Supreme Court of NSW Court of Appeal

Decisions Reserved as at 18 August 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	2022/35553	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	*Farriss v Axford (No 3)* [2022] NSWSC 20

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

				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 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	

5	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 have entered into the share sale agreements	*Stav Investments Pty Ltd v Taylor; LK Investments Pty Ltd v Taylor* [2022] NSWSC 208

				– 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	
6	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	*Jake Properties Australia Pty Ltd v Naaman* [2022] NSWSC 517

				Trust was unable to meet the debt, this was brought about by the Second Appellant directly or indirectly causing the First Appellant to enter into impermissible transactions – Respondent alleged that First Appellant, as successor trustee of the Sly Fox Trust, owed a fiduciary duty to JPG not to deal with the assets of the Trust in a way that diminished JPG's right of indemnity – Respondent alleged that he was subrogated to JPG's right to enforce that fiduciary duty – Respondent alleged that the Second Appellant was the de facto and shadow director of the First Appellant and the architect of the impugned transactions – Respondent alleged that the First Respondent undertook various transfers of land or properties for no 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	

7	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 theCorporations 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 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 Property Investors Alliance Pty Ltd v CBB Project Pty Ltd (in liq)* [2022] NSWSC 1081

				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	
8	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
9	2022/299298	Hartnett v Bell; Hartnett v Deakin-Bell	7/03/2023	PROFESSIONAL NEGLIGENCE (legal) – The Appellant (a solicitor) charged his (now deceased) mortgagee client (the First Respondent) $288,601.03 for acting in uncontested possession proceedings to enforce a $30,000 mortgage – the Second Respondent as mortgagor (on behalf of the estate of his deceased mother) brought a claim that the Appellant ought to be ordered to disgorge or pay back what are said to be excessively charged legal fees that were borne by the Second Respondent as	*Bell v Hartnett Lawyers (No 3)* [2022] NSWSC 1204

				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	
10	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
11	2022/370857	Soulos v Pagones; Soulos v Soulos; Kristallis v Soulos; Kristallis v Pagones	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 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	*Re Estate Soulos* [2022] NSWSC 1507

				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)	
12	2022/336144	United Resource Management Pty Ltd v Par	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	*Par Recycling Services Pty Ltd v United Resource Management Pty Ltd* [2022] NSWSC 1269

		Recycling Services Pty Ltd		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	
13	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 abrogated Chorley exception	*Birketu v Castagnet* [2022] NSWSC 1435
14	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

15	2022/344622	Demex Pty Ltd v McNab Building Services Pty Ltd	12/05/2023	BUILDING & CONSTRUCTION – the parties entered into a subcontract by which the appellant agreed to undertake remediation works – the appellant claimed an amount for work completed and the respondent challenged the amounts claimed – an adjudication determination was made in favour of the appellant against the respondent under s 22 of the Building and Construction Industry Security of Payment Act 1999 (NSW) – the respondent sought a declaration that the determination was void and an order that it be quashed – the primary judge held that the respondent was denied procedural fairness because it was a realistic possibility that if the adjudicator had disclosed that he would apply a conversion factor to the determination and allowed the respondent to make submissions as to that approach the respondent could have dissuaded him from taking that approach – whether the primary judge erred in determining that the second respondent had denied the first respondent procedural fairness – whether the primary judge erred in determining that the denial of procedural fairness was material	*McNab Building Services Pty Ltd v Demex Pty Ltd* [2022] NSWSC 1441
16	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 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	*Bao v Li* [2022] NSWSC 1335

				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	
17	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	*Anderson v Canaccord Genuity Financial Ltd* [2022] NSWSC 58

				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 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	
18	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
19	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
20	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 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	*Ritson v State of New South Wales (No. 1)* [2022] NSWDC 345

				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	
21	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 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	*Expandamesh Pty Ltd v Sydney Metro (No 3)* [2022] NSWLEC 137

				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	
22	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 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	*Lowe v Pascoe (No 13)* [2022] NSWSC 320

				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	
23	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 $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	*YTO Construction Pty Ltd v Bhatt* [2022] NSWDC 348

				– 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	
24	2021/349602	Garslev Holdings Pty	9/06/2023	EQUITY – Third Respondent ("BAD Nominees") was trustee of a self-managed	*Overdean Developments Pty Ltd v Garslev Holdings Pty Ltd (No 3)* [2021]

		Ltd v Overdean Developments Pty Ltd		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 the BLE and GEP administrations – Mr Mahommed is the sole director and shareholder of the Fourth Appellant (“Vestecorp”) – also on 9 May 2016, BAD	NSWSC 1482

				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	
25	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
26	2023/110538	Lieschke v Lieschke	12/07/2023	COMMERCIAL ARBITRATION – setting aside of arbitration award on the basis of refusal of arbitrator to permit a third party expert to	*Lieschke v Lieschke* [2022] NSWSC 1705

				confer with the appointed experts – whether use of the third party expert would contradict the methodology adopted for interim award – whether the direction not to confer was a proper exercise of discretion by the Arbitrator	
27	2023/138941	Ceerose Pty Ltd v A-Civil Aust Pty Ltd	20/07/2023	BUILDING & CONSTRUCTION – the first respondent as subcontractor agreed to carry out certain work for the appellant for a sum – the first respondent served a payment claim and the appellant provided a payment schedule in response which rejected the claimed amount in its entirety – an adjudicator issued a determination that the ultimate amount to be paid was over $2 million – the appellant challenged the validity of the determination asserting several jurisdictional errors – the primary judge found that none of the grounds were made out by the appellant and there was no constructive failure to exercise jurisdiction as alleged – whether the primary judge erred in failing to conclude that the adjudicator committed a jurisdictional error in rejecting the appellant's claim for liquidated damages – whether the primary judge erred in exercising the power in s 32A of the Building and Construction Industry Security of Payment Act 1999 (NSW)	*Ceerose Pty Ltd v A-Civil Aust Pty Ltd* [2023] NSWSC 239
28	2022/382189	Anderson v Indigenous Land and Sea Corporation	24/07/2023	ADMIN LAW (judicial review) – the respondent is the registered proprietor of parcels of rural land in NSW and Queensland – the first and second appellant occupy the lands without the consent of the respondent – the respondent brought a claim against the appellants for possession of the lands or alternatively sought an injunction to restrain the appellants'	*Indigenous Land and Sea Corporation v Anderson* [2022] NSWSC 1650

				trespass – the primary judge held that s 23 of the Supreme Court Act 1970 (NSW) was not displaced and – whether the primary judge erred in failing to have regard to the dispute between the liquidator and the respondent as to who owns the land – whether the primary judge erred by finding that Ngurampaa Ltd held land on trust for the respondent – whether the primary judge erred in failing to consider whether the respondent and the liquidator acted in bath faith or engaged in unconscionable conduct	
29	2022/387702	Mao v Bao	25/07/2023	EQUITY – the appellant sought judgment for the unpaid amount of a loan he made to the respondent (it being agreed that a sum of $800,000 was paid off the loan) – the respondent made a cross-claim against the appellant concerning a property in Vaucluse that the appellant bought with money which had been provided by the respondent, claiming that the appellant held the property as trustee for the respondent – both the appellant's claim and the respondent's cross-claim succeeded – the parties disputed when the set-off should take place – the primary judge found that the requirements of an equitable set-off were met and the set-off should be taken at the date of 5 May 2014 (and noted that no point was taken about this by the appellant) – whether the primary judge erred by finding that the requirements of an equitable set-off were satisfied, as between the parties' respective claims – whether the primary judge erred by finding that the set-off between the parties' respective claims is to be	*Mao v Bao (No 2)* [2022] NSWSC 1699

				undertaken at 5 May 2014 rather than the date of judgment pursuant to s 21 of the Civil Procedure Act 2005	
30	2023/88427	Pitcher Partners Holdings Pty Ltd v Twigg	25/07/2023	PROCEDURE – stay of proceedings – abuse of process – where in earlier proceedings respondent was successful in establishing a breach of fiduciary duty against a separate party – where primary proceedings now seek to establish that applicants are accessorily liable for conduct of other party - whether forensic decision made not to join applicant to earlier proceedings – whether erred in assessing extent of prejudice that would be sustained – whether prejudice could be cured by trial judge – whether there was any relevant delay by the respondent in bringing proceedings – whether claim is vexatious or frivolous	*Twigg v Pitcher Partners Holdings Pty Ltd (No 4)* [2023] NSWSC 109
31	2022/282107; 2022/362371	Toth v State of New South Wales	27/07/2023	TORTS – claim for false imprisonment, assault and malicious prosecution – charge of "upskirting" dismissed after successful appeal to District Court - evidence – failure to address malice – findings inconsistent with evidence – whether erred in relying on tendency – whether erred in admitting disputed video evidence – bias	*Toth v State of New South Wales* [2022] NSWDC 263
32	2022/384592	Flynn v PPK Mining Equipment Pty Ltd	28/07/2023	TRADE PRACTICES – the appellants entered into a Share Purchase Agreement with the respondents by which the appellants sold their shares in two companies for cash, shares in second respondent and, subject to satisfaction of the "Second Performance Conditions" (SPCs), further shares in the second respondent – the appellants brought a claim for the further shares in the second	*Flynn v PPK Mining Equipment Pty Ltd (No 2)* [2022] NSWSC 1640

				respondent and unpaid dividends on those shares - the primary judge held that the Share Purchase Agreement was varied, including the SPCs – the primary judge did not accept that transfer pricing or market price transfer pricing was an accounting standard within the meaning of the Share Purchase Agreement – the primary judge held that no adjustment to revenue nor amendment to the NPAT Statement ought to be made – the primary judge held that, although the respondents were in breach of the Share Purchase Agreement as varied by failing to provide an NPAT Statement, there was no loss – the primary judge held that the appellants succeeded in obtaining declaratory relief however they did not satisfy the SPCs and were not entitled to the further shares – whether the primary judge erred in finding that the revenue of the Business for the relevant period was less than $1,000,000 – whether the primary judge erred in finding that the respondent's calculation of revenue was in accordance with the applicable accounting standards defined in the Share Purchase Agreement – whether the primary judge erred in finding that internal transfer pricing was not appropriate to calculate the revenue in the relevant period – whether the primary judge erred in making various findings with respect to revenue for internal jobs, for FLP-1 enclosures and for job NEX00216 – whether the primary judge erred in construing the contractual term "business" by excluding overhaul (service and repair) work – whether	

				the primary judge erred in finding that reconditioning, replacing, overhauling, repairing and servicing various components was self evidently not part of the Business – whether the primary judge erred in making various findings with respect to the revenue for the Certificates of Recognition	
33	2022/286577	Hart v Metlife Insurance Ltd	31/07/2023	INSURANCE – the appellant was a member of the NSW police force from 2003 to 2016 and an insured member of two group life superannuation policies (in respect of both of which the respondent was the insurer on risk) while they were in force – from 2006 the appellant developed a back injury and in 2010 the appellant developed psychological illnesses in the course of her service with the police force including PTSD and major depression and from 2010 was placed on permanently restricted duties – the appellant made a claim to the respondent for total permanent disablement under the two policies in 2018 – the respondent rejected the claim but advised that it was prepared to reassess the claim – in 2021 the respondent declined the appellant's claims – the primary judge held that a duty on an insurer to reconsider was not established – whether the respondent owed a duty to consider whether a claim it had previously rejected ought to be accepted – whether the respondent breached any duty or obligation (including a duty of good faith) in failing to reconsider the appellant's claim – whether the primary judge erred in failing to answer the third separate question and find that the appellant was entitled to a declaration	*Hart v MetLife Insurance Limited* [2022] NSWSC 1157 *Hart v MetLife Insurance Limited* [2022] NSWSC 1251

				that the respondent breached its duty of good faith in failing to consider whether the appellant's claim ought to be accepted	
34	2023/18616	Dendrobium Coal Pty Ltd v McGoldrick	1/08/2023	TORT (negligence) – the respondent was a graduate mining engineer completing a three year program which required him to a year working at each of the three mines owned by his employer – during the his time working at the Dendrobium Mine, the respondent suffered significant injuries when he was trapped underneath a significant quantity of coal and rock which fell on him – notwithstanding the respondent's partial recovery, his employer told him a year later that he no longer had a position as a mining engineer – subsequently the respondent took a position as a control room operator – the respondent has ongoing pain in his left foot and leg – the appellant admitted its liability to the respondent in negligence for the fall, which it accepted had been the cause of his injuries, loss and damage, less than one month before the commencement of the hearing of the respondent's claim – proceedings came before the Supreme Court for an assessment of damages – the primary judge noted that senior counsel for the appellant did not suggest to the respondent that his evidence was untruthful or substantially inaccurate, nor that the primary judge should not accept his evidence – the primary judge accepted that mining operations at the mine at which the respondent works are not guaranteed into the future, and the mine may cease operations before 2034 because it	*McGoldrick v Dendrobium Coal Pty Ltd* [2022] NSWSC 1341

				is not economically viable – the primary judge awarded the respondent damages for lost future earning capacity, non-economic loss and future treatment costs and domestic assistance – whether the primary judge erred in finding that the respondent's current employment was at risk – whether the primary judge erred in awarding damages for non-economic loss and future economic loss – whether the primary judge erred in making an award for Future Domestic Care and Assistance which was excessive – whether the primary judge erred in finding that the appellant through its senior counsel did not make any submissions adverse to the respondent's credit – whether the primary judge erred in finding that the plaintiff was entitled to costs on the ordinary basis and indemnity basis – whether the primary judge erred in failing to consider that further medical evidence was served addressing further economic loss – whether the primary judge erred by failing to award the respondent the costs reserved by Wright J on 24 February 2020	
35	2022/212427	Norkin v University of New England	2/08/2023	ADMINISTRATIVE LAW (other) – university collection of personal information for purpose of pre-via assessment – whether compliance with Privacy and Personal Information Protection Act 1998 (NSW)	*Norkin v University of New England* [2022] NSWSC 819
36	2022/219092	J & E Vella Pty Ltd v Hobson	8/08/2023	EQUITY – fiduciary duties – The First Appellant and the Second and Fourth Respondents each operated its own freight services business and provided services to Schweppes separately – in 2001, these	*In the matter of Beverage Freight Services Pty Ltd* [2022] NSWSC 874

				companies incorporated, and became shareholders of, the Fifth Respondent (BFS), for the purpose of providing an administrative service to Schweppes to facilitate the existing companies making the Schweppes deliveries, and entered into an agreement about the manner in which BFS would provide services to Schweppes by allocating work to the BFS shareholders – the role of the Second Appellant and the First and Third Respondents was to be directors of BFS – in 2012, tensions between the BFS shareholders led to the engagement of Risk Connect Australia to resolve disputes arising from the operations of BFS – Risk Connect Australia facilitated a meeting between the shareholders of BFS in Ingleburn, in which the BFS shareholders decided to wind down BFS – in the immediate aftermath, the First and Third Respondents caused the Sixth Respondent to be incorporated, which performed the work previously performed by BFS – the primary judge found that the Appellants had failed to establish that the First and Third Respondents owed fiduciary duties to the Appellants arising from the incorporation of BFS and consequently had failed to establish that the Second, Fourth, Sixth and Seventh Respondents and Mechita Nominees Pty Ltd were knowingly concerned in the breaches of fiduciary duty by the First and Third Respondents – whether the primary judge erred in finding that the First and Third Respondents did not owe a fiduciary duty to the First Appellant not to divert the business of	

				BFS to a new corporate entity which excluded the First Appellant – whether the primary judge erred in making various factual findings – whether the primary judge erred in finding that any fiduciary duty owed by the First and Third Respondents would not have continued beyond the meeting at Ingleburn – whether the primary judge erred in failing to find that the Second, Fourth, Sixth and Seventh Respondents and Mechita Nominees Pty Ltd were knowingly concerned in the breaches of fiduciary duty by the First and Third Respondents	
37	2023/109813	R v Rodden	9/08/2023	COSTS – the applicant was tried by jury on a charge of murder and found not guilty – the Legal Aid Commission made a claim for a certificate under s 2 of the Costs in Criminal Cases Act 1967 (NSW) (Act) in the applicant's name – the primary judge refused the application for a costs certificate in the applicant's name – the primary judge held it was not unreasonable for the charge to have been pressed against the applicant – whether the primary judge erred in finding that the constructions of s 4 of the Act and the construction of s 42 of the Legal Aid Commission Act 1979 (NSW) did not permit the granting of a certificate where the applicant is legally aided – whether the primary judge erred in taking into account the method by which the payment would be made by the Director-General to the Legal Aid Commission and failing to take into account public policy considerations – whether the primary judge erred in finding that it was not	*R v Rodden (Costs)* [2022] NSWSC 1230

				unreasonable for the Crown to institute proceedings against the applicant	
38	2023/107603	Dahdah v White	10/08/2023	MOTOR VEHICLE ACCIDENTS – dismissal of proceedings – failure to provide a full and satisfactory explanation under s109(3)(a) of Motor Accidents Compensation Act 1999 (NSW) – whether applicant/plaintiff had provided such an explanation – whether primary judge's findings on delay were incorrect – whether erred in taking into account that as the applicant's son was a lawyer, that it was reasonable to conclude that his son would have provided advice on delay	Lower court decision not on Caselaw
39	2022/387563; 2023/168897	Horizon Hotels Pty Ltd v Australian Secured & Managed Mortgages Pty Ltd	10/08/2023	REAL PROPERTY – the first respondent is in the business of providing mortgage finance for borrowers and the second respondent is a mortgage broker who arranges finance for borrowers – the appellant as borrower entered into an agreement with the first respondent to obtain finance in the sum of $1,100,000 to refinance existing loans and for working capital – the respondents brought proceedings to recover $70,000 from the appellant pursuant to the agreement, comprising establishment and brokerage fees and administration, commitment and legal fees – the primary judge found that the appellant was liable to the respondents for the sums of money claimed, payment of which were secured by equitable charges over properties belonging to the appellant that gave rise to caveatable interests – the primary judge held that it was appropriate to make an order extending the caveats until the amounts of secured monies had been paid – whether the	*Australian Secured & Managed Mortgages Pty Ltd v Horizon Hotels Pty Ltd* [2022] NSWSC 1647

				primary judge erred in finding that the interest rate preconditions for payment of fees under the agreement were satisfied – whether the primary judge erred in failing to find that the respondents were estopped from relying on the term of the agreement – whether the primary judge erred in finding that the evidence did not establish that Mr Barkas' state of mind and knowledge should be imputed to the appellant – whether the primary judge erred in inferring that Mr Barkas did not discuss the fee assumption with Mr Magree – whether the primary judge erred in finding that the appellant had failed to demonstrate that it would be placed in a position of significant disadvantage if departure from the fee assumption were permitted – whether the primary judge erred in extending the operation of the caveats	
40	2022/387881	Hinkler Ave 1 Pty Limited v Sutherland Shire Council	11/08/2023	LAND AND ENVIRONMENT – separate question – application of saving provisions in clause 2(1)(a) of Schedule 7A of State Environmental Planning Policy (Housing) 2021 – whether development application made before commencement date of SEPP – whether plans attached to application satisfied the requirements of the Regulation – whether satisfaction was objective or whether it was the subjective view of the respondent Council whether it complied – if it was subjective, whether there was any evidence that the respondent wasn't satisfied	*Hinkler Ave 1 Pty Ltd v Sutherland Shire Council* [2022] NSWLEC 150
41	2023/90820	Croc's Franchising Pty Ltd v Alamdo	15/08/2023	LEASES AND TENANCIES – the first appellant is a franchisor of playcentres – the first appellant leased a property from the first	*Alamdo Holdings Pty Ltd v Croc's Franchising Pty Ltd (No 2)* [2023] NSWSC 60

		Holdings Pty Ltd		respondent – the parties entered an Incentive Deed under which the first respondent agreed to pay a contribution towards the fitout of the premises – a franchisee of the first appellant took possession of the premises and was adversely affected by COVID-19 – the first appellant sought rental relief from the first respondent – the first respondent sought financial information from the first appellant to assist in obtaining COVID-19 rental relief – the first appellant failed to give the required financial information – the parties engaged in the statutorily required mediation but were unable to come to a resolution – the appellants asserted that the first appellant and its franchisee were entitled to protections under the COVID-19 Regulation and relied on the franchisee's reduced turnover – the first respondent ultimately retook possession and sought unpaid rent and outgoings, loss of bargain damages and a refund of the contribution under the Incentive Deed – at the relevant time eligibility for the COVID-19 Regulation protections were contingent upon having a turnover in FY19 of less than $50m and eligibility for JobKeeper – the primary judge found that the first appellant was unable to provide evidence demonstrating that it was eligible for JobKeeper at the time the first respondent retook possession of the property – the primary judge held that the first respondent was not prevented from terminating the lease and taking possession of the property – the primary judge found that the first respondent was able to recover rental	*Alamdo Holdings Pty Ltd v Croc's Franchising Pty Ltd* [2022] NSWSC 1746

				arrears and loss of bargain damages, but could not recoup the payment under the Incentive Deed as it had obtained the benefit of the fitout – whether the primary judge erred in finding that the first appellant was not an impacted lessee under the COVID Regulation by finding that it was not eligible for JobKeeper – whether the primary judge erred in finding that the first respondent had engaged in good faith negotiations – whether the primary judge erred in finding that the COVID Regulation did not preclude the first respondent from taking possession of the property and terminating the lease agreement	
42	2023/198861; 2023/198869; 2023/198867	Independent Liquor and Gaming Authority v Area Hotel UT Pty Ltd; Independent Liquor and Gaming Authority v The Griffith Hotel Pty Ltd; Independent Liquor and Gaming Authority v Whitehull HTL Pty Ltd	16/08/2023	ADMINISTRATIVE (other) – respondents applied to change the gaming machine entitlements of particular hotels – application granted for White Bull Hotel and Area Hotel but with conditions to require presence of responsible gambling officer and maintenance of gambling incident register – application refused for Griffith Hotel and Gemini Hotel - whether applicant had a residual discretion to refuse an application for transfer when the application complies with the Act and regulations – whether residual discretion to refuse application to increase where the application complies with the Act and regulations – whether Gaming Machines Act 2001 (NSW) provided an exhaustive statutory criteria for applications – whether conditions specified in Liquor Act are constrained to the sale and supply of liquor	*Whitebull HTL Pty Ltd & ors v Independent Liquor and Gaming Authority* [2023] NSWSC 588
43	2023/32732	Jay v Petrikas	17/08/2023	TORTS (other) – injurious falsehood – dispute between members and office holders of the	*Jay v Petrikas (No 4)* [2022] NSWDC 628; *Jay v Petrikas (No 5)* [2023]

				NSW Rural Fire Service (RFS) regarding three publications made between August and September 2016 – the appellants were informed that these publications would result in them being a subject of a private investigation, although there was insufficient evidence for any breach of RFS standards such that any disciplinary actions needed to be taken – first two publications purported concern regarding the appellants' "continued bullying and disruptive behaviour" and requested steps for "appropriate disciplinary action" to be taken – the third publication concerned a relationship between a member and the first appellant's daughter, which resulted in that member alleging that the first appellant had bullied him and he felt intimidated – the primary judge found that there were a very limited number of false representations which in any event were not actuated by malice and immaterial to the decision to investigate – the primary judge gave judgments for the respondents – whether the primary judge erred in finding against the appellants with respect to the contested representations – whether the primary judge erred in finding that the statements were not directed to the appellants' economic interests due to the volunteer nature of their respective positions – whether the primary judge erred in finding that the occupation here was not economic or a profession for the purposes of the tort of injurious falsehood – whether the primary judge erred in not considering or giving weight	NSWDC 707

				to the failure of the respondents in giving evidence regarding the contested representations – whether the primary judge erred in finding that the representations were not published with an improper purpose – whether the primary judge erred by not finding that actual damage was caused by the representations – whether the primary judge erred in finding that aggravated and exemplary damages should not be awarded	