv Ltd v Caterjian* [2022] NSWSC 1093

				making various factual findings – Whether primary judge erred in failing to find that the manner in which the advance was made discharged the Second Appellant's obligations in accordance with the principles in Ankar Ply Ltd v National Westminster Finance (Australia) Ltd (1987) 162 CLR 549 at [11] - Whether primary judge erred in failing to find that the Respondents had engaged in unconscionable conduct	
44	2022/222755	Akrawe v Culjak	28/03/2023	REAL PROPERTY – Contract for the sale of land – The First Appellant entered into a contract for sale with the Respondents in 2020 following auction – The contract provided for completion on the 42nd day after the date of the contract, this date was extended twice – The Respondents served a Notice to Complete, however settlement did not take place on that date – The time for completion was extended a third time – Settlement did not take place – The Respondents served a Notice of Termination upon the First Appellant – The Respondents sought a declaration that the contract was duly terminated and an order that they are entitled to the deposit of $155,000 – The First Appellant denied the validity of the Notice of Termination – The Appellants sought an order that the contract be specifically performed by cross-claim – Primary judge held that the Notice of Termination was valid, and that the Respondents were entitled to recover the deposit – Primary judge dismissed the cross-claim – Whether primary judge erred in making various factual findings – Whether	*Culjak v Akrawe* [2022] NSWSC 949

				primary judge erred in failing to order that the contract be specifically performed – Whether the errors in factual findings caused the primary judge to misapply the discretionary power granted by s 55(2A) of the Conveyancing Act 1919 (NSW)	
45	2022/273744	Wass v Director of Public Prosecutions	29/03/2023	ADMIN LAW (judicial review) – an Apprehended Violence Order (AVO) was made in the Local Court in NSW naming the Plaintiff as the Defendant for a period of 12 months – the Plaintiff applied to revoke the AVO after it had expired – the primary judge refused to revoke the AVO pursuant to s 72A of the Crimes (Domestic and Personal Violence) Act 2001 (NSW) (Act) – whether the primary judge erred in misconstruing s 72A of the Act by reading the words 'at any time' as meaning 'at any time prior to the expiration of the order'	*Lower decision not available on Caselaw*
46	2022/181653	Ling v Pang	30/03/2023	EQUITY – The First Appellant is the wife of a director of the Second Appellant – The Respondent is an accountant and Justice of the Peace – The First Appellant's husband entered into an agreement with one Mr Zhuang by which the husband loaned to Mr Zhuang $900,000 for a term of one year with a fixed interest rate of 30% per annum to invest in a commercial development in Roselands The First Appellant's husband was advised to conduct due diligence and a credit check but did not do so – The loan moneys were advanced before the loan agreements were signed or guarantees provided – Executed versions of the loan agreements were provided, purportedly signed by Mr Zhuang	*Ling v Beyond Developments Group Pty Ltd* [2022] NSWSC 685

				and his wife, Ms Liping Wang – The Respondent purportedly witnessed the signature of Ms Wang – The Respondent could not recall whether he witnessed the signatures in question, and Ms Wang denied that she signed those documents – At the conclusion of the loan term, a demand for the payment of the loan moneys and interests was issued – Mr Zhuang made a payment of $100,000 to the Second Appellant – Beyond developments went into liquidation – Appellants brought a claim against Ms Wang for repayment of the loan moneys – Appellants brought a claim against the Respondent for knowing concern in misleading and deceptive conduct; misleading and deceptive conduct; and breach of duty of care – Primary judge was not satisfied that the signatures were authentic and dismissed the claims against the Respondent – Whether primary judge erred in finding that the signatures of the Respondent were placed on the documents by someone else – Whether primary judge erred in making various factual findings – Whether primary judge erred in finding Mr Zhuang was not in the Respondent's camp for the purposes of Jones v Dunkel (1959) 101 CLR 298 – Whether primary judge gave inadequate reasons – Whether primary judge erred in finding that the appellants did not suffer loss rom their reliance on the Respondent's signature on the loan agreements	
47	2022/265558	Kalloghlian v Mitry Lawyers	31/03/2023	COSTS – dismissal of motion seeking costs against applicant's lawyer under s99 of Civil	*Kalloghlian v Mitry Lawyers Pty Ltd* (No 2) [2022] NSWSC 1071

		Pty Ltd		Procedure Act 2005 (NSW) – whether evidence established a prima facie case that order should be made – whether irrelevant factors taken into account – whether alleged failure to plead cause of action amounts to gross negligence or improper conduct – adequacy of reasons	