

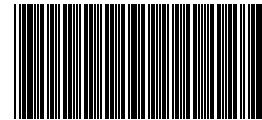
I, Toufic Bazouni, solicitor on record for the Appellants hereby certify this and the following 9 pages are the Appellants' submissions in reply for publication pursuant to paragraph 27 of Practice Note SC CA 1.

Signed:

11 November 2025



Filed: 10 November 2025 12:08 PM



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Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2024/00444848

TITLE OF PROCEEDINGS

First Appellant	Engadine Medical Imaging Services Pty Ltd ATF the Engadine Unit Trust ACN 613194219
Second Appellant	Ali Kyatt
Number of Appellants	3
First Respondent	Mena Ibrahim
Second Respondent	ENGADINE MEDICAL IMAGING PTY LTD
Number of Respondents	3

FILING DETAILS

Filed for	Engadine Medical Imaging Services Pty Ltd ATF the Engadine Unit Trust, Appellant 1 Ali Kyatt, Appellant 2 Advanced Imaging Pty Ltd ATF the Kyatt Family Trust, Appellant 3
Legal representative	Toufic Bazouni
Legal representative reference	
Telephone	02 9891 6388
Your reference	TB:GBW:240366

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (Appellant's amended reply submissions 10.11.2025.pdf)

[attach.]

Form 101 (version 3)

APPELLANTS' SUBMISSIONS IN REPLY**COURT DETAILS**

Court	Supreme Court of New South Wales
	Court of Appeal
Registry	Sydney
Case number	CA 2024/444848

TITLE OF PROCEEDINGS

First Appellant	ENGADINE MEDICAL IMAGING SERVICES PTY LTD ATF THE ENGADINE UNIT TRUST & ORS
Number of Appellants	3
Respondents	MENA IBRAHIM & ORS
Number of Respondents	3

PROCEEDINGS IN THE COURT BELOW

Title below	Engadine Medical Imaging Services Pty Ltd ATF The Engadine Unit Trust & Ors -v- Ibrahim & Ors
Court below	Supreme Court of New South Wales
Case number below	2023/134691
Dates of hearing	13, 15 and 16 May 2024
Decision of	McGrath J

FILING DETAILS

Filed for	Engadine Medical Imaging Services Pty Ltd ATF The Engadine Unit Trust & Ors, Appellants
Legal representative	New South Lawyers
Legal representative reference	TB:GB:RO:240366
Contact name and telephone	George Bazouni
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NEW SOUTH WALES COURT OF APPEAL
SYDNEY REGISTRY

CA 2024/444848

Engadine Medical Imaging Services Pty Ltd ATF the Engadine Unit Trust & Ors
v
Mena Ibrahim & Ors

Response to First & Second Respondents' Submissions

1. The central argument raised by the First and Second Respondent's submissions (**RS**) is that there are an extensive number of unchallenged findings of fact which stand in the way of the Reliance Findings and Central Factual Findings challenged in this appeal. The primary issues raised are:
 - (a) the finding that Mr Ibrahim was not an officer of EMIS: RS [10]-[42]; and
 - (b) the misleading or deceptive conduct claim: RS [44]-[76]; and
 - (c) relief: RS [77]-[83].

which are dealt with in *seriatim* below.

Whether Mr Ibrahim was an officer of EMIS?

2. This issue is raised at RS [10]-[42]. Briefly:
 - (a) in response to paragraphs [10]-[23]:
 - (i) RS [11]: the finding that Dr Kyatt took over total control of the day-to-day management of the EMIS practice: PJ [47] Red 2/175H-L is confined to February 2018 when Dr Kyatt paid \$319,218.91 to Mr Ibrahim to acquire a 51% controlling interest in EMIS, which ultimately ended up being worthless by reason of the conduct of Mr Ibrahim and Mr Chaudhry on and from February 2022 when EMI was incorporated and steps taken to establish the competing business; and
 - (ii) RS [11]: the finding that Mr Ibrahim had no power to manage the Engadine Practice (under the terms of the Engadine Imaging Trust Deed): PJ [49] Red 2/175X-176G does not preclude him from being an officer of EMIS;
 - (iii) RS [15]: whilst other persons (including Dr Kyatt) may have assumed practical responsibility of EMIS' operations, Mr Ibrahim's conduct identified at [30]-[34] of the Appellants' Submissions (**AS**) is sufficient for him to be an officer of EMIS, notwithstanding the other unchallenged factual findings raised by the First and Second Respondents;

- (iv) RS [17]: whilst it is true that officers may change over time, in light of the nature of Mr Ibrahim's conduct identified at paragraphs AS [30]-[34] which included the "lengthy and coordinated" rebranding of various practices to Focus Radiology on and from May 2022: PJ [127] Red 2/192L-Q [278], [279] Red 2/245C-N the temporal assessment of Mr Ibrahim's conduct demonstrates that on a real review by this Court, the finding that he was not an officer of EMIS cannot stand;
 - (v) RS [18]: there is no need for the Appellants to demonstrate that Mr Ibrahim managed EMIS to the exclusion of Dr Kyatt in order for Mr Ibrahim to be found as an officer of EMIS. The proposition is unsupported by any authority; and
 - (vi) RS [20]: the pleaded case was that Mr Ibrahim was an officer from early 2019 and thereafter: FASOC [25] Red 23H-J, which required an assessment of Mr Ibrahim's conduct on and from this date. That assessment informs the Court as to whether Mr Ibrahim was an officer on and from the incorporation of EMI and when the Deed of Settlement was being negotiated and eventually entered into;
- (b) in response to paragraphs 25 to 39:
- (i) RS [25]: whilst these factual findings are not the subject of challenge, they demonstrate the Primary Judge's failure to look to the contemporaneous documents which generally furnish the most reliable source of evidence as to what occurred,¹ rather than Dr Kyatt's performance in the witness box;
 - (ii) RS [26]: the Appellants do contend that Mr Ibrahim was personally involved in decisions of EMIS after June 2021, the most obvious example being the rebranding of the various practices (including the Engadine Practice) to Focus Radiology on and from May 2022, being a fundamental matter to the Engadine Practice: AS [32];
 - (iii) RS [27]: the Appellants do not need to prove that Mr Ibrahim inveigled himself into the decision-making of EMIS;
 - (iv) RS [29]-[30]: requesting and being provided with unfettered access to Xero on and from 12 March 2020 provides Mr Ibrahim with the ability to make informed decisions about EMIS. He utilised that ability when he engaged in the conduct at AS [30]-[34];
 - (v) RS [31]-[33]: the email from Mr Ibrahim requesting a profit distribution **and** the subsequent profit distribution made in accordance with Mr Ibrahim's request, demonstrates that Mr Ibrahim was either making a significant decision that affected the whole, or

¹ *ET-China.com International Holdings Ltd v Cheung* [2021] NSWCA 24 at [25] per Bell P, Leeming JA agreeing at [287].

substantial part, of the business owned by EMIS, or alternatively was a person with whose instructions the directors of EMIS were accustomed to act;

- (vi) RS [34]-[36]: whilst the emails do not show who actually effected the transfer, Dr Kyatt gave unchallenged evidence that Mr Ibrahim withdrew the sum of \$33,000.00 from EMIS' bank account: Blue 1/119Q-R;
- (vii) RS [37]-[39]: the document comprising the terms of settlement speaks for itself. That objective evidence, coupled with Mr Ibrahim's involvement in the termination of the very same employee some eight weeks earlier demonstrates that Mr Ibrahim was either making a significant decision that affected the whole, or substantial part, of the business owned by EMIS, or alternatively was a person with whose instructions the directors of EMIS were accustomed to act;
- (viii) RS [40]: the Primary Judge failed to consider the totality of Mr Ibrahim's conduct. When that assessment is carried out, they are not "isolated incidents" but evidence demonstrating that Mr Ibrahim was an officer of EMIS; and
- (ix) RS [41]-[43]: the Appellants repeat those matters above.

Misleading or Deceptive Conduct

3. This issue is raised at RS [44]-[76]. Briefly:

- (a) in response to paragraphs [44]-[54]:
 - (i) RS [44]-[46]: whether or not a reasonable expectation exists that disclosure should be made or silence broken must be assessed in the whole of the circumstances in which the parties are situated. If Mr Ibrahim was an officer at the time, that is a pertinent matter which informs the Court's assessment of the whole of the circumstances;
 - (ii) RS [47]-[50]: the Appellants rely on the findings made regarding Mr Ibrahim's conduct AS [40] and the absence of Dr Kyatt's knowledge of such conduct AS [41] which, when assessed together establish the conduct by silence upon which the Appellants rely; and
 - (iii) RS [51]-[54]: the communications from Bridges Lawyers forms part of the context within which the conduct must be assessed as a whole;
- (b) in response to paragraphs [55]-[68]:

- (i) RS [55]-[56]: the submission demonstrates the Primary Judge's failure to look to the contemporaneous documents which generally furnish the most reliable source of evidence as to what occurred,² rather than Dr Kyatt's performance in the witness box;
 - (ii) RS [57]: the answer provided by Dr Kyatt ignores the inconsistent statement made by Dr Kyatt immediately before the question raised by the Primary Judge: AS [55] and that the only means that Dr Kyatt had of receiving information about negotiations was through Mr Gasic;
 - (iii) RS [58]: the Primary Judge's failure to accept Dr Kyatt's evidence on critical matters relevant to his claim arose because the Primary Judge's failed to look to the contemporaneous documents rather than Dr Kyatt's performance in the witness box; and
 - (iv) RS [61]: there was no need to call Mr Gasic. The best evidence was the contemporaneous records passing between Mr Gasic and Dr Kyatt, all of which were produced in response to Notice to Produce with Dr Kyatt waiving privilege. It is highly improbable that testimonial evidence from Mr Gasic years after the events could be more reliable than those records.
- (c) in response to paragraphs [66]-[74]:
- (i) RS [66]-[67]: the competing business representations are the subject of challenge: AS [21];
 - (ii) RS [68]: a lack of trust is relevant to reliance but not determinative;
 - (iii) RS [69]-[71]: Dr Kyatt gave direct evidence as to reliance: Blue 1/104R-105Z;
 - (iv) RS [73]: the unchallenged findings regarding the trust reposed by Dr Kyatt in his lawyers and his reliance on them is consistent with Dr Kyatt relying on the representation from by Mr Ibrahim as it was communicated to him by Mr Gasic, being the only gateway through which Dr Kyatt's received information; and
 - (v) RS [74]: the unchallenged findings, when viewed in the context that all communications came to Dr Kyatt through his lawyers, do not preclude a finding of reliance.

Relief

4. This issue is raised at RS [77]-[82]. Briefly:

- (a) in response to paragraphs [77]-[82]:
 - (i) RS [77]-[78]: the Appellants elected to seek the imposition of a constructive trust. A remedy not considered by the Primary Judge;

² *ET-China.com International Holdings Ltd v Cheung* [2021] NSWCA 24 at [25] per Bell P, Leeming JA agreeing at [287].

- (ii) RS [79]-[80]: a constructive trust was sought on the basis that the Engadine Practice was taken by Mr Ibrahim with Mr Chaudhry's knowledge and assistance (i.e. it was the same business): PJ [145] Red 2/198F-H, N-V.

Response to Submissions of Third Respondent's Submissions

5. The gravamen of the Third Respondent's submissions appear to be that:
- (a) nothing turns on the fact that Mr Chaudhry signed the Crowd IT Proposal on 26 February 2023 as he had already been removed as a director on 23 February 2023;³ and
 - (b) even if Mr Chaudhry assisted Mr Ibrahim to establish the competing business, the Appellants have not established causation and loss.⁴
6. It is convenient to deal with each argument in *seriatim* below.

The Crowd IT Proposal

7. Mr Chaudhry receiving the Crowd IT Proposal on 18 February 2023: Blue 2/587-613 and signing it on 26 February 2023: Blue 2/613 is a significant matter the Appellants rely on for the following reasons:
- (a) **First**, when Mr Chaudhry signed this document on 26 February 2023, he was not aware that he had been removed as a director of EMIS at that time, a matter raised directly with the Primary Judge in closing written submission: Black 230A-H.
 - (b) **Second**, the absence of Mr Chaudhry's knowledge of his removal as a director of EMIS on 23 February 2023 is confirmed in writing by a letter from his lawyers dated 17 March 2023: Blue 1/196D-J. The terms of that letter are unequivocal and confirm that Mr Chaudhry "was not made aware of and did not consent" to his removal as a director of EMIS.
 - (c) **Third**, the timing and content of the Crowd IT Proposal issuing demonstrates that Mr Chaudhry must have been involved with Mr Ibrahim setting up the competing business. So much is evident from Mr Chaudhry being listed as the key contact: Blue 2/594K-N and the Focus Radiology Premises clearly identified in the document: Blue 2/606U; and
 - (d) **Fourth**, whilst Mr Chaudhry might have been in a position to explain away the matters referred to above, he elected not to give evidence and a *Jones v Dunkel* inference is readily available on this particular issue, notwithstanding the Primary Judge's failure to draw such an inference.

³ Third Respondent's Submissions at [1]-[18].

⁴ Third Respondent's Submissions at [19]-[26].

8. The matters referred to above demonstrate that the Primary Judge's no evidence finding regarding Mr Chaudhry assisting Mr Ibrahim to establish the competing business was in error: PJ [419]; Red 2/313I-O.
9. Whilst knowledge is not a requirement to fall within the definition of a director under s 9 of the *Corporations Act 2001* (Cth), any person appointed as a director has provided a signed written consent to do so and accordingly has knowledge of their appointment: s 201D *Corporations Act 2001* (Cth).
10. In order to determine whether Mr Chaudhry assisted Mr Ibrahim establish the competing business the Court should make factual findings as to what actions Mr Chaudhry took and then assess those findings against Mr Chaudhry's knowledge at the time. When this task is carried out, the fact remains that Mr Chaudhry had knowledge that:
 - (a) Mr Ibrahim was taking active steps to set up a competing business on and from July 2022: PJ [278] Red 2/245C-G, [412] Red 2/311X-312C; and
 - (b) Mr Chaudhry remained a director of EMIS at the time he signed the Crowd IT Proposal on 26 February 2023.
11. In the absence of Mr Chaudhry giving evidence, the reasonable inference is that Mr Chaudhry assisted Mr Ibrahim establish a competing business prior to 18 February 2023, when he received the Crowd IT Proposal.
12. Whilst mere receipt of the Crowd IT Proposal may not be sufficient to establish a breach of the duties owed by Mr Chaudhry to EMIS, breach is established in light of the following findings made by the Primary Judge:
 - (a) the Focus Radiology rebranding process was being coordinated by Mr Chaudhry and included the Engadine Practice located at the Engadine Premises: PJ [144] Red 2/197G-M;
 - (b) that Mr Chaudhry knew that Mr Ibrahim was taking steps to obtain the New Lease in the name of EMI: PJ [144] Red 2/197G-M;
 - (c) the steps taken from late November 2022 through to late February 2023 to get the radiology business of Focus Radiology Engadine up and running were done in a manner to ensure that there was no paper trail revealing Mr Chaudhry's involvement in such activities: PJ [276](3) Red 2/243G-Q.
 - (d) steps were also taken to ensure that Ms Coles, who was clearly instrumental to the overall rebranding project and working at the direction of Mr Ibrahim: PJ [280] Red 2/245O-R, was not seen to be associated with Mr Chaudhry: PJ [277] Red 2/244T-X;
 - (e) Ms Coles made arrangements on 14 and 23 February 2023 to conceal the efforts made to establish the competing business from EMIS: PJ [276(7)] Red 2/244G-K; and

(f) Dr Kyatt did not know or consent to the rebranding of the Engadine Practice to Focus Radiology Engadine: PJ [284] Red 2/246I-M,

and the Central Factual Findings with respect to Mr Chaudhry that are challenged in this appeal.

13. The assistance relied on by the Appellants is that which was pleaded, Mr Chaudhry assisted Mr Ibrahim to establish the competing business: (FASOC [30.8]) Red 1/111V-X and to destroy or otherwise prevent the profitability and viability of the existing business owned by EMIS: (FASOC [55]) Red 1/118L-W.
14. What was in the knowledge of Mr Chaudhry were the steps taken by Mr Ibrahim to establish the competing business.

Causation & Loss

15. If the Central Factual Findings are made with respect to Mr Chaudhry, then he has assisted Mr Ibrahim to establish the competing business and/or to destroy or otherwise prevent the profitability and viability of the existing business owned by EMIS. Mr Chaudhry's conduct was so connected to the damage suffered by EMIS when the existing business was destroyed, that as a matter of ordinary common sense and experience, it should be regarded as the cause. The causal connection to the loss claimed by EMIS and such conduct is obvious.
16. With respect to loss, the loss EMIS has incurred is the ongoing obligation to pay rent for a premises from which it can no longer conduct the existing business which has been entirely destroyed by the actions of Messrs Chaudhry and Ibrahim.

Conclusion

17. The Appellants otherwise rely on their written submissions dated 29 August 2025.



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