
**Supreme Court of NSW Court of Appeal**

**Decisions Reserved as at 16 December 2022**

| | Number | Case Name | Heard | Issues | Judgment Below |
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| 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 |

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| | | | | have held that the appellant was entitled to damages under s 272 of the ACL | |
| 2 | 2021/278620 | Pavlis v Pavlis | 19/05/2022 | EQUITY – constructive trust – proprietary estoppel – Appellants are sons of the Respondents – Respondents are registered proprietors of a property at Strathfield – at the time of its purchase in 1986, the Property was in a very dilapidated state – over a period of 20 years, the Property was restored to its original condition by the Appellants – Appellants expended considerable time, effort and funds in the course of the Property's restoration – as of 2017, a family dispute had resulted in the estrangement of the Appellants from the Respondents – Respondents made no provision for Appellants in their wills – Appellants commenced proceedings against Respondents seeking a declaration that the Respondents hold a 40% interest in the Property on constructive trust for each of the Appellants – Appellants pleaded alternative case on the basis of proprietary estoppel – Appellants contended that Respondents made an express representation in 1999 to the effect that Appellants would each receive a 40% interest in the Property in return for their contributions to the restoration – Respondents denied any such representation – primary judge found in favour of Respondents and dismissed proceedings – whether primary judge erred in failing to find that the restoration was a joint endeavour for the mutual benefit of the parties – whether primary judge erred in finding that Respondents were motivated by their own commercial benefit – | *Pavlis v Pavlis* [2021] NSWSC 1117 |

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| | | | | whether primary judge erred in factual finding as to ownership of a separate property | |
| 3 | 2021/254614 | Mount Gilead Pty Ltd v Stanham | 7/06/2022 | CORPORATIONS – alleged breach of trustee duties by sale of land for undervalue - dismissal of application for leave to proceed under s237 of Corporations Act 2001 (Cth) – whether settlement deed between second applicant in her personal capacity and first respondent prohibited derivative proceedings brought by second applicant as director of company – whether leave is a "cause of action" caught by deed – whether proposed proceedings were in good faith | *Mount Gilead Pty Ltd & Hobhouse v L Macarthur-Onslow & Ors* [2021] NSWSC 948 |
| 4 | 2021/358220 | Shoal Bay Beach Constructions (No 1) Pty Ltd v Hickey | 21/06/2022 | CONTRACT – TORTS (negligence) – extent of solicitor's negligence/breach of retainer – Appellant is the assignee of Shoal Bay Beach No. 1 Pty Ltd (SBB) – SBB retained the Respondents to act as its solicitor for the Shoal Bay development – SBB constructed and developed 53 units – Respondents prepared a master contract for the sale of the units which relevantly provided for a 'Registration Date' by which certain documents had to be registered – Respondents advised the Appellant that under the contract the Registration Date could be extended by giving notice one month prior to the Registration Date – Appellants instructed Respondents to extend the Registration Dates for various sold units – Respondents gave invalid notice of extension of time to purchasers of units 50 and 52 (Purchasers) – Purchasers exercised their rights to rescind the sale contracts – Respondents advised the Appellant that the notice given was invalid – | *Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 6)* [2021] NSWSC 1597; *Shoal Bay Beach Constructions No. 1 Pty Ltd v Mark Hickey and the persons listed in Schedule A to this Statement of Claim trading as at all material times Sparke Helmore (No 5)* [2021] NSWSC 1499 |

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| | | | | Appellant gave instructions not to return any money to the Purchasers – Purchasers commenced Equity proceedings against SBB for return of the deposits paid to it – SBB instructed new solicitors for these proceedings – on 24 November 2016 the Court made orders declaring the rescissions valid and orders for the return of the deposits – Appellant claimed damages against Respondents for alleged negligence and breach of retainer and duty of care – primary judge entered judgment for the Appellant against the Respondents – primary judge assessed a reduction for SBB's contributory negligence at 30% – primary judge ordered that there be no order as to the costs of the proceedings – whether primary judge erred in finding that the Appellant was contributorily negligent – whether primary judge erred in finding that the Respondents are not liable for legal costs in the Equity proceedings by reason of s 5D(1)(b) of the Civil Liability Act 2002 (NSW) – whether primary judge erred in failing to find that the funds for lots 50 and 52 would have been applied to reduce the Appellant's indebtedness – whether primary judge erred in ordering pre-judgment interest – whether primary judge erred in construing UCPR r 42.34(2) – whether primary judge erred in misconstruing the Appellant's submission – whether primary judge erred in failing to award the Appellant costs of the proceedings | |

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| 5 | 2021/363142 | Larsen v Tastec Pty Ltd | 23/06/2022 | CONTRACT – whether primary judge erred in failing to find that the Appellants and the First Respondent entered into a contract – whether primary judge erred in failing to find the First Respondent owed the Appellants a duty of care pursuant to the Design and Building Practitioners Act 2020 (NSW) – whether primary judge erred in making various findings of fact in relation to the cladding, flashing, windows and external doors supplied by the Respondents – whether primary judge erred in failing to find that various representations were made by the Respondents and relied upon by the Appellants | *Lower court decision not available on Caselaw* |
| 6 | 2021/358543 | Catlin Australia Pty v Diamond World Jewellers Pty Ltd | 27/06/2022 | INSURANCE – Appellant was insurer of the Respondent's jewellery store – robbery of the store occurred in December 2017 – Respondent subsequently lodged notice of a claim with the Appellant – Respondent's policy of insurance covered stock that it owned and held on consignment – Respondent claimed in the sum of $1,691,435.70 for entirety of stock present in cabinets which were damaged during the robbery – Respondent arranged for cleaning of the store prior to its inspection by Appellant's loss assessor – Respondent melted damaged jewellery prior to inspection by Appellant's loss assessor – Respondent maintained limited accounting records and stock inventories – in May 2019, Appellant accepted that Respondent had suffered genuine loss under its insurance policy assessed in the sum of $8,600 – on the basis that Appellant was not liable for melted jewellery – in October 2019, Appellant offered | *Diamond World Jewellers Pty Ltd v Catlin Australia Pty Ltd* [2021] NSWSC 1431 |

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| | | | | $500,000 to Respondent for resolution of claim – Respondent rejected this offer – Respondent commenced proceedings against Appellant seeking damages in the sum of $1,431,759.00 – primary judge found in favour of Respondent and awarded damages in quantum as sought by Respondent – whether primary judge erred in applying test of unreasonableness under the insurance policy – whether primary judge erred in considering evidence unavailable to the Respondent at the relevant time – whether primary judge failed to make certain findings of fact – whether primary judge relied upon matters not pleaded by Respondent – whether primary judge erred in making various findings of fact | |
| 7 | 2021/358329 | Media Niugini Ltd v International Management Group of America Pty Ltd | 22/07/2022 | CONTRACT – Appellant made a bid for certain television broadcasting rights to rugby league matches from the Respondent – Respondent accepted the Appellant's bid – a draft contract was prepared by the Respondent – Appellant stated it would not be taking the rights – Respondent purported to terminate the agreement and sold the rights to another party – Respondent alleged that the parties reached a binding contract and claimed damages for wrongful repudiation by the Appellant – primary judge held that the Respondent and the Appellant reached a binding contract – primary judge found that the Respondent did not make a misrepresentation or engage in misleading and deceptive conduct – primary judge held that Appellant repudiated the agreement and the Respondent accepted that repudiation – | *International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV* [2021] NSWSC 1590 |

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| | | | | primary judge awarded damages calculated as the difference the Respondent was entitled to receive under the contract and the amount it will receive for those rights from the other party – whether primary judge erred in construing the Appellant's bid – whether primary judge erred in finding that the Respondent did not make a misrepresentation or engage in deceptive and misleading conduct – whether primary judge erred in finding the parties reached a complete binding contract | |
| 8 | 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 | *Anchorage Capital Master Offshore Ltd v Sparkes (No 3); Bank of Communications Co Ltd v Sparkes (No 2)* [2021] NSWSC 1025 |

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| | | | | causation – whether primary judge erred as to his findings on loss and damage | |
| 9 | 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 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 | *Ford Motor Company of Australia Limited v Tallevine Pty Ltd (as trustee for Thornleigh Trading Trust) (in liq)* [2022] NSWSC 83 |

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| 10 | 2021/320994 | 123 259 932 Pty Ltd v Cessnock City Council | 25/08/2022 | CONTRACT – Appellant operated a business conducting adventure flights – Respondent is the owner of Cessnock Airport – in July 2007, Appellant and Respondent executed deed entitled “Agreement for Lease” in respect of a piece of land at the Airport referred to as Lot 104 – Agreement for Lease provided that if proposed plan of subdivision was registered by 30 September 2011, then Appellant would be granted 30-year lease over Lot 104 – Appellant erected hangar on Lot 104 and commenced business there – plan of subdivision not registered by sunset date as Respondent could not meet necessary costs – Appellant did not exercise right to terminate Agreement for Lease and eventually abandoned Lot 104 – Appellant deregistered as a company prior to September 2015 – Respondent terminated Agreement for Lease and purchased Lot 104 for $1 – Appellant was reinstated in June 2017 – Appellant commenced proceedings against Respondent for breach of contract – Appellant claimed damages in sum of approx. $3.7 million for expenditure incurred on Lot 104 and loss of chance to make profit – Respondent contended that Agreement for Lease excluded such liability and that Appellant had not suffered actionable loss – primary judge held that while Respondent had breached Agreement for Lease, Appellant had suffered no loss – primary judge awarded Appellant nominal damages in sum of $1 – whether primary judge erred in misapplying principles in McRae v Commonwealth Disposals | 123 259 932 Pty Ltd v Cessnock City Council (No 2) [2021] NSWSC 1329 (Adamson J) |

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| | | | | Commission (1951) 84 CLR 377 and Commonwealth v Amann Aviation Pty Ltd (1991) 174 CLR 64 in respect of situation where damages difficult to prove – whether primary judge erred in application of cl 12.3 of Agreement for Lease – whether primary judge erred in assessment of two limbs in Hadley v Baxendale – whether primary judge erred in finding that Amann Aviation presumption had been rebutted in light of various factual matters – whether primary judge erred in failing to make certain findings of fact | |
| 11 | 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 |
| 12 | 2022/211026 | Owners of Strata Plan 74232 v Tezel | 5/09/2022 | ADMINISTRATIVE (other) – action for damages for loss of rental income following water ingress into strata lot - meaning of the words “the loss” in s 106(2) of Strata Schemes Management Act 2015 (NSW) – whether “the loss” is the loss occasioned only when an ongoing breach ceases with effect – whether respondent’s claim was out of time | *Tezel v Owners of Strata Plan 74232* [2022] NSWCATAP 149 |

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| 13 | 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* |
| 14 | 2021/363148 | Ausbao (286 Sussex Street) Pty Ltd | 14/09/2022 | REAL PROPERTY – Claim for payment of compensation from the Torrens Assurance Fund – Appellant purchased land in the City of Sydney for $55 million described by reference to four lots in identified deposited plans – Deposited plans described the area of the parcels as having a total site area of 1,337.4 $m^2$ – Appellant discovered after completion of sale that total site area was only 1,255.9 $m^2$ – Site area of the land was a critical determinant under the relevant planning instruments of the maximum floor area of the completed redevelopment – Appellant sought compensation for the difference in value, or, alternatively, for loss of chance to acquire the land for a lesser price – Primary judge found that the error as to the area of the Lot stated in the plan was an error as to measurement within the meaning of s 129(2)(e) of the *Real Property Act 1900* (NSW) (RPA) because "measurement" includes a stated or ascertained size as well as the process of ascertaining a size and thus that the claim for compensation failed – Primary judge found (in the alternative) that the material cause of any loss or damage suffered by the Appellant was an act or omission by the Appellant for the purposes of s 129(2)(a) of the RPA – Whether primary judge erred in finding that s 129(2)(a) excluded the Appellant's entitlement to compensation – Whether primary judge erred in finding that s 129(2)(a) does not create an apportionment of responsibility regime – Whether | *Ausbao (286 Sussex St) Pty Ltd v The Registrar-General of New South Wales* [2021] NSWSC 1651 |

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| | | | | primary judge erred in applying *Kumar v Registrar-General of New South Wales* [2021] NSWSC 1103 and *Wassell v Ken Carr Bobcat & Tipper Hire Pty Ltd* [2021] NSWSC 1415 as authorities for the proposition that s 129(2)(a) does not create an apportionment of responsibility regime rather than finding that those authorities were incorrectly decided – Whether primary judge erred in making various factual findings – Whether primary judge erred in holding that "measurement" in s 129(2)(e) of the RPA refers to both a stated size and the process of ascertaining size – Whether primary judge erred in finding that damages should have been assessed by reference to the difference between the price paid for the land and its market value at the date of acquisition | |
| 15 | 2022/65396 | Aust-One Investment Pty Ltd v New World Investments Pty Ltd | 15/09/2022 | REAL PROPERTY – the Appellant and the Respondent are owners of adjoining retail buildings in a shopping centre – the previous owners of these buildings agreed to redevelop the buildings – the previous owner of the Respondent's building granted easement to the previous owner of the Appellant's building on terms that included a covenant given by the previous owner of the Appellant's building that they (and successive owners of the Appellant's building) would pay one quarter of its gross rentals each calendar month to the owner of the Respondent's building – the Appellant ceased to pay the share of the rentals and claimed that the payment covenant was not enforceable and made a claim for an order requiring the Respondent to repay the total amount of gross rentals that the Appellant had paid on the basis that these amounts were paid under a mistake of law – the Respondent made a cross-claim for a | *Aust-One Investment Pty Ltd v New World Investments Pty Ltd* [2022] NSWSC 137 |

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| | | | | declaration that the payment covenant was enforceable on the basis that the amount required to be paid is one quarter of the net rent and outgoings – the primary judge found that the payment covenant was reasonable commercial solution – the primary judge found that the Appellant was not entitled to say that it was prevented from rejecting or disclaiming the benefit of the easements – the primary judge found that the Appellant was not entitled to deduct from the actual rentals received its own business costs not recoverable from the lessees – the primary judge dismissed the Appellant's claim and the Respondent's cross-claim – whether the primary judge erred in having regard to the Council Deed for the purposes of construing the easement – whether the primary judge erred in holding that the performance of the covenant was a condition of the Appellant's right to enjoy the easement and that the payment covenant bound the Appellant as the successor registered proprietor of the dominant tenement | |
| 16 | 2021/264875 | Galati v Deans | 20/09/2022 | EQUITY – Appellant was sole director and shareholder of Fifth Respondent – First Respondent is sole director and shareholder of Second Respondent – Appellant and First Respondent were engaged in a joint venture concerning the proposed redevelopment of the area at Blackwattle Bay comprising the Sydney Fish Markets – as part of arrangements for the sale of land at the site, in April 2015 the Second and Fifth Respondents entered into a call option | *Galati v Deans* [2021] NSWSC 1094 |

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| | | | | agreement regarding the purchase of shares in the Fourth Respondent, which held an indirect interest in the manager and operator of the Sydney Fish Markets – call option came to be exercised on 20 November 2015 by the Third Respondent as nominee of the Appellant and First Respondent – TRHS became registered owner of shares in Fourth Respondent – Third Respondent was under the control of First Respondent – Appellant asserted a 50% beneficial interest in the shares of Fourth Respondent as held by Third Respondent – First and Second Respondents refused to acknowledge the asserted interest – Appellant commenced proceedings against Respondents seeking declaration that Third Respondent held 50% of its shares in Fourth Respondent on trust for Appellant and Fifth Respondent – First and Second Respondents brought cross-claim seeking equitable compensation for breach of fiduciary duties, damages for misleading and deceptive conduct and damages for tort of deceit – relating to Appellant's alleged receipt of a secret commission of $1,799,820.95 from purchaser of call option rights to land at the development site – primary judge found in favour of Respondents – Appellant's claim dismissed – cross-claim successful and Appellant ordered to pay equitable compensation, damages for misleading and deceptive conduct and exemplary damages for deceit – whether primary judge erred in failing to find an express trust had been agreed between Appellant and First | |

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| | | | | Respondent – whether primary judge erred in ordering a constructive trust over 50% of shares of Fourth Respondent in Appellant's favour – whether primary judge erred in refusing to refer Appellant's claims for enquiry as to monetary relief – whether primary judge erred in holding Appellant liable for half-share of the secret commission payment – whether primary judge erred in awarding exemplary damages against Appellant | |
| 17 | 2021/252548 | Macquarie Units Pty Ltd v Sunchen Pty Ltd | 21/09/2022 | EQUITY – equitable remedies – recission in aid of rights at law –Second Appellant is 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 – | *Nassif v Sun* [2021] NSWSC 990 |

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| | | | | 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 | |

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| 18 | 2022/126858 | Paltos v Milevski | 21/09/2022 | EQUITY – dissolution of partnership – Appellant and First Respondent formed a partnership and practised under the name "Paltos Milevski Family Lawyers" – Appellant suffered a number of strokes, and was unable to contribute to the running of the practice – Appellant was significantly indebted to the partnership – Partnership was dissolved by order of the Court in April 2016, on First Respondent's application – Second and Third Respondents appointed as receivers and managers of the partnership by the Court – Receivers made arrangements with First Respondent to take over assets and associated liabilities, with almost all of the active files provided to First Respondent's practice – Partnership's staff commenced employment with First Respondent's practice – In separate proceedings, Westpac obtained judgment against Appellant and First Respondent in debt recovery proceedings vis-à-vis a $460,000 business loan obtained by the partnership – Primary judge concluded that the assets transferred to First Respondent had no demonstrated intangible value and that First Respondent was entitled to judgment against Appellant – Whether primary judge failed properly to determine (and award) the value of the goodwill and/or business and/or intangibles due to Appellant | *Milevski v Paltos* [2022] NSWSC 261 |

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| 19 | 2021/341356 | Admiral International Pty Ltd v Insurance Australia Ltd | 26/09/2022 | INSURANCE – Appellant operated a warehouse at Alexandria, New South Wales – Respondent insured against damage to, or destruction of property at, the Appellant's warehouse under an Industrial Special Risks Policy – on 16 April 2018, a person entered into the warehouse and set it alight – the ensuing fire destroyed the warehouse and its contents – those contents included stock that the Appellant held on behalf of its clients – it was not in dispute between the parties that the fire was deliberately lit – the Appellant lodged a notice of claim with the Respondent seeking indemnity for the destruction of the warehouse and its contents, and for the consequential loss of gross profits – the Respondent rejected the Appellant's claim on the basis that the Appellant had committed arson fraud – the Respondent alleged that large quantities of goods were removed from the warehouse imminently prior to the fire with the knowledge and consent of the Appellant and without the authority of the Appellant's customers – the Appellant denied these allegations and commenced proceedings against the Respondent seeking damages for breach of the insurance policy and for breach of the Respondent's duty of utmost good faith in s 13 of the Insurance Contracts Act 1984 (Cth) – primary judge entered judgment for the Respondent and dismissed the proceedings – whether primary judge erred in failing to apply Worth v HDI Global Specialty SE [2021] NSWCA 185 when drawing certain inferences – whether the primary judge erred | *Admiral International Pty Ltd v Insurance Australia Ltd; Brightcity International Trading Pty Ltd v Admiral International Pty Ltd* [2021] NSWSC 1440 |

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| | | | | by misapplying the onus of proof as to certain material facts – whether the primary judge erred in making various findings of fact, including by way of inference – whether the primary judge erred in considering the mental element of fraud – whether the primary judge erred in failing to observe the Browne v Dunn rule – whether the primary judge erred by engaging in speculative reasoning – whether the primary judge erred in construing condition 8.16 of the insurance policy – whether the primary judge erred in the hypothetical assessment of damages | |
| 20 | 2022/240730 | Huang v 18 Woodville Holding Pty Ltd | 11/10/2022 | REAL PROPERTY - Torrens title - Hua Cheng International Holdings Group Pty Ltd (Hua Cheng) developed a number of commercial and residential developments in Hurstville - Appellants purchased a unit in the development pursuant to a contract for sale entered into in 2009 - Appellants paid purchase price of the property and received an acknowledgement of receipt of payment which foreshadowed an exchange of the certificate of title - Hua Cheng entered into a loan agreement secured by a registered mortgage over Hua Cheng's interest in the land and fixtures thereon to obtain financing - Hua Cheng defaulted in making loan repayments - Appellants lodged a caveat claiming a legal and equitable interest pursuant to contract of sale - Hua Cheng went into liquidation in 2017 - Respondent was assigned the debt owed by Hua Cheng to the financier under the loan agreement and the registered mortgage, which was subsequently | *18 Woodville Holding Pty Ltd v Hua Cheng International Holdings Group Pty Ltd (in liq) (No 2)* [2022] NSWSC 947 |

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| | | | | transferred to the Respondent – The receiver of Hua Cheng gave notice to the Appellants terminating any tenancy at will in March 2022 - Respondent (as mortgagee) sought possession of units occupied by inter alios, the Appellants - Appellants filed a cross-claim seeking specific performance - Appellants claimed a tenancy at will as purchasers in possession prior to settlement - Appellants claimed an equitable interest in the property commensurate with the availability of specific performance - Primary judge dismissed Appellants' claims on the basis of s 42 of the Real Property Act 1900 (NSW) insofar as the Respondent's registered mortgage took priority over the Appellants' unregistered interest in the land in circumstances where no exception to s 42 was made out- Whether primary judge erred in construing s 42 of the Real Property Act 1900 (NSW) as not picking up, and giving notice of, the interests of the Appellants under a contract for sale which was specifically enforceable - Whether primary judge erred in failing to find that the Appellants' interest took priority over that of the Respondent | |
| 21 | 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 – | *Flanagan v Bernasconi* [2022] NSWSC 381 |

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| | | | | 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 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- | |

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| | | | | respondent was not reckless | |
| 22 | 2022/73239 | Sahab Holdings Pty Ltd v Tonks | 19/10/2022 | CORPORATIONS – the Appellant is a family company – the parents commenced proceedings against their son Ken for engaging in improper conduct in relation to their affairs and the ownership of the Appellant – the Court made orders appointing the Respondents as receivers and managers of the Appellant until final determination of the parents' proceedings – meanwhile Senses commenced proceedings against the Appellant – the Respondents defended the Senses proceedings – the Court upheld Senses' claims and ordered that the Appellant pay Senses' costs – the Appellant sought an inquiry into the receivership and management conducted by the Respondents – the primary judge was not satisfied that there was a prima facie case that there was some act or omission that required inquiry – the primary judge declined to grant leave for an inquiry to be conducted into the receivers' conduct of the Senses proceeding – whether the primary judge erred in concluding that the receivers were obliged to defend the Senses proceedings – whether the primary judge erred in concluding that the valuation reports indicated that it was in the interests of the Appellant to defend the Senses proceedings – whether the primary judge erred in concluding that the approach taken by the receivers to the Senses proceedings made commercial sense – whether the primary judge erred in concluding that the Appellant failed to establish a prima facie case that there was | *In the matter of Sahab Holdings Pty Ltd* [2022] NSWSC 4 |

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| | | | | conduct on the part of the receivers deserving of inquiry | |
| 23 | 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 - 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 | *Lahoud v Willoughby City Council* [2022] NSWLEC 125 |
| 24 | 2022/78092 | Jamal v Workers Compensation Nominal Insurer | 20/10/2022 | WORKERS COMPENSATION – Appellant was the sole director at all material times of Al Maamoun & Co Pty Ltd, which company operated a grocery store in Auburn between 6.00am and midnight – The company did not have any workers' compensation insurance at all relevant times from its formation until Mr Khaled Jamal's injury – Mr Jamal was employed by the Appellant's company on a temporary basis to assist with the fitout of premises in Bondi Junction – Mr Jamal's employment was intended to last no more than six weeks, for which he was to be paid $1,156 per week, making a total of $6,936 – The statutory maximum amount that is reasonably expected to be paid in wages to an employee in order to meet the description of "exempt employer" under s 155AA of the Workers Compensation Act 1987 (NSW) (Act) is $7,500 – Primary judge found that the Appellant did not have reasonable grounds for | *Workers Compensation Nominal Insurer v Jamal* [2022] NSWDC 10 |

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| | | | | believing that the wages paid to Mr Khaled would not have exceeded the limit of $7,500 – Primary judge found the Appellant liable to reimburse the insurance fund as a culpable director insofar as the Appellant was aware that Mr Jamal was entitled to sums in excess of the statutory limit, or at least wilfully ignorant of this – Whether primary judge erred in finding that the corporation contravened s 155 of the Act with the Appellant's actual knowledge – Whether primary judge erred in finding that Appellant was wilfully ignorant of the contravention of s 155 – Whether primary judge erred in finding that the Appellant was in a position to influence the conduct of the corporation in relation to the contravention of s 155 – Whether the primary judge erred in finding that the amount recoverable from the Appellant was $258,565 as opposed to $103,771.29. | |
| 25 | 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 | *Carpenter v Morris* [2021] NSWSC 1700 |

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| | | | | (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 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 | |

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| | | | | 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 | |
| 26 | 2022/254111 | Bonanno v Finamore | 25/10/2022 | EQUITY – Trusts – Property at Rosebery was jointly owned by the Respondents and operated as a boarding house – Appellant and Respondents executed a deed in 2011 which provided for Appellant to make an advance of $130,000 to Respondents and contained a term that gave Appellant a right to require Respondents to transfer a one third share in the property to Appellant – Appellant advanced $30,000 of the moneys, but Respondents did not transfer interest in property to Appellant – Appellant sought declaration that Respondents held one third interest in property on trust for him, and an order for the sale of the property – Respondents alleged breach of deed – Respondents alleged that agreement was in substance a mortgage and term giving Appellant one third interest in the property was an unfair and unenforceable collateral advantage on the equity of redemption – Whether primary judge erred by declaring that Respondents did not hold a one third share of property on trust for Appellant – Whether primary judge erred in finding that the deed incorporated an option to require the transfer of the property – Whether primary judge erred in finding that the deed was in effect a | *Bonanno v Finamore* [2021] NSWSC 1558 |

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| | | | | mortgage – Whether primary judge erred in finding that the term of the deed providing for the transfer was unconscionable – Whether primary judge erred in applying Lord Parker's Proposition (3) from Kreglinger (G & C) v New Patagonia Meat and Cold Storage Company Ltd [1914] AC 25 to find the transfer provisions invalid – Whether primary judge erred in ordering Appellant to pay 60% of the Respondents' costs of the proceedings on the ordinary basis | |
| 27 | 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 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 – | *Moore v Scenic Tours Pty Limited (No 4)* [2022] NSWSC 270 |

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| | | | | 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 | |
| 28 | 2022/187172 | BCC Trade Credit Pty Ltd v Thera Agri Capital No 2 Pty Ltd | 26/10/2022 | INSURANCE – whether entitled to indemnity under a "Trade Credit Insurance Police" – where some of the drawdown requests were a sham – where "Murabaha" facility was not Sharia-compliant – whether claim on policy involved an insured risk as there was no "Debt Obligation" or "Advanced Payment" as required by clause | *Thera Agri Capital No 2 Pty Ltd v BCC Trade Credit Pty Ltd t/as The Bond & Credit Co* [2022] NSWSC 669 |
| 29 | 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 materials rather than the equipment | *Ritchie v Advanced Plumbing and Drains Pty Ltd* [2022] NSWSC 330 |

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| 30 | 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 |
| 31 | 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 erred by failing to find that the respondents | *Farriss v Axford (No 3)* [2022] NSWSC 20 |

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| | | | | 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 | |
| 32 | 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 the presumption of knowledge and approval | *Lim v Lim* [2022] NSWSC 454 |

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| | | | | 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 | |
| 33 | 2022/187883 | Misan v Markham Real Estate Partners (KSW) Pty Ltd | 4/11/2022 | CONTRACT – guarantee and indemnity provisions of sub-lease – recovery of rental arrears, loss of bargain, make-good costs and legal costs - failure to pay rent by sub-lessee when it went into administration - whether landlord unlawfully re-entered into possession of retail tenancy – whether re-entry a repudiation of sub-lease – whether re-entry unlawful as contrary to s440B of Corporations Act 2001 (Cth) – whether respondent could terminate sub-lease prior to expiry of breach notice issued under s 129 Conveyancing Act 1919 (NSW) – whether changing of locks amounted to a re-entry | *Markham Real Estate Partners (KSW) Pty Limited v Misan* [2022] NSWSC 733 |

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| 34 | 2022/14130 | Jennings v Wilden | 7/11/2022 | TORTS – Marital rape – Appellant was at all material times a high profile rugby league player – Appellant and Respondent were in a relationship (and ultimately married) from 2010 to 2016 – Primary judge found that Appellant had sexually abused Respondent throughout the course of their marriage – Primary judge reached conclusions as to liability (erroneously) applying the standard for appellate review of findings of fact in Fox v Percy [2003] HCA 22 at [29], namely that the Court was to look to objective facts and, where they exist, incontrovertible facts, where they do not exist, questions should be asked as to whether the plaintiff's claims are "glaringly improbable" or contrary to compelling inferences – Primary judge awarded general damages, aggravated damages, exemplary damages, expenses for future treatment, and damages for economic loss (in total, $490,091.05) – Whether primary judge erred in applying the standard for appellate review of findings of facts – Whether damages awarded for future economic loss were excessive and unsupported by the evidence | *Wilden v Jennings* [2021] NSWDC 705 |
| 35 | 2022/151935 | Roberts v Goodwin Street Developments Pty Ltd | 8/11/2022 | CONSTRUCTION – Respondent owned land in Newcastle – Respondent entered into building contract with DSD Builders Pty Ltd (DSD), of which Appellant's wife was the sole director – Appellant supervised the construction work carried out by DSD – Dispute arose between Respondent and DSD concerning defective building works for which a Notice to Remedy Defaults was served – | *Goodwin Street Developments Pty Ltd atf Jesmond Unit Trust v DSD Builders Pty Ltd (in liq)* [2022] NSWSC 624 |

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| | | | | Substantial damage was done to the building site, and materials, fixtures and/or fittings were removed from the site – Primary judge found that although Respondent did not have exclusive possession of the site at the time of damage, it was a reversioner in a position shortly to obtain exclusive possession of the reversion and thus entitled to bring an action on the case for trespass – Primary judge held that Respondent entitled to damages reflecting the costs of repair, as opposed to any diminution in the value of the reversionary interest – Primary judge found that Appellant caused the damage to the building site – Primary judge found that Appellant carried out construction work for the purposes of s 36 of the Design and Building Practitioners Act 2020 (NSW) and acted in breach of his duty of care under s 37 of that Act – Primary judge held that Appellant liable to pay Respondent the cost of making good the damage and rectifying the defects – Whether a competent person would agree that the flesh of “Daniel” or “Daniel Roberts” is not the same as the office of Trustee “Daniel” or “Daniel Roberts” – Whether Appellant, as a living man with flesh and blood, cannot defend himself in a civil jurisdiction – Whether Appellant as a member of the homo sapiens species owns Divine Trust Rights to a Good Soul, Body, Mind and Property – Whether Appellant can be converted to a Thing via Civil Controversy – Whether Respondent, as a fictional person, cannot make a claim against a living natural person | |

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| 36 | 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 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 | *Alelaimat v Synergy Scaffolding Services (No 3)* [2022] NSWSC 536 |

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| | | | | 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 | |
| 37 | 2022/140658 | Heise v Employers Mutual Ltd | 21/11/2022 | ADMINISTRATIVE LAW (other) – private prosecution - appeal by prosecutor from Local Court to Supreme Court under Crimes (Appeals and Review) Act 2001 – respondent convicted in Local Court for failing to determine worker's compensation claim within 42 days under s282 of Workplace Injury Management and Workers Compensation Act 1998 - whether respondent corporation a "person" for purposes of s283 of that Act | *Employers Mutual Ltd v Heise* [2022] NSWSC 465 |

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| 38 | 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 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 | *The Cleaning Doctor NSW Pty Ltd v Fonseca* [2022] NSWSC 253 (Williams J) |

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| | | | | 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 | |
| 39 | 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 |
| 40 | 2022/195125 | Darkinjung Local Aboriginal Land Council v Minister Administering the Crown Land Management Act 2016 | 25/11/2022 | LAND AND ENVIRONMENT – Claim under Aboriginal Land Rights Act 1983 (NSW) – Appellant filed two appeals in the NSWLEC appealing refusals by the respondent of two land claims in Gosford lodged in 2009 – The lots the subject of the claims are Crown land – The lots the subject of the claims were occupied by Terama Industries Inc, a disability services provider – The respondent refused the claims on the basis that the land was "not claimable Crown land as it was needed for the essential public purpose of supported | *Darkinjung Local Aboriginal Land Council v Minister Administering the Crown Land Management Act – 'Gosford 1 & 2'* [2022] NSWLEC 68 |

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| | | | | employment for disabled persons" – Appellant submitted that the date at which the respondent must prove the existence of an essential public purpose is the date of the claims, as opposed to the date at which the Minister reserved the land, or the date at which the Minister began investigating the claims – Appellant submitted that "public" purpose is one that is carried out by the government – Appellant submitted that Terama Industries was not a charitable organisation – Appellant submitted that the respondent failed to prove the requisite essentiality of the public purpose – Primary judge concluded that the land was not claimable Crown land, and dismissed the Appellant's claim – Whether primary judge erred in finding that, as at the date of the claims, the land was not claimable Crown land – Whether primary judge erred by determining whether the lands claimed were not claimable Crown lands by reference to the circumstances as they existed in 1969-1971 and 9 years after the date of the claims, as opposed to the date of the claims – Whether primary judge erred by holding that whether the claimed lands were "needed or likely to be needed" by the Executive Government at the date of the claims could be established by a use of the claimed lands by a private organisation unknown to the Minister until the claims were investigated – Whether the primary judge erred by making various factual findings – Whether primary judge erred in holding that policy documents which did not | |

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| | | | | exist at the date of the claims were relevant to the determination that the public purpose was essential | |
| 41 | 2022/127231 | Chief Commissioner of State Revenue v Godolphin Australia Pty Ltd | 30/11/2022 | TAXATION – The Respondent sought review of a decision of the Appellant to assess the Respondent for land tax in respect of two properties – the Respondent submitted that the land was exempt from land tax on the basis of the exemption for rural land used for primary production because the dominant use of the land was for the maintenance of stallions for the purpose of selling their bodily produce – the Appellant argued that the true use of the land was not for the requisite statutory purpose but rather for breeding, training and spelling racehorses – primary judge held that the exemption applied and the assessment should be set aside – whether primary judge failed to correctly apply the legal test in determining that the land was used for primary production – whether primary judge erred in finding that the Respondent conducted an 'integrated or composite' activity on the land – alternatively whether primary judge erred in finding that the preparation of horses for racing was with the overall purpose of increasing revenue from nomination fees and from the sale of progeny produced by the horses – whether primary judge erred in finding that the nomination fees and sale of progeny were sufficiently proximate to the maintenance of the animals on the land – whether primary judge erred in determining that the dominant use of the land was for the maintenance of horses for the purpose of | *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 430 |

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| | | | | selling their bodily produce | |
| 42 | 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 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 | *Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208 |

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| | | | | 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 | |
| 43 | 2022/156881; 2022/269962 | Gilmore Finance Pty Ltd v Aesthete Pty Ltd | 5/12/2022 | EQUITY – breach of trust – Appellant invested some $7.69 million in development projects in relation to two properties – two trusts were established to develop the properties – the First and Second Respondents were at all material times trustees of the trusts – Appellant alleged that it made its investments as a result of representations by the Third Respondent (who was the sole director of the First and Second Respondent) said to be misleading or deceptive for the purposes of s 18 of the Australian Consumer Law – in the alternative the Appellant brought other claims concerning the manner in which the First and | *Gilmore Finance Pty Ltd v Aesthete Pty Ltd atf the Real Money Unit Trust* (No 2) [2022] NSWSC 557 |

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| | | | | Second Respondent conducted the trusts – the primary judge held that the Appellant failed to make out any of its claims and dismissed the proceedings – whether the primary judge erred in failing to determine whether there had been a breach of trust by the First and Second Respondent by way of a failure to provide proper accounts, books and records in respect of the trusts – whether the primary judge erred in finding that there had been no breach of trust by the First and Second Respondent through their conduct with respect to the approval of excessive legal fees in circumstances where the Third Respondent was in a position of conflict | |
| 44 | 2022/171716 | Koprivnjak v Koprivnjak | 6/12/2022 | EQUITY – Trusts and trustees – Appellant is Respondent's father – Respondent was the registered proprietor of a property at Shoal Bay NSW – Appellant and Respondent claimed net proceeds of the sale of the property, which was sold in December 2020 – Appellant alleged that he made direct financial contributions to the purchase of the property, and financial contributions to the maintenance of the property, which gave rise to a resulting trust – Appellant alleged that Respondent held a one quarter interest in the property on trust for him, and claimed a constructive trust in relation to the remaining three quarter interest – Primary judge dismissed Appellant's claim – Whether primary judge erred in holding that the Appellant asserted that Respondent held a one quarter interest of the property on trust for him, as opposed to a 100% interest – Whether primary judge erred in failing to find that the | *Koprivnjak v Koprivnjak* [2022] NSWSC 586 |

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| | | | | presumption of advancement had been rebutted – Whether primary judge erred in failing to find that the time at which the parties' intention for the purposes of a resulting trust is to be considered was the time of the exchange of contracts – Whether primary judge failed to give proper weight to the inherent improbability that the Appellant would in effect gift a property to the Respondent – Whether primary judge failed to make various factual findings – Whether primary judge erred by determining that Respondent could rely on an offer made to Appellant in Federal Circuit Court proceedings on the question of costs – Whether primary judge erred in finding that Respondent could rely on an offer in the instant proceedings where it was not shown that rejection of such offer was unreasonable | |
| 45 | 2022/249986; 2022/259024 | Registrar of Births, Deaths and Marriages v FJG; Attorney General for NSW v FJG | 6/12/2022 | STATUTORY INTERPRETATION – The Attorney-General seeks a declaration that on its proper construction s 45(1)(b) of the Births, Deaths and Marriages Registration Act 1995 (NSW) does not empower the Registrar of Births, Deaths and Marriages to correct an entry in the Register about a marriage solemnised in New South Wales where correction would cause the particulars contained in the entry to be inconsistent with those in the marriage certificates prepared and signed under s 50 of the Marriage Act 1961 (Cth) or to amend particulars contained in the name or sex of a party to the marriage where that person has changed their name or a certificate has been issued recognising that the person is of a different sex to that | *Registrar of Births, Deaths and Marriages v FJG & FJH* [2022] NSWCATAP 270 |

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| | | | | recorded at the time of the marriage subsequent to the registration of their marriage, or to amend the sex of a party to the marriage such that the marriage is between two persons of the same sex when same sex marriage was not lawful under the Marriage Act 1961 (Cth) at the time of the marriage – Alternatively, the Attorney-General seeks a declaration that insofar as s 45(1)(b) of the Births, Deaths and Marriages Registration Act 1995 (NSW) properly construed empowers the Registrar to correct an entry in the Register about a marriage solemnised in New South Wales where the correction would engender inconsistency with the marriage certificates prepared under the Marriage Act 1961 (Cth) where that correction has not been certified as necessary under that Act, that s 45(1) of the NSW Act is inconsistent with ss 50 and 51 of the Marriage Act 1961 (Cth) and inoperative by force of s 109 of the Constitution – Alternatively to the first declaration sought, the Attorney-General seeks a declaration that s 45(1)(b) is inoperative by force of s 109 of the Constitution insofar as it, properly construed, empowers the registrar to amend the sex of a party to the marriage such that the marriage is between two persons of the same sex when same sex marriage was not lawful under the Marriage Act 1961 (Cth) at the time the marriage occurred – The Attorney-General seeks an order in the nature of mandamus directing the Appeal Panel of the Civil and Administrative Tribunal to order | |

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| | | | | that the appeal be allowed, and the decision of the Registrar of Births, Deaths and Marriages be affirmed | |