Supreme Court of NSW Court of Appeal

Decisions Reserved as at 30 June 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	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
3	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	*Flanagan v Bernasconi* [2022] NSWSC 381

				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-respondent was not reckless	

4	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 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	*Carpenter v Morris* [2021] NSWSC 1700

				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	
5	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	*Farriss v Axford (No 3)* [2022] NSWSC 20

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

				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 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	
7	2022/96995	Taylor & Wilkinson v Stav	1/12/2022	CONTRACT – Breach of contract and misleading and deceptive conduct – First Appellant was founder, director and CEO	*Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208

		Investments Pty Ltd		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 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	
8	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	*Jake Properties Australia Pty Ltd v Naaman* [2022] NSWSC 517

				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 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	
9	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 -	Lower Court decision not available on CaseLaw

				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	
10	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 apartments – The liquidator of the Respondent opposed the	*The Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022] NSWSC 1081

				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	
11	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 – whether primary judge erred by rejecting	*In the matter of Tzavaras & Sons Pty Ltd* [2022] NSWSC 359

				certain evidence	
12	2022/383325	Next Generation (NSW) Pty Ltd v State of New South Wales	6/03/2023	LAND & ENVIRONMENT – the appellant sought a declaration that Part 4 of Chapter 9 of the Protection of the Environment 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	*The Next Generation (NSW) Pty Ltd v State of New South Wales* [2022] NSWLEC 138
13	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
14	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	*Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204

				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 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	
15	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 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	*Lynda Gabriel de Roma v Inner West Council & Ausgrid Operator Partnership* [2022] NSWDC 425

				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	
16	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	*Parfit Investments Ptv Ltd v Caterjian* [2022] NSWSC 1093

				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 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	
17	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	*Culjak v Akrawe* [2022] NSWSC 949

				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 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)	
18	2022/265558	Kalloghlian v Mitry Lawyers Pty Ltd	31/03/2023	COSTS – dismissal of motion seeking costs against applicant's lawyer under s99 of Civil 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	*Kalloghlian v Mitry Lawyers Pty Ltd (No 2)* [2022] NSWSC 1071
19	2022/370857	Soulos v Pagones; Soulos v Soulos;	6/04/2023	SUCCESSION – the deceased was survived by her four children (James, Maria, Dennis and Nick), 12 grandchildren and several great-grandchildren – the deceased left an estate of	*Re Estate Soulos* [2022] NSWSC 1507

		Kristallis v Soulos; Kristallis v Pagones		some $35.8 million comprising all forms of property – much of the property was held by two companies, Esperia Court Pty Ltd (Esperia) and A&R Management Pty Ltd (A&R) – by her last will the deceased left each child property and shares in Esperia, although the deceased gifted Nick all management shares in Esperia and the major interest of all members of Esperia in a winding up of Esperia – disputes as to particular parcels of land and corresponding entitlements to shares in Esperia and A&R arose between the children of the deceased – Maria brought a claim for Esperia to be wound up in oppression proceedings against the deceased's estate, Nick and John (Nick's son) – claims as to family provision orders were brought by each of James, Maria and Dennis – the primary judge made orders that the four sets of proceedings be heard together with evidence in each set of proceedings to be evidence in each other set of proceedings so far as may be material – the primary judge made orders that each child of the deceased receive 125 of the 500 management shares in Esperia – the primary judge made an order that James receive 1,000 shares in Esperia given to Nick – the primary judge made orders inter alia that Nick and John hold their interest in certain property on trust for Esperia and that they be required to retire as directors of Esperia – whether the primary judge erred in finding that adequate provision for the proper maintenance, education or advancement in the life of James had not	

				been made in the will of the deceased for the purpose of s 59 of the Succession Act 2006 (NSW)	
20	2022/336144	United Resource Management Pty Ltd v Par Recycling Services Pty Ltd	14/04/2023	CONTRACT – agreement to separate waste from recycled collections in commingled containers – dispute as to failure to make payments - whether "implied agreement" could be terminated by reasonable notice – whether erred in finding misleading or deceptive conduct in relation to the Somersby Supply Agreement – whether offer would have been but for that conduct – whether loss suffered – whether an agreement on more favourable terms would have been entered – whether common mistake as to 2011 agreement was such that the parties were bound by the "implied agreement" – whether the appellant was unjustly enriched – whether failure to call witness gave rise to a Jones v Dunkel inference of 2011 agreement coming to an end	*Par Recycling Services Pty Ltd v United Resource Management Pty Ltd* [2022] NSWSC 1269
21	2022/295461	Wojciechowska v Secretary, Department of Communities and Justice	24/04/2023	CONSTITUTION – proceedings pending in NCAT concerning Government Information (Public Access) Act 2009 - applicant a resident of Tasmania - whether Tribunal can exercise jurisdiction – whether President of NCAT erred in exercising functions under s52 of Civil and Administrative Tribunal Act 2013 to reconstitute Appeal Panel	*Wojciechowska v Secretary, Department of Communities and Justice* [2022] NSWCATAP 226
22	2022/342349	Atanaskovic v Birketu Pty Ltd	1/05/2023	COSTS – declaration made as to costs entitlement during pending cost assessment of party & party costs - whether unincorporated law firm can recover costs performed by employed solicitor – whether previous right to recover derived from the now	*Birketu v Castagnet* [2022] NSWSC 1435

				abrogated Chorley exception	
23	2022/326111	He v Kure	3/05/2023	EQUITY – Oral Loan Agreement – The Respondent sought a monetary judgment for $1,804,117.84 (plus interest) in respect of loans allegedly made by the Respondent to the Appellant which were not repaid, and moneys alleged to have been misappropriated by the Appellant – Primary judge found that the Respondent had loaned the Appellant $633,744.57 in 2008, repayable upon two months' notice, which remained unpaid – Primary judge found that the Respondent loaned the Appellant a further $312,000 in 2009, which remained unpaid – Primary judge found that the Respondent loaned the Appellant a further sum of $159,738 later in 2009, which remained unpaid – Primary judge found that the entitlement to recover the sums loaned was not extinguished by the Limitation Act 1969 (NSW) ss 14 and 63 – Primary judge held that the Respondent was precluded from maintaining his claim for equitable compensation for the alleged misappropriations on the basis that he made the claim more than six years after it first became available to him – Primary judge entered judgment for the Respondent in the sum of $1,105,513.04 – Whether primary judge erred in finding that each of the three loans remained unpaid – Whether primary judge erred in finding that the Appellant bore the onus to prove that the first loan had been repaid – Whether the primary judge erred in holding that the first loan was in fact a loan –	*Kure v He* [2022] NSWSC 1240

				Whether primary judge erred in finding that entitlement to recover each of the three loans was not barred by the Limitation Act 1969 (NSW) – Whether primary judge failed to give adequate reasons for the cost orders made	
24	2022/303307	Anderson v State of New South Wales; Perri v State of New South Wales	4/05/2023	TORT – false imprisonment, assault and battery – strip search by police officers of applicant when a minor – proceedings dismissed after limitations defence – whether exemption for “child abuse” in s6A of Limitations Act 1969 applied – whether violation of child’s privacy an abuse – whether the “Capable Persons” had taken reasonable steps to ascertain the fact mentioned in s50(1)(c) – whether ought to have known that injury was sufficiently serious to justify bring an action	*Anderson v State of New South Wales* [2022] NSWDC 435
25	2022/341	Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd	4/05/2023	PROCEDURE – dismissal of proceedings after non-payment of security for costs – whether UCPR 42.21(3) is inconsistent with s1335 of the Corporations Act 2001 – whether power under UCPR 42.21 enlivened – whether erred in dismissing amended statement of claim – whether erred in ordering security for costs – whether failed to take into account that applicant was a trustee with no assets COSTS – whether erred in ordering costs of the dismissal of cross-claim - whether failed to take into account an undertaking not to pursue a cross-claim	*Ranclose Investments Pty Ltd v Leda Management Services Pty Ltd* [2021] NSWDC 651
26	2022/318631	Li v Tao	16/05/2023	EQUITY – the appellant and respondent were in a de factor relationship – the appellant bought a property in North Ryde using the respondent’s money for the deposit – both	*Bao v Li* [2022] NSWSC 1335

				parties entered into a written agreement with the appellant and Mr Bao pursuant to which Mr Bao agreed to contribute 50% of the costs for the development of a North Ryde Property in return for 50% of net profits – the respondent purchased a property in St Ives and at some point the appellant's name was added as co-purchaser – the parties' relationship deteriorated and the respondent and Mr Bao requested that the appellant sell the North Ryde Property but the appellant refused – Mr Bao sought an order from the court that the North Ryde Property be sold and an account taken to determine his entitlement – the respondent cross-claimed against the appellant alleging that she held the North Ryde Property and the St Ives Property on express trust for him – the primary judge held that the appellant and the respondent agreed to the creation of an express trust in relation to both properties – whether the primary judge erred in finding that the respondent and Ms Lee were honest witnesses – whether the primary judge erred in finding that the appellant was an unimpressive witness – whether the primary judge erred in finding that an express trust arose in relation to the St Ives Property – whether the primary judge erred in making various factual findings – whether the primary judge erred in making orders to effect the transfer of the St Ives Property without first ordering that the appellant was entitled to an indemnity with respect to the mortgage liabilities in her name	

28	2022/48359; 2022/173413	Anderson v Canaccord Genuity Financial Ltd	17/05/2023	EQUITY – the Ashington group of companies (Ashington) was founded and controlled by Mr Anderson, the Appellant's husband - Ashington carried on a property development business – Ashington came under financial strain and engaged the services of the First Respondent to raise capital from alternative sources – Ashington also engaged the services of the Fourth Respondents to advise the superannuation fund investors on behalf of Ashington – Ashington engaged the Second and Third respondents as Head of Funds Management and Head of Acquisitions respectively to liaise with the First and Fourth Respondents – the Second and Third Respondents abandoned attempts to secure capital raising – investors approved the removal of Ashington as trustee of the property development business – Ashington went into liquidation and the Appellant purchased the rights and interests in Ashington – Appellant commenced proceedings against the Respondents alleging that the Respondents had acted unlawfully to take Ashington's business for their own benefit – Primary judge held that Appellant had standing to sue for breach of contract but not breach of obligations owed to Ashington as a trustee – Primary judge held that Second and Third Respondents breached duties of good faith and loyalty arising from their employment with Ashington – the primary judge held that loss not established and ordered Second and Third Respondent to pay nominal damages – the primary judge	*Anderson v Canaccord Genuity Financial Ltd* [2022] NSWSC 58

				dismissed claims for breach of fiduciary duty, knowing assistance and confidence against the Respondents – whether the primary judge erred in finding that Appellant lacked standing to sue for breach of confidence and fiduciary obligations – whether the primary judge erred in failing to find that the Second and Third Respondents breached fiduciary duties – whether the primary judge erred in failing to find that the First, Fourth, Fifth and Sixth Respondents knowingly assisted the Second and Third Respondents – whether the primary judge erred in failing to find that the First Respondent breached fiduciary duties and duties of good faith – whether the primary judge erred in calculating Appellant's loss	
29	2022/119930	Collier v Attorney General for the State of New South Wales	18/05/2023	ADMINISTRATIVE LAW (other) – orders made under Vexatious Proceedings Act 2008 (NSW) restraining applicant from commencing proceedings in New South Wales without leave – whether primary erred in not adjourning trial – whether erred in discretion to make orders – procedural fairness – bias - findings – evidence	*Attorney General for the State of New South Wales v Collier (No 1)* [2022] NSWSC 457
30	2022/238296	SAS Trustee Corporation v Learmont	19/05/2023	WORKERS COMPENSATION – Police Regulation (Superannuation) Act 1906 (NSW) – Whether the trial judge erred in law in finding in favour of the Respondent	Lower Court decision not on Caselaw
31	2022/362424	Ritson v State of New South Wales	25/05/2023	WORKERS COMPENSATION - Treatment expenses - Appellant suffered a thumb injury in 2006 - Appellant made a claim under s 60 of the Workers Compensation Act 1987 (NSW) for the cost of fractional ablative laser treatment ($825) undertaken in 2021 - The Appellant's former employer, the NSW	*Ritson v State of New South Wales (No. 1)* [2022] NSWDC 345

				Police Force, disputed liability pursuant to ss 78 and 287 A of the Workplace Injury Management and Workers Compensation Act 1998 (NSW), alleging that the Appellant had received damages in respect of the injury relief upon -Appellant and Respondent entered into a Deed of Release with respect to all claims and entitlements arising from the Appellant's employment following the Appellant's discharge from the Police Force - Primary judge concluded that the terms of the deed included the thumb injury and thus the Appellant was not entitled to the costs of treatment - Whether primary judge erred in finding that the payment to the Appellant pursuant to the deed met the description of "damages" as defined ins 149(1) of the Workers Compensation Act- Whether primary judge erred in finding that such payment was in respect of the thumb injury for the purpose of s 151A of the Workers Compensation Act- Whether primary judge denied the Appellant natural justice by failing to address the Appellant's contention that the Respondent's conduct created an estoppel by convention	
32	2022/379614	Sydney Metro v Expandamesh Pty Ltd	26/05/2023	LAND & ENVIRONMENT – a substratum of a property owned by the respondent was compulsorily acquired by the appellant for the purpose of constructing tunnels for the Sydney Metro City and Southwest project – the Valuer General determined that the amount of compensation to be paid to the respondent was nil – the respondent commenced proceedings disputing the Valuer	*Expandamesh Pty Ltd v Sydney Metro (No 3)* [2022] NSWLEC 137

				General's determination – the primary judge held that a hypothetical purchaser of the substratum of the site would contemplate a potential 10% uplift – the primary judge held that making allowances for cost the uplift in value of the site is at least in the order of $800,000 – the primary judge ordered the appellant to pay the respondent $20,000 for the compulsory acquisition and pay the respondent's costs – whether the primary judge erred by applying an improper construction of clause 2(1)(a) of Schedule 6B to the Transport Administration Act 1988 to the facts - whether the primary judge erred in determining the amount of market value – whether the primary judge erred by failing to have proper regard to the matters specified in s 55 of Just Terms Act in determining the amount of compensation	
33	2022/144952; 2022/145015	Lowe v Tu; Lowe v Lowe	29/05/2023	EQUITY – Partnership – This appeal arises out of the Sze Tu v Lowe litigation, which concerned three properties purchased by the deceased father of the Second Appellant and various of the Respondents (who died intestate) purchased with moneys derived from a partnership between the deceased and various of his children – The Second Appellant is the deceased's daughter, and the First Appellant is married to the Second Appellant – Primary judgment concerned the form of orders for the further conduct and finalisation of the various related proceedings in the litigation, specifically, the extent to which the estate of the deceased should receive a distribution from the funds held by	*Lowe v Pascoe (No 13)* [2022] NSWSC 320

				the Administrator, the calculation of notional distributions received by the First to Third Respondents, and the costs of the proceedings – Primary judge concluded that the Administrator's costs were to be paid out of the funds held by the Administrator – Primary judge directed the parties to provide orders giving effect to all conclusions reached in the proceedings – Primary judge made orders on 21 April 2022 – Whether primary judge erred in making a notation as opposed to an order regarding the value of the Net Proceeds Trust and distributions to be made therefrom – Whether primary judge erred in making a notation rather than an order as to the value of the Profits Trust and distributions to be made therefrom – Whether primary judge erred in failing to determine all relevant matters raised by the Inquiry – Whether primary judge entered orders inconsistent with orders of the Court of Appeal in Sze Tu v Lowe (No 2) [2015] NSWCA 9	
34	2022/274797	Cappello v Lyons	1/06/2023	PROFESSIONAL NEGLIGENCE – The Appellants entered into a construction contract with builders to renovate their home in Haberfield – A dispute arose in which the Appellants claimed damages for defective building work and the builders cross-claimed for a sum representing an unpaid progress claim – The Appellants were represented by the Respondent prior to the hearing – Ball J dismissed the Appellant's claim in the Supreme Court proceedings with costs – On appeal, the Appellants succeeded in part, in which Leeming JA noted that the Appellants'	Lower court decision not on caselaw

				contention on appeal that conditions precedent for the builders' claim in contract were not satisfied had not been pleaded in the Appellants' defence to the cross-claim, nor run at trial – The Appellants alleged that the Respondent negligently failed to plead non-compliance with the conditions precedent and that the Respondent's breaches of his duty of care prevented the Appellants from succeeding with their claim at first instance and on appeal – Whether primary judge erred in finding that advocates' immunity was available as a complete defence to the cause of action – Whether primary judge erred in finding that there was no maintainable action against the Respondent in light of the Appellants' liability to the builder – Whether primary judge erred in finding that the builder had a maintainable action for quantum meruit – Whether primary judge erred in making various factual and credibility findings	
35	2022/284565	Bhatt v YTO Construction Pty Ltd	2/06/2023	TRADE PRACTICES – Misleading or deceptive conduct – the appellant is a director of Innovative Civil Pty Ltd (Innovative) – the respondent contracted Innovative to carry out excavation works – Innovative issued a progress claim to the respondent which claimed a variation amount – the respondent disputed the amounts claimed and Innovative lodged an adjudication application – the adjudicator determined to allow Innovative the variation sum sought – the respondent commenced proceedings to set aside the adjudication determination on the basis that it was procured by fraud and paid approximately	*YTO Construction Pty Ltd v Bhatt* [2022] NSWDC 348

				$1.5 million into the Supreme Court – the respondent's claims were dismissed (see [2018] NSWSC 1354) and the amount paid into court was ordered to be paid to Innovative – on appeal (see [2019] NSWCA 110) Innovative was successful and was ordered by the NSWCA to pay $399,000 plus GST and interest back into Court however Innovative did not pay that amount and subsequently entered into voluntary liquidation – the Court also remitted the proceedings to the Equity Division for further hearing – the respondent brought proceedings against the appellant in the District Court alleging that the respondent suffered damage because of three representations made by the appellant in relation to the adjudication – the trial judge held that the appellant did make the three statements and that they were representations made in trade or commerce to the adjudicator and the respondent by the appellant – the trial judge held that there was misleading or deceptive conduct in relation to claims in category 1 and 4 – the trial judge held that the adjudicator relied upon the misleading and deceptive conduct of the appellant in coming to its view that Innovative was entitled to its entire claim – the trial judge held that the respondent suffered a loss of $254,100 because of the misleading or deceptive conduct of the appellant – whether amendments sought by respondent in the continuing Equity Division proceedings are inconsistent with respondent's appeal – whether an issue estoppel arises – whether	

				the contents of the payment claim were representations made in trade or commerce	
36	2021/349602	Garslev Holdings Pty Ltd v Overdean Developments Pty Ltd	9/06/2023	EQUITY – Third Respondent (“BAD Nominees”) was trustee of a self-managed superannuation fund (“Dean Super Fund”) for the sole benefit of the Second Respondent (“Mr Dean”) – Mr Dean was sole shareholder and director of BAD Nominees – First Respondent (“Overdean”) replaced BAD Nominees as trustee of the Dean Super Fund in September 2018 – Mr Dean is sole director and shareholder of Overdean – in February 2013, BAD Nominees made a secured loan of $2m to Beechworth Land Estates Pty Ltd (“BLE”) to fund the acquisition of a mortgage over 39 properties in regional Victoria (“mortgaged properties”) – where the mortgagor had defaulted – BAD Nominees also made a secured loan to Griffith Estates Pty Ltd (“GEP”) – in July 2014, BLE and GEP went into administration – BAD Nominees lodged a proof of debt claimed to be owed by BLE under the loan advanced to it – early in May 2016, Mr Dean was introduced to the Second and Third Appellants (“Mr L Smits” and “Mr Mahommed”) by a mutual acquaintance who was the sole director of BLE (“Mr Photios”) – Messrs L Smits and Mahommed were notified that BAD Nominees was yet to receive any payment out of the administration of BLE and lacked legal representation – on 9 May 2016, BAD Nominees executed a Power of Attorney in favour of Messrs L Smits and Mahommed for a period of three years and for the purposes of	*Overdean Developments Pty Ltd v Garslev Holdings Pty Ltd (No 3)* [2021] NSWSC 1482

				the BLE and GEP administrations – Mr Mahommed is the sole director and shareholder of the Fourth Appellant (“Vestecorp”) – also on 9 May 2016, BAD Nominees, Vestecorp and Mr L Smits entered into a consultancy agreement and an “irrevocable authorisation and direction” (“IAD”) – consultancy agreement set out terms on which Vestecorp and Mr L Smits would provide services to BAD Nominees and exercise functions and powers in respect of the BLE and GEP administrations – the IAD provided for the payment to Vestecorp and Messrs L Smits and Mahommed of 25% of all monies payable to BAD Nominees under the administrations – on 2 August 2017, BLE and BAD Nominees entered an agreement for the transfer of nine of the mortgaged properties in consideration of the reduction of the debt owed to BAD Nominees by $1m – on 21 February 2018, BLE went into liquidation – Fifth Appellant (“Mr J Smits”) is the sole director and shareholder of the First Appellant (“Garslev”) – on 20 March 2018 and 5 November 2018 respectively, BAD Nominees executed deeds to transfer to Garslev the nine mortgaged properties and other of its rights in relation to the BLE administration in consideration of $850,000 – those deeds were signed by Mr Mahommed on behalf of BAD Nominees – the earlier of those deeds permitted Garslev to pay the consideration by setting off monies allegedly owed by BAD Nominees to Vestecorp and Messrs L Smits and Mahommed – by the latter of the deeds,	

				Vestecorp and Messrs L Smits and Mahommed assigned to Garslev the debts allegedly owed to them by BAD Nominees in consideration for payment out of the profits of a separate property development being undertaken by Garslev – Garslev became registered proprietor of the nine mortgaged properties on 5 November 2018 without making any monetary payment to BAD Nominees – Garslev subsequently sold the nine mortgaged properties for an aggregate price of $1.126m – late in 2018, Mr Mahommed executed a deed on behalf of BAD Nominees to retain Mr L Smits as the company's solicitor in litigation concerning the administration of BLE – on 13 December 2018, Respondents commenced proceedings against Appellants seeking declarations that the Power of Attorney, consultancy agreement and IAD were rescinded for breach of fiduciary duty, that the deeds of 20 March and 5 November 2018 were rescinded for breach of fiduciary duty, that the Garslev holds the proceeds of the sale of the nine mortgaged properties on constructive trust for BAD Nominees or Overdean – Appellants defended the proceedings and cross-claimed for damages comprising fees said to be owed to Vestecorp and Messrs L Smits and Mahommed under the consultancy agreement and IAD, offset against the $850,000 paid to Garslev – Appellants also contended that the Respondents' proceedings were precluded by the doctrines of res judicata, issue estoppel and/or Anshun estoppel by reason of earlier	

				judgments in related proceedings concerning the BLE administration and the Dean Super Fund – primary judge found in favour of Respondents and ordered the relief that they sought – whether primary judge erred in finding that Respondents had standing to bring the proceedings – whether primary judge erred in finding that the proceedings were not precluded by any of the doctrines of res judicata, issue estoppel or Anshun estoppel – whether primary judge erred in finding that there was fraud on the Power of Attorney – whether primary judge erred in finding that recission was available in respect of the deed of 20 March 2018 – whether primary judge erred in finding that the Appellants had breached fiduciary duties owed to the Respondents – whether primary judge erred in the application of the principle in Barnes v Addy – whether primary judge erred in making, or failing to make, various findings of fact – whether primary judge erred in the quantification of debts said to be owing between the parties – whether primary judge erred in the assessment of costs in view of the principle in Bell Lawyers Pty Ltd v Pentelow (2019) 269 CLR 333	
37	2023/105049	State of New South Wales v Hollingsworth	9/06/2023	PROCEDURE – respondent seeks damages for false imprisonment, assault and battery against the applicant – claim includes a claim for exacerbation of pre-existing PTSD – applicant sought medical examination of respondent – respondent would not consent unless able to record examination – applicant unable to find psychiatrist of its own choice	*Hollingsworth v State of New South Wales* [2023] NSWDC 46

				who would agree to such - whether erred in directing that any forensic psychiatrist allow the respondent/plaintiff to make a sound recording of the entire session - whether failed to consider the importance of applicant being able to select their own medical practitioner – whether erred in not considering that there was no right to record under s 7 of Surveillance Devices Act 2007 (NSW)	
38	2022/368706	State of New South Wales v Spedding	13/06/2023	TORTS (other) – malicious prosecution – the respondent became a person of interest in relation to an investigation into the disappearance of William Tyrrell – two months later the respondent was arrested and charged in relation to historical sexual assault allegations – the respondent was found not guilty in District Court proceedings by Sweeney DCJ on all counts and was awarded costs – the respondent brought a claim against the appellant for damages on the basis that the sexual assault allegations that led to his District Court prosecution were in effect a collateral attack upon him in order to facilitate the investigation of him as a suspect in the disappearance of William Tyrrell – the primary judge found that the criminal proceedings were instituted and maintained against the respondent without reasonable or probable cause and were malicious – the primary judge held that the respondent had established that he was entitled to damages on the causes of action pleaded except of the claim for false imprisonment – whether the primary judge erred in finding that Detective Senior Constable Brennan and Detective	*Spedding v State of New South Wales* [2022] NSWSC 1627

				Chief Inspector Jubelin maintained the prosecution (and on that basis were liable for malicious prosecution) beyond April 2015 – whether the primary judge erred in making findings of malice – whether the primary judge erred in finding that DSC Brennan and DCI Jubelin engaged in misfeasance in public office – whether the primary judge erred in finding that DSC Brennan and DCI Jubelin engaged in collateral abuse of process – whether the award of damages was manifestly excessive	
39	2022/386243	Independent Liquor and Gaming Authority v 4 Boys (NSW) Pty Ltd	14/06/2023	ADMINISTRATIVE (judicial review) – declaration sought in Supreme Court as to applicant's failure to revoke decisions made under the Gaming Machines Act 2001 (GMA) – whether s 48 of Interpretation Act 1987 (NSW) gives the applicant the power to revoke a decision under either s 34 or s20A of the GMA – whether Part 4 of GMA evinces a contrary intention to displace s 48	*4 Boys (NSW) Pty Ltd v Independent Liquor and Gaming Authority* [2022] NSWSC 1689
40	2022/318509; 2022/318527	Elite Realty Development Pty Ltd v Sadek	15/06/2023	EQUITY – Mr Afyouni (second appellant) and Mr Sadek (first respondent) were building contractors who decided to jointly develop a property for profit in 2016 – in 2018 the parties fell out and entered into a Termination Agreement – Mr Afyouni was the subject of a gun attack which he alleged that Mr Sadek was involved in planning – the appellants alleged that the Termination Agreement was tainted with duress to the person and ought to be declared voidable– the primary judge held that Mr Sadek asked the gunman to go and physically threaten Mr Afyouni to unblock the bank accounts – the primary judge held that	*Elite Realty Development Pty Ltd v Sadek* [2022] NSWSC 1333

				Mr Sadek's pressure was a reason that Mr Afyouni entered into the Termination Agreement but that any effect of duress had ceased by October 2018 – the primary judge found that Mr Afyouni subsequently affirmed the Termination Agreement and therefore rescission was not available to him – the primary judge held that Mr Sadek did not breach any directors' and concurrent fiduciary duties in relation to the Termination Agreement nor did he breach his general law duty to act bona fide for the benefit of Elite as a whole – the primary judge did not accept that certain properties were assets of the joint venture – whether the primary judge erred by denying Mr Afyouni procedural fairness – whether the primary judge erred by finding that Mr Afyouni had escaped form the illegitimate pressure placed upon him – whether the primary judge erred in finding that the properties were not assets of the joint venture for the purpose of taking accounts of the joint venture	
41	2022/352028	Sunaust Properties Pty Ltd v Owners of Strata Plan 64807	19/06/2023	ADMINISTRATIVE LAW (other) – application by respondent to terminate caretaker agreement under s72 of Strata Schemes Management Act 2015 (NSW) – whether NCAT had jurisdiction - whether caretaker agreement was caught by saving provisions in Schedule 3 of the Act – whether agreement was governed by earlier Strata Schemes Management Act 1996 (NSW) – whether s30 of Interpretation Act 1987 (NSW) operates to accrue earlier rights when application made under wrong Act	*Sunaust Properties Pty Ltd v Owners of Strata Plan 64807* [2022] NSWCATAP 246; *Sunaust Properties Pty Ltd v Owners of Strata Plan 64807 (No 2)* [2022] NSWCATAP 335

				PROCEDURE - whether slip rule enlivened – Appeal Panel determined appeal on jurisdictional basis and did not deal with other grounds of appeal as being unnecessary – Appeal Panel subsequently dealt with other grounds under the slip rule in a No 2 decision - whether omission intentional and not covered by slip rule – whether an obvious error	
42	2022/302813	C & V Engineering Services Pty Ltd v Metropolitan Demolitions Pty Ltd	21/06/2023	BUILDING & CONSTRUCTION – the respondent was engaged as a demolition subcontractor for a development of three buildings, and in turn engaged the appellant as a steel fabricator – the parties entered into a separate contract in relation to each building – the appellant sued the respondent for non-payment of sums due under the contracts – the primary judge held that the appellant's claim for breach of contract in respect of Building C failed but upheld the appellant's claim in respect of Building B – whether the primary judge erred in finding that the contract in relation to Building C included a condition precedent that the respondent was first to give a direction to the appellant to commence the fabrication of Building C steel soldiers prior to any such fabrication taking place – whether the primary judge erred in finding that the respondent never gave any direction to the appellant as to when it should commence fabricating steel soldiers for Building C – whether the primary judge erred in assessing the appellant's award of damages for breach of contract	*C & V Engineering Pty Ltd v Metropolitan Demolitions Pty Ltd* [2022] NSWDC 154

43	2022/383376	Ballina Shire Council v Moore	22/06/2023	TORT (negligence) – the respondent was riding her electric bicycle upon a shared pathway designed to be used by both cyclists and pedestrians – the respondent sought to overtake two pedestrians, then swerved off the path to avoid a bollard and fell from her bike – the respondent brought proceedings in which she claimed that the appellant was aware of the risk of a person being injured either by colliding with the bollard or by attempting to avoid colliding with the bollard and the appellant breached its duty of care by failing to remove the bollard – the primary judge found that the respondent acted reasonably and the bollard was not an obvious risk – the primary judge found that the appellant chose to leave a single bollard in 2016 and in 2017 the appellant was advised that a single bollard was unlikely to slow cyclists and may result in a cyclist colliding with a pedestrian – the primary judge held that the appellant as the occupier of the pathway owed the respondent a duty of care and breached that duty – the primary judge awarded damages to the respondent in the sum agreed by the parties – whether the primary judge erred in identifying the risk of harm which befell the respondent against which the appellant was required to take reasonable precautions – whether the primary judge erred in holding that there was an absence of social utility in having a single bollard in the path – whether the primary judge erred in finding that the appellant failed to take reasonable precautions – whether the	*Moore v Ballina Shire Council* [2022] NSWDC 691

				primary judge erred in finding the harm sustained by the respondent was caused by the appellant – whether the primary judge erred in failing to reduce the judgment sum for contributory negligence on the part of the respondent	
44	2022/366496	Lin v Zheng	23/06/2023	TRADE PRACTICES – the appellant approached the respondents (together, the Lenders) to lend funds for a property development in Turramurra – the appellant and his company (Quantum) entered into oral loan agreements with the Lenders pursuant to which the Lenders advanced monies to Quantum on an unsecured basis – Quantum on-lent the funds to another company – the Lenders brought a claim for damages or compensation against the appellant – the Lenders contended that the appellant guaranteed the repayment of monies loaned to Quantum for the purposes of the property development – the primary judge held that the appellant made a representation to the Lenders that he was a guarantor of Quantum's liability in respect of the third, fourth and fifth respondents and that this representation was misleading and deceptive – the primary judge further held that the guaranteed repayment representations were made by the appellant to the Lenders and these representations were misleading and deceptive – the primary judge also held that causation was made out in respect of these representations – whether the primary judge erred in finding that the appellant made a representation to the third, fourth and fifth	*Quantum Investments (Aust) Pty Ltd & Ors v Zhi Wei Lin trading as Jack Lin* [2022] NSWSC 1387; *Quantum Investments (Aust) Pty Ltd & Ors v Zhi Wei Lin trading as Jack Lin (No 2)* [2022] NSWSC 1558

				respondents that he was a guarantor of Quantum’s liability in respect of their loans and this representation was a cause of their loss – whether the primary judge erred in finding that the appellant made the guaranteed repayment representations to the Lenders and these representations were a cause of the Lenders’ loss	
45	2022/49292	Corry v NHB Enterprises Pty Ltd	27/06/2023	EQUITY – First Respondent is a veterinary compounding chemist that employed the First Appellant as leading pharmacist – the First Appellant became a director and shareholder of a company in competition with the First Respondent – the Respondents commenced proceedings against the First Appellant – the Court made a search order permitting a search to be carried out at the First Appellant’s residential and business premises – the Second Appellant informed the First Appellant about the search order in spite of instructions from the independent solicitor forming part of the search party – the Respondents brought four charges against the First Appellant and one charge against the Second Appellant – the primary judge upheld that the first, second and fourth charge against the First Appellant and held that the Second Appellant breached the prohibited contact order but did not help or permit the First Appellant to breach the prohibited contact order – the primary judge ordered that the First Appellant serve a custodial term and that the Second Appellant pay a fine of $15,000 suspended on condition that she perform 25 hours of community service –	*NHB Enterprises Pty Ltd v Corry (No 7)* [2021] NSWSC 741; *NHB Enterprises Pty Ltd v Corry (No 8)* [2022] NSWSC 97

				whether the primary judge erred in his treatment of evidence – whether primary judge erred by dealing with notice of motions as discrete matters – whether the primary judge denied procedural fairness to the Appellants	
46	2022/305853	Edmonds v Barrington Winstanley Group Pty Ltd	29/06/2023	CONTRACT – Deeds – The Respondent sought a monetary judgment against the First and Second Appellants pursuant to a deed of acknowledgement of debt entered into in 2018 – The Appellants were self-represented – The Respondent alleged that the amount owing (being $240,520) was secured by a charge over a properly owned by the First and Second Appellant – The Appellants denied that they were parties to the Deed, and alleged that it was signed under duress (being coercion and intimidation by the Respondent) – Primary judge held that the Appellants were parties to the deed – Primary judge did not accept the evidence of the First Appellant as to duress – Primary judge held that the Deed was binding and enforceable, and that the Appellants were thus obliged to pay the Respondent the amount owing plus interest – Primary judge found that the amount owing was not secured by a charge over the property, nor did an estoppel by deed preclude the Appellants from asserting that such amount was not the subject of the charge – Whether primary judge denied the Appellants procedural fairness – Whether primary judge erred by not making a pro bono referral in circumstances where the First Appellant's incarceration for fraud would lead to insuperable credit issues – Whether primary	*Barrington Winstanley Group Pty Ltd v Edmonds* [2022] NSWSC 531

				judge erred by taking into account the irrelevant consideration of incarceration – Whether primary judge erred in construing the Deed and the fee agreement – Whether primary judge erred in making various factual findings – Whether primary judge erred in failing to consider the application of the Farm Debt Mediation Act 1994 (NSW) – Whether primary judge erred in failing to find that the Deed was illegal and unenforceable due to breaches of fiduciary duties owed by the Respondent	