WEDNESDAY 7 FEBRUARY 2024

YTO CONSTRUCTION v GANGHUI 2023/236125 (Stevenson J – 11/8/23)
BUILDING & CONSTRUCTION – in September 2017, the first respondent entered into a contract (the Contract) with the appellant to construct an apartment complex in Ashfield (the Project) – in March 2019, a further agreement was entered into by the appellant and the first respondent (the Handwritten Agreement) – following the completion of the Project, each party contended that the other owed it a sum of money – the first respondent brought proceedings against the appellant for a debt arising under the Handwritten Agreement and amounts due under the Contract – the appellant brought a cross-claim based on representations made by the first respondent that brought about an "Arrangement" and a "Further Arrangement" – the primary judge entered judgment in favour of the first respondent in the sum of $2.75 million – whether the primary judge erred in finding that the appellant had not established the existence of the Arrangement or the Further Arrangement – whether the primary judge erred in rejecting the appellant's claim for an estoppel – whether the primary judge erred in failing to find that the respondents had engaged in misleading and deceptive conduct – whether the primary judge erred in finding that the $600,000 paid by the appellant to the first respondent was a loan – whether the primary judge erred in finding that the appellant owed $2.75 million to the first respondent under the handwritten agreement – whether the primary judge erred in failing to find that the Further Arrangement was a variation to the Arrangement – whether the primary judge erred in finding that the appellant was not entitled to various claims, including for site remediation, consultant's fees, and delay claims.

Ganghui Pty Ltd v YTO Construction Pty Ltd [2023] NSWSC 729 (Stevenson J)

Ganghui Pty Ltd v YTO Construction Pty Ltd (No 2) [2023] NSWSC 944 (Stevenson J)

THURSDAY 8 FEBRUARY 2024

YTO CONSTRUCTION v GANGHUI 2023/236125 (Stevenson J – 11/8/23)
Day 2

MONDAY 12 FEBRUARY 2024

BLUTH & Ors v BOYDED INDUSTRIES 2023/277802 (Chen J – 11/8/23)
PROFESSIONAL NEGLIGENCE (legal) – the appellants (HWLE) acted as solicitors for the respondent – in 2017, the respondent entered into a deed (the Deed) with various corporate entities (the companies) – the Deed granted the respondent a call option to purchase a lot which formed part of a larger parcel of land owned by the companies (the Land) – the Deed prohibited the respondent from causing a caveat to be registered on any part of the Land – the prohibition was an agreed essential term – under the Deed, if the companies transferred ownership of the land to another

entity or did not register the relevant Strata documents, the respondent would be entitled to a payment of $3.5 million from the companies – representatives of the respondent learned that the companies intended to sell the Land – HWLE, on behalf of the respondent, lodged a caveat against the title to the Land – the companies terminated the Deed on the basis that the respondent had breached an essential term – the respondent sued HWLE for professional negligence – causation was disputed at trial – the primary judge found that HWLE's negligence had caused the respondent's loss – whether the primary judge erred in finding that the respondent would have rescinded the deed when the Strata documents were not registered, and therefore erred in finding that the appellants' breach of duty caused loss – whether the primary judge erred in finding that the guarantor under the Deed and the companies were willing and able to pay $3.5 million.

Boyded Industries Pty Ltd v Bluth & Ors [2023] NSWSC 915

TUESDAY 13 FEBRUARY 2024

DALTON v NAEGELI 2023/219338 (Stevenson J – 16/6/23)
CONTRACT – in December 2018, the respondent, for and on behalf of an unincorporated association (HEP), entered into a cash funding agreement (the Agreement) with CRB Investment Holdings Pty Ltd (CRB) (now in liquidation) – HEP advanced $500,000 to CRB, with the terms of the Agreement being that CRB would repay a total of $6.5 million over the course of 13 months (a 1,200% pa interest rate) – in October 2019, the late Mr Schaeffer and two of his associated companies (the second and third appellants) executed a Deed of Guarantee and Indemnity (the Guarantee) in respect of the Agreement – Mr Schaeffer died on 14 July 2020 – the respondent brought proceedings against the appellants seeking to recover $6.5 million under the Guarantee – the primary judge held that the Guarantee was valid and binding on the parties, and that the appellants' defences of unconscionable conduct and unfair contract under the *Australian Securities and Investments Commission Act 2021* (Cth) (the ASIC Act) failed, but found that the Guarantee was in one respect an unjust contract under the *Contracts Review Act 1980* (NSW) (the Contracts Act) – the primary judge held that the debt of $6.5 million was joint and several between the appellants, with the first appellant's liability limited to $500,000 – whether the primary judge erred in concluding that the respondent did not act unconscionably within the meaning of s 12CB of the ASIC Act – whether the primary judge erred in finding that the appellants entered into the Guarantee freely and voluntarily – whether the primary judge erred in concluding that the Guarantee was not a standard form contract within the meaning of s 12BK of the ASIC Act – whether the primary judge erred in concluding that the terms of the Guarantee were not unfair within the meaning of s 12BG of the ASIC Act – whether the primary judge erred in failing to conclude that the Guarantee should not be wholly set aside pursuant to s 7 of the Contracts Act.

Naegeli v Dalton and Schaeffer as Executors of the Estate of the late John Herman Schaeffer [2023] NSWSC 466 (Stevenson J)

Naegeli v Dalton and Schaeffer as Executors of the Estate of the late John Herman Schaeffer (No 2) [2023] NSWSC 626 (Stevenson J)

WEDNESDAY 14 FEBRUARY 2024

SCONE RACING CLUB v COTTOM 2023/232441 (Schmidt AJ – 06/07/23)
WORKERS COMPENSATION – personal injury – respondent employed by the applicant when he slipped and fell suffering injuries – medically assessed by the Personal Injury Commission (PIC) – respondent's appeal to the medical appeal panel was dismissed – respondent sought judicial review claiming that the PIC had failed to supply members of the appeal panel with further documents which he sought to rely on – primary Judge granted leave to file the Summons out of time and determined the appeal panel's decision should be quashed as it was affected by jurisdictional error – whether the additional documents were relevant and material and whether they were considered by the appeal panel.

Cottom v Scone Racing Club Ltd [2023] NSWSC 779

THURSDAY 15 FEBRUARY 2024

KUDRYNSKI v ORANGE CITY COUNCIL 2023/71664 (Pepper J – 14/2/23)
LAND & ENVIRONMENT – compulsory acquisition of land – the first appellant owned a parcel of land in Orange (the Land) – the respondent council compulsorily acquired the Land for a council stormwater harvesting project (the Project) after failed negotiations with the first appellant – the Land was compulsorily acquired under the *Land Acquisition (Just Terms Compensation) Act 1992* (the Act) for $450,000 as determined by the Valuer-General – the first respondent considered the amount to be insufficient and applied to the Court pursuant to s 66 of the Act for a redetermination of the compensatory amount alleging the Land was worth $160 million – the first appellant submitted the Land should be valued as having regard to the amount and value of the water the respondent would be able to harvest from the Project – the respondent contended that the value of the Land should be based on its market value on the date of the acquisition, due to s 56 of the Act precluding any beneficial effect of the public purpose of the acquisition – the primary judge gave the first respondent's valuation evidence of the Land little weight due to it not being contemporaneous or conforming with the UCPR – the respondent's evidence was an expert valuation report which valued the acquired land at $560,000 based on the highest and best use of the Land, without regard for its public purpose – the primary judge accepted the evidence provided by the respondent such that the Land was valued at $560,000 – whether the primary judge failed to consider other valuations, specifically the value of $160 million – whether the primary judge erred in taking into account irrelevant considerations of the valuation of land – whether the primary judge erred by failing to allow the appellant's agent sufficient time to prepare for the hearing – whether the primary judge failed to obtain oral evidence from the respondent's CEO.

Kudrynski v Orange City Council [2023] NSWLEC 9

FRIDAY 16 FEBRUARY 2024

de ROBILLARD v NSW BAR ASSOCIATION 2023/208817 (Le Poer Trench ADCJ, H Dixon SC, L Porter – 1/6/23)

ADMIN LAW (judicial review) – a complaint was made against the appellant (a former barrister, with a cancelled practicing certificate) for serious professional misconduct – the first respondent (the Council) recommended that the appellant be removed from the Roll kept by the Supreme Court of NSW and the Australian Legal Profession Register (the Rolls) – in Stage 1 proceedings, the Tribunal found that the appellant was guilty of unsatisfactory professional conduct and professional misconduct – the Council sought an interlocutory order that prohibited the appellant from communicating with any member of the Council, which was granted in interlocutory proceedings – in Stage 2 proceedings, the appellant sought for the Tribunal to recuse itself due to apprehended bias (on numerous grounds, including that two tribunal members were barristers and members of the Bar Association, and that the Senior Member was "staring [at the appellant] in a very mean and aggressive manner") – the Tribunal held that apprehended bias was not established – the Tribunal ordered that the appellant be removed from the Rolls – whether the Tribunal had jurisdiction to make orders – whether the Tribunal failed to provide reasons upon request – whether the Tribunal was in jurisdictional error by considering irrelevant matters and failing to consider relevant matters – whether the Tribunal was influenced by bias against the appellant

NSW BAR ASSOCIATION v de ROBILLARD 2023/293223

DISCIPLINARY PROCEEDINGS – the Tribunal found the respondent guilty of professional misconduct and unsatisfactory professional conduct (Stage 1 decision) – the Tribunal recommended pursuant to ss 262(4)(a) and 302 of the *Legal Profession Uniform Law* (NSW) (LPUL) that the respondent be removed from the Roll kept by the Supreme Court of NSW and the Australian Legal Profession Register (Stage 2 decision) – the applicant seeks a declaration that the respondent is not a fit and proper person to remain on the roll of lawyers maintained by the Supreme Court and an order that the respondent's name be removed from the roll.

Council of the New South Wales Bar Association v de Robillard [2021] NSWCATOD 207 (Le Poer Trench ADCJ, Dixon SC, L Porter – "Stage 1")

Council of the New South Wales Bar Association v de Robillard [2022] NSWCATOD 122 (Cole DCJ – "interlocutory proceedings")

Council of the New South Wales Bar Association v de Robillard [2023] NSWCATOD 75 (Le Poer Trench ADCJ, H Dixon SC, L Porter – "Stage 2")

HEALTH CARE CORPORATION v CLEARY 2023/283765 (Ainslie-Wallace ADCJ – 11/8/23)

TORTS (negligence) – in July 2020, the respondent was admitted to the appellant hospital for an operation on his back – the surgery appeared to have been successful – the following day, while being transported through the hospital, the bed on which the respondent was lying collided with a wall, causing him immediate pain – the respondent experienced ongoing pain and numbness,

requiring further surgical and non-surgical interventions – the respondent had a history of back and leg injuries dating back to 2015 – the respondent alleged that his ability to work, his capacity for assisting the household, and his enjoyment of life had all been affected – the primary judge made an award of damages in favour of the respondent – whether the primary judge erred in accepting the respondent's account of the incident and its effect on his body – whether the primary judge erred in her evidentiary findings – whether the primary judge erred in finding that the appellant was negligent – whether the primary judge erred in her findings as to causation – whether the primary judge erred in her findings as to the probable consequences of the collision with the wall – whether the primary judge erred regarding the contribution of the surgery on 17 July to the respondent's ongoing suffering – whether the primary judge erred as to foreseeability – whether the primary judge erred in finding that the respondent had the capacity for work prior to the collision with the wall – whether the primary judge erred in the award of damages.

Graham Cleary v Health Care Corporation Pty Ltd t/as Wollongong Private Hospital [2023] NSWDC 263

KOUNTA v TYRO 2023/443752 (Rees J – 16/11/23)
KOUNTA v TYRO 2023/434383 (Rees J – 16/11/23)
RESTRAINT OF TRADE – EXPEDITED – the parties entered into an agency agreement which concerned the joint provision of certain payment services – Tyro alleged that Kounta breached a restraint of trade clause by reason of certain conduct – Kounta contended its conduct fell outside of the restraint of trade clause – primary judge held that conduct fell within the ambit of the restraint of trade clause and that the clause was valid, granting a permanent injunction against Kounta – whether the trial judge erred in finding that the restraint of trade clause was reasonable – whether the trial judge erred in failing to find that the restraint of trade clause was contrary to the public interest – whether the trial judge erred in exercising discretion to grant an injunction.

Tyro Payments Ltd v Kounta Pty Ltd [2023] NSWSC 1384

MONDAY 19 FEBRUARY 2024

HADDEN v INLINE 2023/257859 (Adronos SC DCJ – 21/07/23)
CONTRACTS – applicant is the director and shareholder of a number of companies – rspondent issued 6 invoices to the applicant in respect of work it had performed for him and his companies – primary Judge found the applicant was liable to pay the invoices as a matter of contract or on the basis of quantum meruit - whether the primary Judge erred in concluding the applicant was contractually liable to the respondent – whether the primary Judge erred in finding that the applicant was personally responsible for the fees of various corporate entities.

Inline Partners Pty Ltd v Hadden [2023] NSWDC 273

WEDNESDAY 21 FEBRUARY 2024

SECRETARY DoCJ v STEWART 2023/231566 (Deputy President Elizabeth Wood – 23/6/23)
WORKERS COMPENSATION – the respondent was employed as a prison officer for the appellant, during which he suffered a physical injury – the appellant accepted liability and paid compensation – the respondent later filed a claim for a mental injury (the injury) resulting from the employment, to which the appellant accepted liability – the proceedings concern a dispute between the parties as to the respondent's pre-injury weekly earnings and whether the period where the respondent received compensation for the first injury should be included – in a June 2022 decision, the PIC determined that it should not be included – on appeal, the Deputy President held that reg 8E of the *Workers Compensation Regulation 2016* (NSW) applied to exclude the period of leave taken whilst receiving compensation payments – whether the Deputy President erred in the construction of reg 8E.

Secretary, Department of Communities and Justice v Stewart [2023] NSWPICPD 35 (available on Austlii, not Caselaw)

CREATIVE ACADEMY v WHITE POINTER 2023/265994 (Rees J – 25/7/23)
CONTRACTS – the proceedings concerned a claim by the respondents against the appellants for a debt owed under a 2017 oral contract entered into between the second respondent (Hedley, a director of the first respondent) and the seventh appellant (Larcombe, a director of the first appellant) where the respondents would source childcare sites for the first appellant (CAG) for a fee – no written agreement was entered into, but Hedley would invoice CAG for the first respondent's (WIP) consultancy services – CAG created special purpose vehicles to enter into the leases (being the second to sixth appellants, the SPVs) – in 2020, Larcombe emailed Hedley a "settlement agreement" between the first respondent (WIP) and CAG, which noted CAG was entitled to a refund of fees paid where sites did not proceed – Hedley refused to sign the settlement agreement – whether the primary judge erred in finding an oral agreement was made between the parties – whether the primary judge erred in finding that there was no binding settlement agreement – whether the primary judge erred as to the finding that there was no binding settlement agreement between the parties – whether the primary judge erred as to the application or interpretation of the *Property and Stock Agents Act 2002* (NSW) and *Agents Act 2003* (ACT) where the respondents did not hold a real estate agent licence – whether the primary judge erred as to certain factual findings – whether the primary judge erred as to her findings on mistaken belief – whether the primary judge erred in finding that the respondents had no entitlement to seek restitution – whether the primary judge erred as to her conclusion on the respondents' entitlement to their fees.

White Pointer Investments Pty Ltd v Creative Academy Group Pty Ltd [2023] NSWSC 817

COOKE v TWEED SHIRE COUNCIL 2023/253064 (Lot 34 Proceedings) (Pain J – 11/7/23)
COOKE v TWEED SHIRE COUNCIL 2023/253053 (Lot 3 Proceedings) (Pain J – 11/7/23)

LAND & ENVIRONMENT – the respondent Council commenced two civil enforcement proceedings against the appellant in relation to alleged breaches of the *Environmental Planning and Assessment Act 1979* (NSW) (EPA Act) – the allegations concerned the appellant's use and building works to infuse olive oil with hemp – the activities occurred on two lots of land in Northern NSW (Lot 3 and Lot 34) – Lot 34 was owned by Kempcove (the second respondent in the Lot 34 Proceedings), Lot 3 was co-owned by the appellant, Mr Kovac and Mr Van Lieshout (the second and third respondents in the Lot 3 Proceedings) – the Council alleged that the lots were used for rural industry, and the building works carried out on the lots were used for the purposes of an agricultural produce industry – the appellant did not have Council consent for the use or building works – during an extended adjournment of the hearing, the use had ceased due to various licencing issues, and refusals of several building development applications made by the appellant (now being heard as Class 1 appeals) – the primary judge declared that the appellant had breached the EPA Act by using and carrying out building works on the lots for the purposes of an agricultural produce industry without consent – whether the primary judge erred in finding that the sole purpose of the use of the lots was as "rural industry", as opposed to "intensive land agriculture", within the meaning of that term in the Tweed Local Environment Plan 2014 (NSW) (TLEP) – whether the primary judge erred in finding that the processing of the hemp into end products on the lots was not a use which was neither ancillary or incidental to the cultivation of hemp on the lots for the purpose of "intensive plant agriculture" as defined in the TLEP – whether the primary judge erred in various findings pertaining to the commercial value of farming or growing hemp – whether the primary judge erred in characterising the land use by reference to sales – whether the primary judge erred in finding that the buildings on the lots required consent under the TLEP.

Tweed Shire Council v Cooke [2023] NSWLEC 73

THURSDAY 22 FEBRUARY 2024

PROIETTI v PROIETTI 2022/217751
VEXATIOUS – Court to consider of its own motion whether to declare Proietti a vexatious litigant.

FRIDAY 23 FEBRUARY 2024

FONG bhnf FONG v WELLER 2023/246763 (Newlinds SC DCJ – 11/10/23)
ADMIN LAW (judicial review) – in February 2014, the applicant retained the first respondent (Mr Weller), a solicitor – they entered into a costs agreement – following concerns regarding the applicant's capacity, the Supreme Court appointed a tutor, who in November 2014 entered into a second costs agreement with Mr Weller in relation to the same proceedings, on identical terms – Mr Weller sought to enforce his costs against the applicant and ultimately obtained judgments against the applicant – the applicant sought to have the judgments set aside under UCPR r 36.15 –

the primary judge found against the applicant and, in so doing, found that an intention on behalf of the applicant and Mr Weller to end the first costs agreement could not be imputed – whether the primary judge erred on the face of the record by holding that the first costs agreement continued with full force and effect, notwithstanding that Mr Weller entered into a second costs agreement with the applicant's tutor.

Weller v Fong BHNF Calvin Yao Ping Fong [2023] NSWDC 429

MONDAY 26 FEBRUARY 2024

BEREJIKLIAN v ICAC 2023/302494 (Hon Ruth McColl AO SC – 29/6/23)
ADMIN LAW (judicial review) – the plaintiff was the Premier of NSW – the Defendant (ICAC) prepared a report regarding her involvement with the then member of Parliament for Wagga Wagga (Mr Maguire) in June 2023 (the Report) which was then provided to the Legislative Council and Legislative Assembly – ICAC found that the plaintiff engaged in serious corrupt conduct through exercising her official functions in relation to funding awarded to institutions in Mr Maguire's electorate (the funding decisions) while in an undisclosed relationship with Mr Maguire – the plaintiff seeks an order quashing the "serious corrupt conduct" findings made in the Report – whether the assistant commissioner prepared the Report outside her authority under the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) – whether ICAC fell into jurisdictional error by finding that the plaintiff was influenced by her relationship with Mr Maguire without any probative evidence – whether ICAC made an error of law in finding that the plaintiff's relationship with Mr Maguire was capable of amounting to an interest capable of giving rise to a conflict of interest – whether ICAC erred by making findings regarding the plaintiff's duties as Premier – whether ICAC erred by finding that the plaintiff had engaged in conduct which was a breach of public trust – whether ICAC fell into jurisdictional error by misconstruing the ICAC Act's provisions regarding corrupt conduct and dishonesty – whether ICAC fell into jurisdictional error by finding that the Ministerial Code imposed disclosure obligations on the plaintiff – whether ICAC erred in finding that the plaintiff had engaged in conduct involving the exercise of her official functions.

ICAC report to the President of the Legislative Council and the Speaker of the Legislative Assembly titled *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel), June 2023* (Volume 1) and (Volume 2).

TUESDAY 27 FEBRUARY 2024

BEREJIKLIAN v ICAC 2023/302494 (Hon Ruth McColl AO SC – 29/6/23)
Day 2

WILSON v SAS TRUSTEE 2023/224594 (Neilson DCJ – 20/10/21 & 27/6/23)
WORKERS COMPENSATION – the appellant was a police officer, and in 2000, he was medically discharged due to a work related knee injury – the appellant was thus entitled to a pension based on 72.75% of his salary ever since – in 2019, the appellant applied for an increase to the pension to 85% of his salary due to his incapacity for work outside the NSW Police Force (NSWP) – in 2020, the appellant applied for the certificate under which he was discharged to include the infirmity of post-traumatic stress disorder (PTSD) that he suffered as a result of working for the NSWP – the respondent granted an increase of his pension to 77.11% of his salary, but declined to make the PTSD amendment – the primary judge increased the entitlement to 79.67% based on the appellant's diminution of capacity – the primary judge dismissed the second application, on the basis that there was no evidence to suggest that the appellant was suffering PTSD prior to or at the time of his discharge – whether the primary judge erred in finding that the District Court had jurisdiction – whether the primary judge erred in failing to find that the respondent or Court had the power to amend the original certification – whether the primary judge erred in finding that the respondent was functus officio – whether the primary judge erred by applying the wrong legal test – whether the primary judge made a finding that was legally unreasonable and took into account irrelevant considerations when finding that the appellant was not incapacitated by PTSD – whether the primary judge erred in failing to recuse himself due to actual or apprehended bias.

Wilson v SAS Trustee Corporation (No 2) [2021] NSWDC 840 (Neilson DCJ) (regarding the application for the primary judge to recuse himself)

Wilson v SAS Trustee Corporation (No 4) [2023] NSWDC 224 (Neilson DCJ) (principal judgment)

WEDNESDAY 28 FEBRUARY 2024

QUARRY STREET v MINISTER 2023/217399 (Preston CJ LEC – 9/6/23)
ADMIN LAW (judicial review) – Aboriginal land claim – Crown land (the Land) was subject to a claim lodged by the second and third respondents (the Land Councils) under the *Aboriginal Land Rights Act 1983* (NSW) (the Act) to the first respondent (the Minister) – the land had been the subject of a special lease which was granted to the Paddington Bowling Club Ltd (the Club) in 1962 until its expiry in 2010 – a new registered lease was then granted to the Club, for a period of 50 years (the Lease) – in 2018, the Lease was ultimately assigned to the appellant, with the Crown's consent – in 2021, the Minister transferred the Land to the Land Councils under the Act – the appellant sought judicial review of the Minister's decision, claiming that he had misconstrued s 36(1) of the Act, that the Land had been used lawfully when it was leased out, and that he had denied the appellant

procedural fairness – the primary judge held that none of the grounds were established – whether the primary judge erred in failing to find that the Minister's decision was affected by jurisdictional error.

Quarry Street Pty Ltd v Minister Administering the Crown Land Management Act 2016 [2023] NSWLEC 62

THURSDAY 29 FEBRUARY 2024

OLIVERI LEGAL v CASSEGRAIN 2023/309899 (Elkaim AJ – 7/9/23)

CONTRACT – in 2008, the appellant law firm was engaged by Mr Cassegrain, a director of the respondent company, to act for him in proceedings heard in the Supreme Court – on behalf of both himself and the respondent, Mr Cassegrain signed a document purporting to indemnify and guarantee all legal fees incurred by the appellant in acting for Mr Cassegrain (the Agreement) and a costs agreement with an estimate of costs of $33,000 – in 2009, the appellant prepared a retainer agreement, which Mr Cassegrain signed both in his personal capacity and as a director of the respondent (the Retainer) – Mr Cassegrain accrued significant legal fees, with many invoices from 2011 onwards going unpaid – Mr Cassegrain entered bankruptcy in September 2015 – the appellant sought to enforce the guarantee against the appellant and claimed payment of the unpaid legal fees – the primary judge held that Mr Cassegrain did not have authority to bind the respondent to the Agreement – the primary judge separately held that, if the respondent were bound, the Agreement was valid only as an indemnity and not as a guarantee, and that the claims under the indemnity were both time-barred and unenforceable as contrary to public policy – whether the primary judge erred in failing to find that Mr Cassegrain had ostensible authority to sign the Agreement – whether the primary judge erred in failing to find that the respondent was bound by the Agreement – whether the primary judge erred in failing to find that the respondent was liable to pay amounts owing either under the Agreement or due to an estoppel – whether the primary judge erred in finding that the appellant had conceded that if the Agreement only operated as an indemnity then it only applied to the claim under the Retainer.

Oliveri Legal Pty Ltd v Cassegrain Tea Tree Oil Pty Ltd (No 2) [2023] NSWSC 1082