

# BETTINA ARSTE

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## Select Cases

### Appellate

- ***Wicks v State Rail Authority of NSW; Sheehan v State Rail Authority of NSW (2010) 241 CLR 60*** – statutory construction - s.30 of the *Civil Liability Act 2002* (NSW) – limitation on recovery for pure mental harm (led by JT Gleeson SC & PM Morris).
- ***Wicks v State Rail Authority of NSW; Sheehan v State Rail Authority of NSW [2010] HCATrans 15*** – special leave application - statutory construction - s.30 of the *Civil Liability Act 2002* (NSW) – limitation on recovery for pure mental harm (led by PM Morris).
- ***Wicks v State Rail Authority of NSW; Sheehan v State Rail Authority of NSW [2009] NSWCA 261*** - statutory construction - s.30 of the *Civil Liability Act 2002* (NSW) – limitation on recovery for pure mental harm (led by PM Morris).
- ***Z v New South Wales Crime Commission (2007) 231 CLR 75*** – privilege – coercive information gathering powers of state investigatory body (led by DF Jackson QC).
- ***Old v McInnes & Hodgkinson [2011] NSWCA 410*** – partnership – payment of premium - whether binding agreement - nature of goodwill – breach of fiduciary duty - (led by SR Donaldson SC & RD Marshall).
- ***Qantas Airways Ltd v Gama (2008) 247 ALR 273*** – appeal in relation to an award of damages consequent upon a breach of s.9 of the *Racial Discrimination Act 1975* (Cth) and s.15(2)(d) of the *Disability Discrimination Act 1992* (Cth) (led by P Gormly).
- ***Sleboda v Sleboda [2008] NSWCA 122*** – conveyance of interest in real property - undue influence - unconscionable conduct (led by SA Kerr).
- ***Baulderstone Hornibrook Pty Limited v Queensland Investment Corporation [2007] NSWCA 9*** – whether valid payment schedule served pursuant to s.14 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) (led by JT Gleeson SC & SA Kerr).
- Advising a major US manufacturing corporation on an appeal to the Administrative Appeals Tribunal for review of a decision by Customs denying the applicability of certain Tariff Concession Orders (led by M Slattery QC).

### Commercial

- ***EMCF SPV No. 1001 Pty Ltd v Jayendee Pty Ltd & Ors*** – franchise agreement - assignment of debt – breach of guarantee and indemnity – misleading or deceptive conduct – unfair contract terms – unconscionable conduct – breach of Franchising Code of Conduct (unled) (settled).
- ***Altendorf Australia Pty Ltd v IBLA Australia Pty Ltd*** – contract for the supply of a wood cutting machine – misleading or deceptive conduct – breach of duty of care (unled) (settled at mediation).
- ***Richard JJ & Anor v Retail Food Group Ltd & 4 Ors*** – franchise agreement - breach of contract – conversion (led by GA Sirtes SC) (proceedings discontinued – administration of client).

- ***Kristóf Nobilis v Marten Yachts Pty Ltd & 2 Ors*** – design and construction of racing yacht – breach of contract – misleading or deceptive conduct (unled) (settled).
- ***Jackson Care Technologies Pty Ltd & Anor v Brighton Technologies Pty Ltd & 4 Ors*** – joint venture - breach of contract – misrepresentation – unconscionable conduct – breach of fiduciary duty (provision of advice regarding claim) (unled).
- ***Hastings Capital Limited (Receivers & Managers Appointed) (Administrators Appointed) v Peter John Thatcher*** – principal and interest payable pursuant to loan facility – guarantee and indemnity – non est factum – misrepresentation - duress – unjust contract within the meaning of s.4(1) of the *Contracts Review Act 1980* (NSW) (unled) (settled).
- ***Bricks & Mortar Australia Limited v Susanne Rae Percival & 3 Ors*** – property joint venture – guarantee and indemnity – unconscionable conduct – undue influence (unled) (proceedings dismissed against my clients).
- ***Old v Hodgkinson; Old v McInnes [2009] NSWSC 1160*** – partnership – payment of premium – whether binding agreement – restitution (led by RD Marshall).
- ***Tassone Property Group Pty Ltd v Mohan Properties Pty Ltd & Anor*** – partnership dispute (led by D Pritchard SC) (settled).
- ***Old v Hodgkinson; Old v McInnes [2008] NSWSC 697*** – partnership - whether goodwill ought be considered in settling the accounts of a dissolved partnership (led by RD Marshall).
- ***Australian Regional Wholesalers v Stafford [2007] NSWSC 572*** – restraint of trade (led by PS Braham).
- Advice in relation to various franchise disputes involving, for example, bank branches, real estate agencies and multinational and international food franchises (led – including by GA Sirtes SC - and unled).

#### Corporations, Insolvency & Bankruptcy

- ***Scott (Trustee), in the matter of Stolyar (Bankrupt) v Stolyar [2022] FCA 691*** – whether properties (or interests in those properties) were held on trust for the bankrupt estates – whether the transfer of certain property amounted to an undervalued transaction (within the meaning of s.120 of the *Bankruptcy Act 1966* (Cth)) or a transaction to defeat creditors (within the meaning of s.121 of the *Bankruptcy Act 1966* (Cth)) and thus void against the Trustee (led by RD Marshall SC).
- ***Sandan Holdings Pty Limited ATF The Sanson Family Investments Trust & Anor v PDD Services Pty Limited ATF Potts Davis Duncombe Services Trust & Ors*** – financial services provider - complex trust structure – restructure of business – sale of business and assets at undervalue - proceedings pursuant to ss.232 and 233 of the *Corporations Act 2001* (Cth) (oppressive conduct of a company’s affairs) (unled) (settled).
- ***Laurence Michael Bookluck & 2 Ors v Metals Recycling Ltd & Anor*** – battery recycling plant – variation / cancellation of rights attaching to shares - proceedings pursuant to ss.232 and 233 of the *Corporations Act 2001* (Cth) (oppressive conduct of a company’s affairs) (led by S Walsh QC and subsequently JM Ireland QC) (settled).
- ***Deputy Commissioner of Taxation v Wade Jonathan Offord*** - application for review of a Registrar’s decision to make a sequestration order (unled) (part heard – application withdrawn).
- Applications pursuant to s.459G(1) of the *Corporations Act 2001* (Cth) (application to set aside statutory demand), e.g., ***In the matter of DCA Capital Pty Limited ACN 629 833 129 [2024] NSWSC 261*** (unled).

- Applications pursuant to s.459P of the *Corporations Act 2001* (Cth) (application for order to wind up company in insolvency) (unled).
- Examinations pursuant to ss.596A and 596B of the *Corporations Act 2001* (Cth), e.g., ***Christopher Thomas Wykes v Capital Cooking Equipment (Aust) Pty Ltd (In Liquidation)*** (unled).

### Real Property, Equity & Trusts

- ***Chaiben Paul Elias v Leopold Elias*** – proprietary interest in real property – whether agreement to sell interest – (led by RD Marshall SC) (settled).
- ***Celene McNeill Pty Ltd v Vanessa Baillie & 2 Ors*** – sale of business – breach of trust – breach of fiduciary duty - receipt of trust property - third party liability (unled) (settled at mediation).
- ***Via Santantonio Pty Ltd v Walker Corporation Pty Ltd*** - orders sought compelling exercise of options to purchase land - breach of trust - constructive trust (led by JM Ireland QC) (settled).
- ***McQuinn v McQuinn & Ors*** – whether power of attorney used to lodge a Transfer Unilaterally Severing Joint Tenancy valid – whether power of attorney used for an improper purpose (led by PS Braham) (settled at mediation).
- ***Neighbourhood Association DP No. 285220 v Moffat [2008] NSWSC 54*** – construction of easement - modification or extinguishment of easements – creation of easements (led by RD Marshall).
- ***Ja Kil Ku v Yern Sung You & Anor [2008] NSWSC 712*** - proportions in which the parties hold their interest in real property - taking of account in relation to each party's contributions towards mortgage repayments and property maintenance (led by PS Braham) (unavailable at hearing).

### Building & Construction

- ***Abigroup Contractors Pty Limited v Sydney Catchment Authority [2007] NSWSC 220*** - misleading or deceptive conduct - quantum of damages to be awarded pursuant to s.82 of the *Trade Practices Act 1974* (Cth) (led by SA Kerr).
- ***Boulderstone Hornibrook Pty Limited v Queensland Investment Corporation [2006] NSWSC 522*** – claim for judgment in the sum of \$105,411,474 pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW) - whether valid payment schedule served pursuant to s.14 of the Act (led by S Finch SC & SA Kerr).
- ***Vero Insurance Ltd & 17 Ors v Mathew Stgar & 3 Ors*** – claim by insurer, Owners Corporation and owners – breach of warranties contained in s.18B of the *Home Building Act 1989* – breach of duty of care – breach of deed of indemnity (unled) (settled).

### Insurance

- ***Boulderstone Hornibrook Pty Limited v Paul Segart Pty Limited [2008] NSWSC 972*** application for leave to proceed against insurer of insolvent company - whether claim within insuring clause (led by PM Morris).
- ***Picasso Builders Pty Ltd v GIO General Ltd*** - Supreme Court proceedings - claim by insured against insurer - destruction by fire of business premises and stock - whether insured able to rely upon s.56 of the *Insurance Contracts Act 1984* (fraudulent claims) or s.28(3) of the *Insurance Contracts Act 1984* (failure to comply with duty of disclosure) (led by SR Donaldson SC) (proceedings stayed/discontinued).

## Professional Negligence & Other Torts

- ***Sunfield Chambers Solicitors & Associates Pty Limited v Twin Creeks Golf & Country Club Limited*** – breach of contract - professional negligence – solicitors (unled).
- ***Ginelle Finance Pty Limited v Diakakis & Ors [2007] NSWSC 60*** - professional negligence – solicitors – loan transactions and mortgage documents (led by SA Kerr).
- Advising on a potential claim for misfeasance in public office (led by AW Street SC).

## Miscellaneous

- ***Helou v Nguyen [2014] NSWSC 22*** – property – stolen money and jewellery – conversion - monies had and received – constructive trust (unled) (unavailable at hearing).
- ***Jamieson v Commissioner for Internal Revenue [2007] NSWSC 324*** – taxes and duties – private international law - tax liabilities incurred by plaintiff whilst resident in US - whether foreign revenue debt could be enforced against estate of plaintiff who died domiciled in NSW (led by PS Braham).

## Inquests & Commissions of Inquiry

- Coronial inquest into the death of a Swiss national – appeared for the deceased’s parents (unled).