Supreme Court of NSW Court of Appeal

Decisions Reserved as at 17 April 2025

	Number	Case Name	Heard	Issues	Judgment Below
1	2024/96419	Metal Manufactures v WesTrac	29/08/2024	CONTRACT – by contract dated 8 July 2022, Verdia Pty Ltd (Verdia) agreed with the respondent to supply and install a "Solar Photovoltaic System" at premises owned by the respondent (the premises) – Verdia entered into a contract with Symmetry Electrical Services Pty Ltd (SES) to perform part of those works – SES entered a contract with the appellant to supply 3,030 solar panels (the Panels) – the terms of that contract included a retention of title clause such that title in the Panels did not pass to SES until payment – SES instructed the appellant to deliver the Panels to the premises and the appellant did so in October 2022 – SES did not pay the invoices issued by the appellant (the last of which was due in February 2024) – in the meantime, Verdia had gone into liquidation in December 2022, and did not make any payments to SES – at that point, the respondent had paid Verdia for the Panels	*Metal Manufactures Pty Ltd trading as TLE Electrical v WesTrac Pty Ltd* [2024] NSWSC 144

				– the appellant sought a declaration that the respondent's interest in the Panels was subject to the appellant's security interest, and orders under the *Personal Property Securities Act 2009 (*Cth) (PPSA) that the respondent return the Panels to the Appellant – the primary judge held that the appellant could not assert its interest in the Panels against the respondent – whether the primary judge erred in finding that the contract between Verdia and the respondent was a contract for the supply of goods rather than for the supply of services – whether the primary judge erred in finding that there was a sale between SES and Verdia such that Verdia had title of the Panels – whether the primary judge erred in finding that the monies paid from the respondent to Verdia constituted "proceeds" within the meaning of s 32 of the PPSA – whether the primary judge erred in holding that the security interest attached to the "proceeds" rather than to the Panels.	
2	2024/161624 2024/171961 2024/183502	Supermega v Sunnya; Yinghan v Sunnya; Sunnya v Yinghan He	26/11/2024	CORPORATIONS – EQUITY – primary Judge determined that various defendants in the proceedings in the Court below had knowingly assisted a breach of fiduciary duty by diverting a business opportunity – determination of the quantum of equitable compensation deferred – whether the primary Judge erred in finding that Mr He and Ms Lu engaged in conduct in contravention of the *Corporations Act* and/or breached their fiduciary duty to Sunnya in wrongfully diverting a business opportunity – whether the primary Judge erred in failing to	*In the matter of Sunnya Pty Ltd* [2024] NSWSC 403

				find that Sunnya would contravene the law of the People's Republic of China - whether the primary Judge erred in finding that various defendants knowingly assisted Mr He and Ms Lu's dishonest and fraudulent breaches of fiduciary duty – whether the primary Judge erred in finding that various defendants should be restrained from taking certain steps.	
3	2024/202851	Interslice v CCA Investments - Bass Hill	16/12/2024	REAL PROPERTY – in October 2014, the appellant entered into a lease (the lease) with the owner (the RSL Club) of land in Bass Hill (the land), pursuant to which the appellant operated a gym on part of the land (the premises) – the lease was for a term of five years commencing on 16 October 2014, with an option to renew for a further term – in April 2019, the appellant exercised the option, with the new lease to commence on 15 October 2019 – the first respondent acquired the land from the RSL Club on 13 September 2019 – no lease in registrable form was provided to the appellant, but the appellant continued to occupy the premises under an equitable lease – the appellant brought proceedings against the first respondent, seeking damages for breach of contract and an order that the bond paid by the appellant be returned – the appellant alleged that the first respondent had repudiated the lease and the equitable lease by a course of conduct, and that the appellant accepted the repudiation and terminated the equitable lease on 7 April 2020 – the first respondent, by cross-claim, sought damages for breach of contract by the appellant,	*Interslice Pty Ltd v CCA Investments – Bass Hill Pty Ltd (No 2)* [2024] NSWSC 481

				alleging that the purported termination of the equitable lease on 7 April 2020 amounted to a repudiation, which the first respondent accepted on 14 April 2020 – the principal issue for determination was whether following the sale of the land, the appellant was permitted to operate a gym from the premises – the primary judge found that the appellant had breached the equitable lease (as there was no valid development approval permitting the appellant to operate a gym from the premises), that the first respondent had not repudiated the equitable lease, and that the appellant's termination of the equitable lease was wrongful and amounted to repudiation – the primary judge further found that, in any event, the appellant had not suffered any loss – the primary judge concluded that the first respondent had also not demonstrated any loss and was entitled to damages of $10 – the primary judge concluded that the appellant was entitled to repayment of the bond – whether the primary judge erred in his construction of the development consent – whether the primary judge erred in finding that the use of the gym was not an existing use protected by ss 4.65-4.70 of the *Environmental Planning and Assessment Act 1979* (NSW) – whether the primary judge erred in finding that the appellant was in breach of the equitable lease – whether the primary judge erred in finding that the first respondent did not repudiate the equitable lease – whether the primary judge erred in finding that the appellant did not suffer any	

				loss from the termination of the equitable lease – whether the primary judge erred in finding that the equitable lease was not frustrated.	
4	2024/339682 & 2024/402826	Graeme Dickson v Janet Marie Petrie	20/02/2025	REAL PROPERTY – the parties are neighbours in Palm Beach – their predecessors in title were involved in the grant of usage rights which was registered as an easement in 2003 – the respondent's land (Lot 2) is burdened by the easement, and the appellants' adjoining land (Lot 1) has the benefit of it – the relevant instrument described the grant as an easement "for garden use" and gave the owner of Lot 1 the right to use part of Lot 2 for "gardening" and to construct and maintain a building to use as a garden shed (the shed), and covered an area of 60m^2 on Lot 2 (the servient area) – the respondent brought proceedings seeking declarations and injunctive relief to support their contentions that either the appellants' rights must accommodate a degree of shared use, or in the alternative that the appellants' rights in effect amount to ownership of the servient area which would invalidate the easement – the primary judge considered that, on the terms of the instrument, the appellants were not required to accommodate shared use – the primary judge therefore concluded that the easement amounted to an effective appropriation of a substantial piece of land, which was sufficient to invalidate it – whether the primary judge erred in finding that the rights conferred on the appellants by the	*Petrie v Dickson* [2024] NSWSC 972

				easement was capable of forming the subject matter of a grant of easement – whether the primary judge erred in failing to consider the separate clauses of the easement – whether the primary judge erred in concluding that the appellants could exclude the servient owners from the servient area including the shed.	
5	2024/402944	Claire Rewais and Osama Rewais t/as McVitty Grove v BPB Earthmoving Pty Ltd	3/03/2025	BUILDING & CONSTRUCTION – the appellant is the registered proprietor of a property in Woodlands (the Property) – in March 2023, the appellant and first respondent entered into an oral agreement pursuant to which the first respondent would carry out earthworks at the Property as requested by the appellant (the Contract) – works commenced in May 2023 – a costs estimate in April 2023, however the scope of the works substantially increased between June 2023 and February 2024 – from August 2023, six invoices were sent to the appellant, some of which were paid in part or in full – following a meeting to discuss the payment of invoices, on 12 February 2024 the first respondent ceased work at the Property and sought payment of the unpaid invoices – in April 2024, the first respondent withdrew all previous invoices and issued a single combined invoice (the payment claim) for $277,007 (allowing a discount for previous payments by the appellant) – there was a dispute as to whether the appellant received the payment claim or a subsequent letter sent on 22 May 2024 (the s 17(2) notice) which recorded that the appellant had not provided a	*Claire Rewais and Osama Rewais t/as McVitty Grove v BPB Earthmoving Pty Ltd* [2024] NSWSC 1271

				payment schedule – the first respondent lodged an adjudication application on 13 June 2024 – the appellant provided the first respondent with a payment schedule on 18 June 2024 which submitted that no amount was owed and that the adjudication application was invalid – the second respondent (as adjudicator) published its determination on 7 July 2024 (the Determination), determining that the appellant was to pay the adjudicated amount of $277,007 – the appellant commenced proceedings seeking that the Determination be declared void and quashed – the appellant alleged that the adjudication application was filed prematurely as they did not receive the payment claim until 11 June 2024 and the s 17(2) notice had not been validly served; additionally the appellant contended that the Contract fell within the ambit of the *Home Building Act 1989* (NSW) (HBA) and that the HBA prohibited the first respondent from enforcing the Determination – although the primary judge concluded that the adjudication application was filed prematurely, he determined that the Determination was not void on that basis – the primary judge also held that, while the HBA applies and the first respondent conceded it was in breach of certain provisions, the first respondent was not barred by the HBA from enforcing the Determination – whether the primary judge erred in concluding that the 22 May 2024 letter was a valid s 17(2) notice – whether the primary judge erred in his findings as to the	

				validity of the adjudication application – whether the primary judge erred in his findings as to the second respondent's consideration of the issue of service – whether the primary judge erred in failing to find that the Determination was void for lack of procedural fairness or natural justice – whether the primary judge erred in his application of ss 10 and 94 of the HBA.	
6	2024/307911 2024/309290 2024/470671	John Mir v Meo Mir as Executor for the Estate of the late George Mir; Leo Mir as the Executor for the Estate of the late George Mir v John Mir; Leo Mir in his capacity as Executor for the Estate of the late George Mir v John Mir	6/03/2025	EQUITY – George, John and Tony were brothers, and from the 1950s until George's death in December 2020, together controlled a successful property investment and development business trading as "the Mir Group of Companies" (the Mir Group), conducted through a large number of companies and trusts – following George's death, John (and entities associated with him) brought proceedings seeking orders, the effect of which would be to wind up the business and divide the assets equally between John, Tony and George's estate – Leo, George's eldest son and executor of his estate, brought a cross-claim against John and his wife Marie, seeking a declaration that certain land they held as trustees of a trust (the J&M Trust) was held on trust for George's estate, John and Tony equally – the key issues for John's claim were whether the business carried on between the brothers was a partnership, and in the alternative whether the various corporations forming part of the Mir Group should be wound up, whether a receiver should be appointed over the various	*Mir v Mir* [2023] NSWSC 408 *Mir v Mir (No 2)* [2024] NSWSC 791 *Mir v Mir (No 3)* [2024] NSWSC 899

				trust assets in the Mir Group, and whether the various “sub-partnerships” in the Mir Group had been dissolved – following the initial hearing, the primary judge concluded that the business was not conducted as a partnership, but that the Mir Group had operated as a single business controlled originally by the brothers, and increasingly by their children – however, the primary judge declined to grant the relief sought by John as to the winding up of companies, trusts and partnerships due to the structure of the business – as to the cross-claim, the primary judge accepted that the J&M Trust forms part of the Mir Group, but that none of the remedies sought by Leo were available – following the initial hearing, there were protracted delays during which the parties attempted to resolve issues raised by the judgment – following a further hearing, the primary judge concluded that it was a term of the agreement between the brothers that all decisions concerning the Mir Group must be taken unanimously (as between John, Tony and Leo), though taking into account the various areas of the business for which each of John, Tony and Leo (formerly George) had essentially been delegated the authority of the trio – the primary judge also declined to make declarations relating to the sub-partnership and declined to remove John and Marie as trustees of the J&M Trust – following a final hearing, the primary judge made a declaration setting out the entities comprising the Mir Group, and the terms of the agreement pursuant to which the business of the Mir	

				Group is conducted. Leo Appeal (2024/309290) Whether the primary judge erred in failing to exercise the discretion to remove the John and Marie as trustees of the J&M Trust – whether the primary judge's failure to exercise the discretion was unreasonable or plainly unjust – whether the primary judge erred in his consideration of the evidence – whether the primary judge made erroneous findings of fact. John Appeal (2024/307911) Whether the primary judge erred in failing to find that the business conducted by the Mir Group was a business conducted by John, Tony and George in partnership – whether the primary judge erred in finding that the Mir Group business' acquisition of properties was inconsistent with the business constituting a partnership – whether the primary judge erred in failing to find that the partnership was dissolved.	
7	2024/374574	Allianz Australia Insurance Limited v The Estate of the Late Summer Abawi	11/03/2025	INSURANCE - Summer Abawi was injured in a motor vehicle accident and brought a claim against the applicant. Ms Abawi subsequently died of unrelated causes and her claim was continued by her estate. A dispute arose as to whether Ms Abawi's injury (which involved wrist lacerations) was a 'soft tissue injury' and therefore a 'threshold injury' pursuant to s 1.6	*Allianz Australia Insurance Limited v The Estate of the late Summer Abawi* [2024] NSWSC 1245

				of the *Motor Accident Injuries Act 2017* (NSW). The Act limits the recovery of damages in respect of such injuries. The dispute was referred to the Personal Injuries Commission, after which it went to the Review Panel (the Second Respondent). On a judicial review application, it was held that the injury was not a 'soft tissue injury', and thus, Ms Abawi's estate was not prevented from recovering damages. The Applicant seeks leave to appeal, arguing that an injury to the skin is a 'soft tissue injury' for the purposes of the Act. They contend that otherwise, skin injuries suffered by most people in motor vehicle accidents would not be excluded from the very statutory provisions that are intended to prevent recovery for such minor injuries.	
8	2024/357818	Trent Nathan Funnell bht Barbara Ramjam v NSW Minister for Mental Health	17/03/2025	ADMIN LAW (other) – The applicant, by his tutor, seeks leave to appeal from a decision of the Mental Health Review Tribunal pursuant to s 150 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW). The Tribunal's reasons are dated 19 January 2024 and the applicant also seeks that the time for the filing of the summons be extended pursuant to s 152(2) of the Act. The applicant is a 'forensic patient' who was granted conditional release on 17 November 2023, after over a decade in detention in mental health facilities. This conditional release allowed him to reside in supported accommodation in the community. On 9 January 2024, the Tribunal, relying on ss 79 and 81 of the Act, purported to make an	Decision not available on Caselaw

				order for his detention following an alleged breach of his conditional release, and in its reasons they also purported to revoke the conditional release order. The applicant seeks leave to appeal the orders and the decision, contending that Part 5, Division 9 (and in particular s 109) provides the sole pathway for revoking conditional release and ordering further detention.	
9	2024/365858	Chief Commissioner of State Revenue v Uber Australia Pty Ltd	18/03/2025	TAX – the proceedings relate to six payroll tax assessments issued by the appellant to the respondent for financial years 2015 to 2020 inclusive, totalling $81.5 million (the Assessments) – the respondent had objected to those assessments, which objections were disallowed by the appellant – the appellant applied to the Supreme Court seeking review of that decision, and to have remitted the issue of whether premium interest should be imposed – the appellant had assessed payroll tax on the basis that the majority of amounts collected by the respondent from customers on behalf of Uber drivers and then remitted to the drivers are to be taken as wages under a "relevant contract" for the purposes of s 32 and 35 of the *Payroll Tax Act 2007* (NSW) (the Act) – the appellant had also imposed premium interest on the respondent – the primary judge found that the contracts between the respondent and Uber drivers were "relevant contracts" within the meaning of s 32 – however, the primary judge concluded that the payments by the respondent to Uber drivers did not fall within s	*Uber Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1124

				35(1) and were not to be taken as wages – the Assessments were therefore revoked and the issue of premium interest remitted – whether the primary judge erred in his interpretation of s 35(1) of the Act – whether the primary judge erred in finding that there was no reciprocity between the money paid by the respondent to an Uber drive and the work performed by that driver – whether the primary judge erred in finding that the respondent was a mere payment collection agent – whether the primary judge erred in exercising his discretion to remit the premium component of interest, by taking into account irrelevant considerations, acting on wrong principle, and failing to take into account a relevant consideration.	
10	2023/424676	The Prothonotary of the Supreme Court of NSW v Alina Yousif	24/03/2025	DISCIPLINARY PROCEEDINGS – in March 2020, the respondent was convicted of three criminal offences and was sentenced to an aggregate term of 3 years' imprisonment served by way of intensive correction order – the applicant seeks a declaration that the respondent is not a fit and proper person to remain on the Roll of Australian lawyers (the Roll) and an order that the respondent's name be removed from the Roll.	N/A
11	2024/338525	Kieran Turner v Joanne Marie Richards	26/03/2025	CORPORATIONS – The primary judge made a declaration as to the identities of directors of several companies in a corporate group. That turned on the determination of several issues - including the validity of various resolutions purporting to appoint some of the applicants	Decision not available on Caselaw

				as directors. In particular, the applicants challenge the primary judge's failure to find that a meeting had occurred in 2019 (which validly appointed Mr Turner as chair). The applicants also raise an issue of principle as to the construction of a constitutional provision setting the term for appointed directors - "hold office until the next following Ordinary General Meeting". The applicants argue that Black J wrongly relied on a rule in Re Consolidated Nickel that a director cannot take advantage of their own wrong (in not calling a general meeting) because that is not a rule of construction but only a discretionary basis to refuse relief in certain circumstances. The applicant also argues that Black J erred in failing to prefer Ward CJ in Eq's approach in Camenzuli v Hawke [2022] NSWSC 168 which considered the Re Consolidated Nickel inapplicable because the respondent was as much at fault as the applicants in failing to call a general meeting. Leave is required under section 103 of the *Supreme Court Act 1970* (NSW) from a decision of Black J on a question ordered to be determined separately.	
12	2024/399278	Guangyi Sui v Zhaoqing Jiang	28/03/2025	CONTRACT – in September 2015, Fortune Agribusiness Funds Management Pty Ltd (Fortune), a company associated with the respondent, was granted Crown Leases (the Leases) in respect of undeveloped land in the Northern Territory – the Leases could be converted into freehold title if included development conditions were met – the	*Sui v Jiang* [2024] NSWSC 1013; *Sui v Jiang (No 2)* [2024] NSWSC 1174

				Leases, originally for a 5 year term, were extended for one year and ultimately terminated in September 2021 – in May 2017, the respondent entered into an agreement with the appellant (the Agreement) pursuant to which the appellant would pay $1.5 million for a 40% shareholding in a company, Australian Fulin Agriculture (AFA) which was to acquire the Leases – in December 2017, Fortune executed a transfer of the Leases in favour of AFA – the Agreement set out that the respondent guaranteed the appellant an agreed annual return of 10% on the $1.5 million for the first three years, with $150,000 payable in each of June 2018, 2019 and 2020 – the Agreement granted the appellant options for the following years – the primary judge found that the options could only be exercised following the initial three year period (ie in the period commencing 15 June 2020) – it was common ground that the options could only be exercised prior to 31 December 2020 – proceedings in the NSWSC and NSWCA took place in 2021 to determine the correct construction of the Agreement – the appellant argued that he had exercised “Option Three”, with the effect that, having sold his shares in AFA for $1,000, he was entitled to have the respondent pay the difference between that sum and $1.5 million – the primary judge concluded that the appellant had not, in the period between June 2020 and December 2020 exercised Option Three and dismissed this aspect of the appellant’s claim – the appellant was successful in his claim for the	

				$150,000 due in June 2020, which had not been paid – whether the primary judge erred in his construction of the Agreement – whether the primary judge erred in concluding that in failing to exercise an option by 31 December 2020, the ability to exercise an option was lost – whether the primary judge erred in his findings as to the intention manifested by the appellant's conduct up to 31 December 2020 – whether the primary judge erred in determining that the appellant had not exercised Option Three by 31 December 2020.	
13	2024/272080	State of New South Wales v Christopher Dennis	28/03/2025	ADMIN LAW (other) – The applicant seeks leave pursuant to s 127(2)(c) of *the District Court Act 1973* (NSW) to appeal from a decision awarding damages to the respondent for wrongful arrest. The respondent conducted a business and was arrested in relation to the issuing of 'pink slips' under the inspection scheme for registration of motor vehicles in NSW. It was alleged that he had been providing these slips in relation to cars that had not been properly brake tested. He was later acquitted of the charges, and commenced proceedings for wrongful arrest. The issue was whether his arrest was authorised under s 99 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW). The primary judge found that it was not so authorised. The applicant contends on appeal that the primary judge applied a flawed interpretation of s 99, including in relation to the test to be applied when there are multiple	Decision not available on Caselaw

				reasons for arrest, and whether consideration of alternatives to arrest are relevant.	
14	2024/408921	XJS World Pty Ltd ACN 119 634 249 v Central West Civil Pty Ltd ACN 158 548 808	4/04/2025	CONTRACT – the appellant is the developer of a property development in Bathurst (the development) – the respondent is a civil engineering works contractor engaged by the appellant pursuant to an agreement entered into in April 2021 (the Contract) – the substance of the work to be carried out by the respondent (the works) were specified in the Contract – the appellant purported to terminate the contract in April 2023, relying on the respondent's alleged breaches of contract – the appellant brought proceedings alleging several breaches of the contract by the respondent, including failures to carry out the works in conformity with plans and relevant planning instruments, failure to cause routine inspections and testing, and failing to complete the works with due diligence, within a reasonable time, or at all – the respondent denied the allegations of breach, and stated that the purported termination of the contract was wrongful and repudiatory – the respondent stated that it accepted the repudiation and was therefore discharged from further performance of its obligations – the respondent also cross-claimed for unpaid invoices – the primary judge concluded that the appellant did not validly terminate the contract, and that the purported termination therefore constituted a repudiation – the primary judge also concluded that the appellant had not established any of the	*XJS World Pty Ltd v Central West Civil Pty Ltd* [2024] NSWDC 465

				alleged breaches, and that its claim for liquidated damages must fail – the primary judge further found that even if the breaches had been established, damages had not been proved – the primary judge finally concluded that the respondent was entitled to the sum sought in the cross-claim for unpaid invoices – whether the primary judge erred in failing to find that the requirement to complete the works within three months was part of the Contract – whether the primary judge erred in finding that the appellant bore the onus to prove the respondent was responsible for delays – whether the primary judge erred in his findings as to breach – whether the primary judge erred in failing to find that the respondent was liable to pay liquidated damages – whether the primary judge erred in finding that the appellant had waived its contractual rights – whether the primary judge erred in finding that the appellant was liable under the cross-claim.	
15	2024/324247	Don Gamage v Michael Riashi	4/04/2025	ADMIN LAW (judicial review) – The applicant was investigated by the Independent Commission Against Corruption (ICAC) and charged with several corruption offences, including offering a bribe and making false statements. The applicant has not yet been convicted of those offences, but challenges the authority of the first respondent (an ICAC investigator) to prosecute the applicant. The applicant's argument is that there is a conflict between two laws – being s 14 of the *Independent Commission Against*	Decision not available on Caselaw

				Corruption Act 1988 (NSW), which the applicant says denies ICAC any prosecutorial powers, and the common informer provision in s 14 of the *Criminal Procedure Act 1986* (NSW). The decision of the Court below was on the basis of s 14A of the *Criminal Procedure Act 1986* (NSW), which expressly contemplates the possibility of an "officer of ICAC" commencing proceedings with the consent of the ODPP. The applicant requires leave pursuant to s 101(2)(h) of the *Supreme Court Act 1970* (NSW), noting the decision below was in relation to an interlocutory decision of the Local Court under Part 5 of the *Crimes (Appeal and Review) Act 2001* (NSW).	
16	2024/308533	David John Evans v Kennth Linton Smith	7/04/2025	REAL PROPERTY – the first respondent owns land, bordering on land owned by the appellants (Lot 41) – the first respondent brought proceedings seeking a declaration that he is entitled to legal title of part of Lot 41 (the contentious land) by reason of decades of adverse possession – the key issue was whether the first respondent and his predecessors in title had demonstrated "possession" of the contentious land – the primary judge concluded that they had, and that the appellants could not assert title to that portion of land – whether the primary judge erred in declaring that the first respondent is the rightful owner of the contentious land – whether the primary judge erred in concluding that the Lot 41 paper title owners lost title to the contentious land in 1989 – whether the	*Smith v Central Coast Council* [2024] NSWSC 981

				primary judge erred in her findings as to factual possession – whether the primary judge erred in her findings as to the conduct of the Lot 41 paper title owners – whether the primary judge erred in her findings as to the treatment of the contentious land by the first respondent and his predecessors in title.	
17	2024/320250	Jenny Angius v Thi Quy Le	7/04/2025	SUCCESSION – Mr Angius (the deceased) died in 2022 – the appellant, his daughter, is the administrator of his estate and sole beneficiary under his last will – the respondent, a granddaughter of the deceased, claimed provision from the deceased's estate on the basis that she was wholly or partly dependent on him – the primary judge concluded that the respondent was partly dependent on the deceased, including through the provision of significant financial assistance following her diagnosis with multiple sclerosis in 2014 – the primary judge concluded that the respondent has established that there were factors warranting the making of her application, and ordered provision in the sum of $2.55 million – whether the primary judge erred in his conclusions as to the respondent's eligibility – whether the primary judge erred in concluding that there were factors warranting the making of the respondent's application – whether the primary judge erred as to the quantum of the provision.	*Le v Angius; Angius v Angius* [2024] NSWSC 924
18	2024/282405	Allianz Australia Insurance	8/04/2025	MOTOR ACCIDENTS – the respondent was hit by a utility vehicle while on a	*Yangzom v Allianz Australia Insurance Limited* [2024] NSWSC 870

		Limited v Dawa Yangzom		pedestrian crossing, and made a claim for compensation under the *Motor Accidents Injuries Act 2017* (NSW) ("MAI Act"). Her dispute with the insurer about their coverage of her expenses was referred to the medical assessor for assessment under the MAI Act, who assessed her level of impairment as falling below the compensable limit of 10%. Ms Yangzom sought to have the assessment reviewed but the President's delegate refused the review application. She then sought judicial review of the decisions of the assessor and the delegate in the Supreme Court. Schmidt AJ found legal errors in the medical assessment and medical assessment certificate by reason of non-compliance with the applicable Motor Accident Guidelines version 9.1, and said these errors were apparent on the face of the assessment and certificate such that the delegate should have referred the decisions for review. On appeal, the insurer contends that there was no legal error in the medical assessment, certificate or the delegate's decision. They submit that any errors with respect to the guidelines did not make the medical assessment or certificate invalid, given the guidelines do not have the status of delegated legislation. The applicant seeks leave to appeal from a decision setting aside a medical assessment and medical assessment certificate made under a dispute referred to the medical assessor under the MAI Act, and setting aside a decision of the delegate of the President of the Personal Injury Commission	

				refusing to refer the medical assessment for review. Leave is required pursuant to r 101(2)(r) of the *Supreme Court Act 1970* (NSW) as the matter at issue is of a value less than $100,000.	
19	2024/404134	Elise Stanberg as tutor for Addison Stanberg v State of New South Wales	9/04/2025	TORTS (negligence) – on 24 July 2019, 11-year-old Addison Stanberg (applicant) participated in a long jump competition with a view to qualifying for the school athletics carnival at Neutral Bay Public School – the lead up to the long jump pit was an asphalt surface covered in a material knows as "Softfall" – the long jump pit itself was approximately 2-metres wide and 6-metres long, and the sand likely 30 centimetres deep – the sides and bottom of the long jump pit was also covered by "Softfall" – on his final jump of the event, having jumped 6 or 7 times previously, the applicant landed feet first and perceived his feet to impact both the sand and "Softfall" surface underneath, causing his feet to slip forward and for him to fall backwards onto his buttocks and back – the applicant then attended the nurse at the school, and felt significant back pain in the period thereafter, which continued, albeit to a lesser extent, through to the date of the hearing below – the applicant alleged that the State of New South Wales (respondent), who accepted it would be vicariously liable for any negligence on the part of either the school or members of the school staff, breached its duty of care in that there was not sufficient sand in the landing area, either per se or because the sand was	*Stanberg v State of New South Wales* [2024] NSWDC 462

				not raked after each jump – the primary judge was not satisfied that the respondent had failed to take adequate precautions against the risk, nor that there was insufficient sand in the pit, nor that the use of "Softfall" material would itself have been insufficient – the primary judge concluded that, in the circumstances, the teachers did take all steps that a reasonable person in their position would have taken – in the alternative, the primary judge found that, as a direct result of the hard landing, the applicant did suffer significant structural damage, and assessed non-economic loss at 20% of the worst case – whether primary judge erred in finding the depth of the sand in the long jump fit was adequate – whether primary judge erred in finding that the respondent took adequate precautions against the risk of harm – whether primary judge erred in finding that the applicant would not suffer any diminution in earning capacity, such diminution having a value in excess of $100,000 – whether primary judge erred in determining the value of the applicant's claim for non-economic loss at 20% of the most extreme case.	
20	2024/428418	Albina Della Bruna v Office of the Health Care Complaints Commission	10/04/2025	PROFESSIONAL NEGLIGENCE (medical) – by amended complaint filed 18 August 2022, the respondent alleged that the appellant had engaged in unsatisfactory professional conduct pursuant to s 139B(1)(a) or (l) of the Health Practitioner Regulation National Law 2009 (NSW) (Regulation) in engaging in conduct that demonstrates the knowledge,	*Health Care Complaints Commission v Della Bruna* [2024] NSWCATOD 164

				skill or judgment possessed by the appellant is significantly below the standard reasonable expected of a practitioner of an equivalent level of training or experience, or in engaging in improper or unethical conduct relating to the practice or purported practice of medicine – the appellant admitted that she was guilty of unsatisfactory professional conduct per s 193B(1)(b) of the Regulation by failing to maintain adequate clinical records of 10 patients per the Health Practitioner Regulation 2016 (NSW) (though denied this constituted professional misconduct), and denied that her prescribing for those patients fell significantly below the standard of knowledge, skill or judgment reasonably expected of her– the latter complaint related to the appellant's prescribing and management of prescriptions of on label and/or "off label" "restricted substances" to 10 patients, namely, Somatotropin/SciTropin (HGH) for "anti-aging and wellness" purposes – Coleman SC ADCJ found that the appellant's management of the prescribing off-label medications to the 10 patients fell below the requisite standard, though not significantly below that standard – Coleman SC ADCJ found that the appellant's unsatisfactory professional conduct was not sufficiently serious to constitute professional misconduct - the majority found that the practitioner's prescribing and management of the off-label medications fell significantly below the requisite standard so as to constitute professional misconduct – whether the majority erred in law in not assessing the	

				appellant's conduct as against the standard reasonably expected of a practitioner of an equivalent level of training or experience – whether the majority erred by unreasonably and illogically rejected the opinion of Professor Holmes-Walker – whether the majority failed to exercise its jurisdiction in failing to consider and determine whether the prescribing of the relevant substances for "wellness" or "anti-aging" purposes was significantly the standard reasonably expected of a practitioner of an equivalent level of training or experience – whether the majority denied the appellant procedural fairness – whether majority erred in law in failing to give adequate, intelligible or logical reasons for their decision – whether majority erred in fact in finding that the practitioner did not seek blood tests to measure IGF-1 levels in relevant patients and in finding that Professor Holmes-Walker's opinion was that 'more clinical trials are needed before growth hormone treatment is considered to be worthwhile in the treatment of aging'.	
21	2024/356404	David and Ros Carr Holdings Pty Ltd (ACN 630 141 909) in its personal capacity and as trustee of the Carr Family Trust v Ivan Ritossa	11/04/2025	EQUITY – the proceedings relate to a unit trust, the Darbalara Property Trust (the Trust) set up by the second and third appellants (the Carrs) and the first and second respondents (the Ritossas) – the Carrs (through the first appellant) and the Ritossas each hold 50% of the units in the Trust, and are directors of the third respondent, the trustee of the Trust – disagreements as to the management of the	*David & Ros Carr Holdings Pty Ltd v Ritossa* [2024] NSWSC 1125

				Trust's business, commencing in 2017, culminated in a falling out in 2020 – the appellants subsequently brought proceedings seeking to bring the Trust to an end by the sale of its assets with a distribution of the net proceeds to the unit holders – the Ritossas argued that the Carrs were free to sell their units in accordance with the terms of the trust instrument, but were not entitled to unilaterally terminate the Trust – the primary judge rejected the appellants' argument that there was either an oral agreement, or representations founding an estoppel, that either family could unilaterally terminate the joint venture by reasonable notice – the primary judge also rejected the submission that the first appellant was entitled under the trust instrument to either call for its proportionate share of the capital of the Trust or to wind up the Trust – the primary judge further found that no oppression (in the *Corporations Act 2001* (Cth) s 232 sense) had been established – finally, the primary judge concluded that a receiver could not be appointed – the primary judge therefore dismissed the appellants' summons – whether the primary judge erred in his construction of the trust instrument – whether the primary judge erred in failing to find that the conduct of the affairs of the third respondent had been oppressive to the Carrs – whether the primary judge erred in his interpretation of the appellants' Amended Points of Claim – whether the primary judge erred in his conclusion reached as to the functioning of	

				the third respondent – whether the primary judge erred in concluding that an order could not be made that a receiver be appointed to wind up the Trust.	
22	2024/379672	Joseph Paul Golden v John Howard	11/04/2025	PROCEDURE – the applicant seeks leave to appeal from various orders, including orders made summarily dismissing proceedings relating to alleged corruption by the respondents in their administration of a fund established to compensate horse owners (the 'CHAPS'), and prohibiting the applicant from instituting proceedings arising from the same facts, pursuant to s 8 of the *Vexatious Proceedings Act 2008 (*NSW). The applicant also seeks leave to appeal from a costs order. Leave is required pursuant to s 101(2)(c) and 101(2)(e) of the *Supreme Court Act 1970* (NSW).	*Golden v Howard* [2023] NSWSC 1418; *Golden v Howard (No 2)* [2024] NSWSC 172; *Golden v Howard & Anor* [2024] NSWSC 1229
23	2024/415961	Black Label Developments Pty Ltd v Nicholas John McMenemy	14/04/2025	BUILDING & CONSTRUCTION – the applicant seeks leave to appeal an interlocutory decision to stay enforcement of a judgment entered pursuant to an adjudicator's assessment under the *Building and Construction Industry Security of Payment Act 1999* (NSW). The stay was granted on terms that the outstanding balance of the judgment debt be paid into Court. Leave is required under s 101 (2)(e) of the *Supreme Court Act 1970* (NSW).	*Black Label Developments Pty Ltd v McMenemy* [2024] NSWDC 516
24	2024/327543	Isabelle Peacock v Geoffrey Knox	15/04/2025	SUCCESSION – Ms Easton (the deceased) died in September 2021, while residing at a nursing home in Batehaven – the first	*Knox v Peacock [*2024] NSWSC 976; *Knox v Peacock (No 2)* [2024] NSWSC 1372

				respondent is a solicitor who, on the instructions of the deceased, drafted a will which was executed by the deceased in November 2020 (the 2020 Will) – the sole beneficiary under the 2020 Will is the second respondent – the first respondent brought proceedings seeking orders that probate of the 2020 Will be granted to him as one of the executors named in the will – the appellant disputed the deceased's capacity to make a will in November 2020, and propounded a will made by the deceased in May 2019 (the 2019 Will), under which the appellant was the executor and sole beneficiary – the primary judge concluded that the deceased did have capacity to make the 2020 Will, and made an order that probate of the 2020 Will be granted to the first respondent – the primary judge also noted that, if he was wrong and the deceased did lack capacity to make the 2020 Will, then, although the 2019 Will was not challenged by either of the respondents, he could not see how the deceased could have had capacity to make the 2019 Will – whether the primary judge erred in failing to hold that the deceased lacked capacity to make the 2020 Will – whether the primary judge erred in failing to find that it was irrational for the deceased to have made the proposed distribution – whether the primary judge erred in his consideration of the evidence of Dr Lonie – whether the primary judge erred in determining that the deceased's relationship with the appellant had materially deteriorated – whether the primary judge misapplied the	

				test in *Banks v Goodfellow* (1870) LR 5 QB 549 – whether the primary judge erred in failing separately to consider whether the first respondent had demonstrated that the deceased had sufficient knowledge and approval of the 2020 Will – whether the primary judge erred in failing to hold that there was no challenge to the 2019 Will – whether the primary judge erred in his award of costs.	
25	2024/399680	Atilla Tok v Rashazar Pty Ltd	16/04/2025	CONTRACT – on 22 January 2016, Mr Tok as vendor and Rashazar Pty Ltd as purchaser entered into an agreement for the sale and purchase of 30% of the shares in Fresh Cut Australia Pty Ltd, a business which supplied fresh vegetables in the Sydney area (agreement) – the agreement was split over two tranches, $100,000 upon the execution of the agreement, and $175,000 two years following execution – Mr Rashazar arranged the transfer of $100,000 into an account nominated my Mr Tok, and the agreement was executed by Mr Rashazar on 25 January 2016 – Mr Tok did not transfer 30% of the shares in Fresh Cut Australia Pty Ltd, despite informing ASIC that he had – the primary judge found that the agreement between the parties was enforceable – the primary judge also found that Mr Tok, in failing to transfer the shares in accordance with the agreement, had breached the agreement – as such, the primary judge concluded that the award for breach of contract by Mr Tok amounted to $285,110.45 by way of damages for wasted expenditure incurred by Rashazar Pty Ltd in	*Rashazar v Tok* [2024] NSWDC 443

				fulfillment of its obligations under the agreement, being the initial $100,000 payment and subsequent $175,000 payment, plus $7,590 in stamp duty and $2,520.45 for late payment – further, the primary judge found that Fresh Cut Australia Pty Ltd had been unjustly enriched in the order of $16,965.48 for payments made by Rashazar Pty Ltd to the ATO on behalf of Fresh Cut Australia Pty Ltd, and that Mr Tok had been unjustly enriched in the order of a further $84,147 for payments made by Rashazar Pty Ltd under mistaken belief – the primary judge found the total liability of Fresh Cut Australia Pty Ltd was $16,965.48, and $369,257.45 for Mr Tok – whether the primary erred in assessing damages for breach of contract by reference to wasted expenditure – whether primary judge erred in ordering restitution in circumstances where the contract was not set aside or rendered void – whether primary judge erred in finding that the first payment was made pursuant to a mistake of fact.	