Supreme Court
of New South Wales

MONDAY 1 JULY 2024

TRANSPORT for NSW v HUNT LEATHER 2023/242788 (Cavanagh J – 3/8/23)
TORTS (other) – the proceedings are representative proceedings pursued on behalf of persons affected by the construction and development of the Sydney Light Rail project (the project) – the claim is a cause of action in nuisance, both public and private, based on the carrying out of the project – the first and third respondents are two businesses said to be affected by the project – the second respondent is the CEO of the first respondent, and the fourth respondent is the sole director of the third respondent – the hearing before the primary judge was conducted to determine the liability of the appellant to the lead plaintiffs (the respondents) and the agreed common questions – the primary judge found that the appellant was liable to the first and third respondents, and dismissed the claims of the second and fourth respondents – the primary judge dismissed the claims in public nuisance – whether the primary judge erred in finding that the first and third respondents suffered an interference with the use of their properties, and that the appellant was responsible with that interference – whether the primary judge erred in their findings as to the reasonable care taken by the appellant – whether the primary judge erred in finding that the use of the roads along the route of the project was an "exceptional" use – whether the primary judge erred in finding that the appellant failed to demonstrate that any nuisance caused by the construction of the project was otherwise inevitable – whether the primary judge erred in finding that the entitlement to damages continued into the period after the actionable nuisance had ceased – whether the primary judge erred in their findings related to the delays to the project – whether the primary judge erred in finding that s 43A of the *Civil Liability Act* (NSW) had no relevance to the proceedings – whether the primary judge erred in finding that the appellant was not exercising a special statutory power conferred by s 104O of the *Transport Administration Act 1988* (NSW).
Hunt Leather Pty Ltd v Transport for NSW [2023] NSWSC 840

HUNT LEATHER v TRANSPORT for NSW 2023/465963 (Cavanagh J – 22/2/24)
TORTS (other) – the proceedings are representative proceedings pursued on behalf of persons affected by the construction and development of the Sydney Light Rail project (the project) – the claim is a cause of action in nuisance, both public and private, based on the carrying out of the project – the appellants are two businesses said to be affected by the project – the hearing before the primary judge was conducted to determine the liability of the respondent to the lead plaintiffs and the agreed common questions – the primary judge held that the appellants (two of the four lead plaintiffs) were entitled to succeed, but that the other two lead plaintiffs (being the CEO of the first appellant and the sole director of the second appellant respectively) were not entitled to succeed – the primary judge held that the appellants were not entitled to recover the litigation funder's commission as damages – whether the primary judge erred in holding that the interference caused to land during the time that construction was planned to take place did not constitute an actionable nuisance – whether the primary judge erred in failing to find that the construction alone constituted an actionable nuisance as it was an exceptional rather than common and ordinary use of those roads – whether the primary judge erred in finding that the entry into litigation funding agreements was not a loan to finance the litigation but rather a choice taken independently of the respondent – whether the primary judge erred in failing to find that entry into litigation funding agreements was the natural and foreseeable consequence of the respondent's conduct – whether the primary judge erred in holding that the loss suffered by the appellants in paying commission to the funder was too remote to be recoverable.
Hunt Leather Pty Ltd v Transport for NSW [2023] NSWSC 840 (Cavanagh J)
Hunt Leather Pty Ltd v Transport for NSW (No 4) [2024] NSWSC 140 (Cavanagh J)

SALTALAMACCHIA v ZAMAGIAS 2023/464967 (Ainslie-Wallace ADCJ – 13/12/23)
TORTS (negligence) – in May 2018, the respondent was injured in a motor vehicle collision between cars driven by himself and the appellant – the appellant and respondent gave different accounts of the state of the traffic lights at the time of the incident – the primary judge found that the respondent was not responsible for the accident, and found that it was more probably than not that the accident occurred due to the applicant and her brother (who was travelling in the car with her) being distracted – the primary judge entered judgment for the respondent – whether the primary judge erred in making findings regarding the appellant's conduct – whether the primary judge failed to provide any or adequate reasons supporting the factual findings – whether the primary judge erred in concluding that the appellant was the cause of the accident – whether the primary judge erred in finding that the respondent did not travel through the intersection against a red light – whether the primary judge erred in failing to have any or adequate regard to the evidence as to the phasing of the traffic lights – whether the primary judge failed to have any or adequate regard to evidence relating to the respondent's reporting of the accident.
Zamagias v Saltalamaccia [2023] NSWDC 553

TUESDAY 2 JULY 2024

TRANSPORT for NSW v HUNT LEATHER 2023/242788 (Cavanagh J – 3/8/23)

Day 2

WEDNESDAY 3 JULY 2024

TRANSPORT for NSW v HUNT LEATHER 2023/242788 (Cavanagh J – 3/8/23)

Day 3

HASTWELL v PARMEGIANI 2023/298104 (Cavanagh J – 24/8/23)
NEGLIGENCE – claim against medicolegal expert arising out of content of report – scope of witness immunity – primary Judge held that the expert was entitled to witness immunity from a claim of professional privilege even though the report was not used in litigation – the expert need only establish that he was instructed to act as an expert witness, produced evidence and that his evidence would have a functional connection with prospective proceedings if those proceedings were to eventuate – whether the primary judge erred in summarily dismissing the proceeding pursuant to UCPR 13.4 on the basis that the appellant's claims against the respondent were bound to fail by reason of the respondent having the benefit of the principle of witness immunity.
Hastwell v Parmegiani [2023] NSWSC 1016

CAMERON v WOOLLAHRA MUNICIPAL COUNCIL 2024/151110 (Pritchard J – 24/3/24)
LAND & ENVRIONMENT – in April 2021, the first respondent (the Council) granted development consent (the consent) to the appellants for the demolition of the existing building and construction of a new dwelling on land owned by the appellants (the site) – in April 2022, the appellants' architect

lodged an application seeking to modify the consent, including a proposed new cellar level and the associated excavation– an assessment report prepared by the Council in June 2022 (the report) accepted the modification application, subject to the deletion of the new cellar level and associated excavation (the impugned excavation) – in June 2022, the Local Planning Panel approved the modification, subject to the deletion of the impugned excavation (the modified consent) – in August 2022, the second respondent issued a construction certificate for the site, listing the aforementioned consents – in the determination of the application, the second respondent was provided with structural plans which included a proposed excavation, which were "stamped" by the second respondent in his determination – in May 2023, the Council filed summons seeking judicial review of the second respondent's decision after complaints regarding the depth of the excavation on the site – the primary judge found that it was legally unreasonable for the second respondent to determine that the plans, specifications, and standards were consistent with the modified consent, and declared that the construction certificate is invalid to the extent that it permits the impugned excavation – whether the primary judge erred in extending the time for the first respondent to commence proceedings for judicial review – whether the primary judge erred in finding that it was legally unreasonable for the second respondent to determine that the plans, specifications and standards were consistent with the modified consent – whether the primary judge erred in finding that the construction certificate was invalid.
Woollahra Municipal Council v Cameron [2024] NSWLEC 27

THURSDAY 4 JULY 2024

RODNY v WEISBORD 2023/465451 (Robb J – 15/12/23)
SUCCESSION – the proceedings related to the estate of Ms Rose Rodny (the deceased) – the deceased was survived by two children, the appellant and the third respondent – the first and second respondents are the children of the third respondent – probate of the deceased's 1997 Will was granted to the appellant (the named executor) – the respondents made family provision applications – litigation subsequently took place in the Supreme Court and Court of Appeal relating to a 2008 draft will propounded by the third respondent, in which the Court of Appeal confirmed the grant of probate of the 1997 Will to the appellant – the primary judge subsequently determined the family provision claims – the primary judge dismissed an application by the appellant to file further evidence – the primary judge dismissed the third respondent's claim for provision but awarded each of the first and second respondents provision in the form of a lump sum of $1.75 million – whether the primary judge erred in not ordering the first and second respondents to serve updating evidence and in not granting leave to the appellant to serve updating evidence – whether the primary judge erred in making assumptions as to the appellant's financial circumstances – whether the primary judge erred in applying the relevant legal tests of "eligible persons" and "factors warranting" to the first and second respondents' claims – whether the primary judge erred in determining the appropriate provision for the first and second respondents – whether the primary judge's reasons were inadequate – whether the primary judge erred in the costs orders regarding the third respondent.
Weisbord v Rodny (No 3) [2021] NSWSC 458
Weisbord v Rodny (No 4) [2022] NSWSC 1726
Weisbord v Rodny (No 5) [2023] NSWSC 1581

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FRIDAY 5 JULY 2024

RODNY v WEISBORD 2023/465451 (Robb J – 15/12/23)

Day 2

THURSDAY 11 JULY 2024

SHINETEC v THE GOSFORD 2023/465518 (Stevenson J – 14/12/23)
BUILDING & CONSTRUCTION – by an agreement made in June 2020 (the Contract), the appellant (Shinetec) agreed with the first respondent (The Gosford) to design, construct and partly finance a development in Gosford (the Project) on a site owned by The Gosford – the site was cleared, but construction did not commence as the requisite construction certificate was not issued by the local council – the property has since been sold – it was a term of the Contract that Shinetec would fund the first $37 million of construction costs, and to secure that obligation would provide a standby letter of credit in the sum of $37 million from its Chinese parent corporation (Shanxi) – in July 2020, Shanxi procured a standby letter of credit from the fifth respondent (the Bank) (the Letter of Credit) – in July 2021, the second and third respondents (the Receivers) were appointed receivers and managers of The Gosford – the Receivers served on the Bank a demand under the Letter of Credit (the Demand) – the Taiyuan Intermediate People's Court of Shanxi Province (the Chinese Court) has issued a "Civil Ruling" suspending payment by the Bank under the Letter of Credit – Shinetec seeks a declaration that Demand is invalid, and an order that The Gosford return the Letter of Credit – The Gosford seeks an order that the Bank pay the $37 million in accordance with the Letter of Credit – the primary judge held that Shinetec's case against The Gosford fails, and that The Gosford is entitled to judgment against the Bank – the primary judge subsequently stayed the judgment against the Bank until further order, pending the parties taking further steps in respect of the Civil Ruling of the Chinese Court – whether the primary judge erred in the findings as to the invalidity of the Demand – whether the primary judge erred in failing to find that the Conditions Precedent were not at any time satisfied or waived – whether the primary judge erred in failing to find that the Contract was discharged, abandoned or abrogated – whether the primary judge erred in finding that an amendment to the appellant's Commercial List Statement was necessary to permit certain contentions the appellant wished to make – whether the primary judge erred in refusing the application by the appellant for leave to amend its Commercial List Statement – whether the primary judge erred in failing to construe the Contract as a whole – whether the primary judge erred in the findings as to the manifest commercial purpose of the Letter of Credit – whether the primary judge erred in the disposal of the cross-claim.
Shinetec (Australia) Pty Ltd v The Gosford Pty Ltd; The Gosford Pty Ltd v Bank of China Ltd (No 2) [2023] NSWSC 1405
Shinetec (Australia) Pty Ltd v The Gosford Pty Ltd; The Gosford Pty Ltd v Bank of China Ltd (No 3) [2023] NSWSC 1596

OVCHINNIKOV v BAIKAL SPORTS CLUB 2024/45000 (Black J – 17/1/24)
OVCHINNIKOV v BAIKAL SPORTS CLUB 2024/202613 (Black J – 17/1/24)
CORPORATIONS – in 1994-1996, the respondent issued debentures with a value of $133,000 to 61 then members of the respondent, including the appellant, and to 6 proposed members of the respondent, who did not subsequently become members – in March 1996, the respondent sent members a letter stating that debenture holders were required to pay the respondent's annual

member fee, and that failure to pay would disentitle a member to vote at meetings – the respondent contends that between June 1994 and 31 December 2022, 35 debenture holders ceased to become members of the respondent by reason of their non-payment of annual membership fees – the respondent sought declaratory relief regarding the voting rights of debenture holders it contends have ceased being members and regarding the status of special resolutions passed at a special general meeting in March 2023 – the appellant sought declarations regarding the validity of the most recent Constitution of the respondent and the requirements to hold AGMs and SGMs of the respondent – the primary judge found that debenture holders had a continuing right to notice of meetings, but that their votes at those meetings would not be counted in determining whether an ordinary or special resolution was passed, as only the votes of members could be counted – whether the primary judge erred in concluding that a debenture holder would lose their membership by not paying the annual member fee – whether the primary judge erred in failing to hold that a debenture holder would remain a member of the respondent by their continuing status as a debenture holder – whether the primary judge erred in the construction of the respondent's Constitution and ss 38 and 39 of the Associations Incorporation Act 2009.
In the matter of Baikal Sports Club Inc [2024] NSWSC 5

FRIDAY 12 JULY 2024

SHINETEC v THE GOSFORD 2023/465518 (Stevenson J – 14/12/23)

Day 2

MONDAY 15 JULY 2024

LAWSON v MINISTER FOR FAMILIES 2023/344411 (Coleman SC ADCJ – 6 October 2023)
LAWSON V MINISTER FOR FAMILIES 2024/93020 (Coleman SC ADCJ – 6 October 2023)
FAMILY LAW – two children, "M" (15 years old) and "P" (5 years old), are the subject of these proceedings – M is the child of the first appellant (the mother) (the biological father of M is not known by the Court) – P is the child of the mother and the second respondent (the father) – in October 2020, M was placed in emergency foster care and P was placed in the care of the father – the Secretary of the Department of Communities and Justice filed a care application in the Children's Court in October 2020 – in April 2022, the Children's Court made final orders – parental responsibility for contact with respect to P was allocated to the first respondent until P attains 12 years of age, but all other aspects of parental responsibility of P were allocated to the father, to the exclusion of the mother – after P attains 12 years of age, all aspects of parental responsibility will be assumed by the father to the exclusion of the mother – all aspects of parental responsibility of M were allocated to the first respondent – the mother commenced proceedings in May 2022 challenging the orders of the Children's Court – the primary judge dismissed the appeal and confirmed the orders of the Children's Court – whether the primary judge did not properly address the evidence and ignored substantive material evidence – whether the primary judge failed to afford procedural fairness to the mother – whether the primary judge gave inadequate reasons – whether the primary judge acted with bias – whether the primary judge erred in making orders that were contrary to the best interests of M and P, and therefore not reflective of the paramount consideration set out in s 60CA of the *Family Law Act 1975* (Cth) and s 26 of the *Children and Young Person (Care and Protection) Act 1998* (NSW) – whether the primary judge erred in the

consideration of the expert evidence – whether the primary judge failed to apply the relevant legal principles to the dispute – whether the primary judge erred in failing to find a mistake of fact in the decision of the Children's Court.

TUESDAY 16 JULY 2024

191 BELLS v WJ & HL CRITTLE 2024/145822 (Pike J – 22/3/24)
TRADE PRACTICES – in March 2022, the appellant and first respondent executed an option deed (the Option Deed) with respect to land in Meroo Meadow (the Land) – pursuant to the Option Deed, the appellant was granted a call option to purchase the Land, with the option to be exercised by 23 March 2024 – were the call option to expire, the first respondent would have seven days to exercise a put option to require the appellant to purchase the land – the option fee (paid by the appellant) was $26.4 million – following entry into the Option Deed, the appellant alleged that it became aware of contamination on the Land – the appellant alleged that the conduct of the respondents in failing to disclose the contamination founded claims for misleading or deceptive conduct and fraudulent concealment, and sought that the Option Deed be declared void – the primary judge dismissed the appellant's claim – whether the primary judge erred in finding that the respondents' failure to disclose the existence of contamination on the Land in the context of other disclosures did not constitute misleading and deceptive conduct – whether the primary judge erred in finding that the Exclusivity Agreement did not impose an obligation on the respondents to disclose the existence of contamination on the Land.
191 Bells Pty Ltd v WJ & HL Crittle Pty Ltd [2024] NSWSC 297

MONDAY 22 JULY 2024

BINGMAN v BOWDENS 2024/134222 (Duggan J – 14/3/24)
LAND AND ENVIRONMENT – in April 2023, the second respondent granted development consent to the first respondent for a silver, lead and zinc mine (the Project) – the appellant commenced judicial review proceedings challenging the grant of development consent – the appellant contended that the second respondent was required to (and did not) consider or assess the environmental impacts of the construction of a 66kV transmission line (the Power Line) – the primary judge held that the grant of development consent was not affected by error – whether the primary judge erred in the application of s 4.38(4) of the *Environmental Planning and Assessment Act 1979* (NSW) – whether the primary judge erred in failing to classify the Power Line as part of a "single proposed development that is State significant development" – whether the primary judge erred in failing to conclude that the impacts of the Power Line were the likely impacts of the development of the Project.
Bingman Catchment Landcare Group Incorporated v Bowdens Silver Pty Limited [2024] NSWLEC 17

MATTHEW CARBONE v FOWLER 2023/443714 (Weber SC DCJ – 10/11/23)
GUISEPPE CARBONE v FOWLER 2023/443762 (Weber SC DCJ – 10/11/23)
BUILDING & CONSTRUCTION – the proceedings involved two contracts between the respondent and each of the appellants (Matthew and Giuseppe) to construct two homes at Oran Park (the contracts) – Matthew is Giuseppe's son – as the building works approached completion, there was a dispute as to the state of accounts on each contract – the appellants alleged that they had overpaid the respondent and sought repayment – the respondent alleged that the appellants had underpaid and refused to grant access to the homes – the appellants commenced proceedings

seeking an order for specific performance of the contracts – by a commercial compromise the respondent agreed to finalise the works and give possession to the appellants – the proceedings remained on foot to determine the amounts owing under the contracts – the respondent did not file a cross claim – the appellants each claimed that they were entitled to a credit in the accounting in respect of the sum of $30,000 they had each paid to Camden Council, and to damages on account of foregone rent – Giuseppe alleged that he was entitled to a credit on account of a cash payment of $60,000 he had allegedly made to the respondent – the primary judge made initial orders and published reasons in February 2023, then appointed a Referee in March 2023 to determine the outstanding issues between the parties – the primary judge in final orders made in November 2023 adopted the Report and Addendum Report of the Referee – the primary judge held that the appellants were not entitled to $30,000 credits on account of the payments to Camden Council, or to damages on account of foregone rent – the primary judge ordered that the respondent pay Matthew $22,000 (plus interest), but ordered that Matthew pay the respondent's costs – in respect of Giuseppe, the primary judge entered judgment for the respondent and ordered that Giuseppe pay the respondent's costs, having found that Giuseppe did not make a $60,000 cash payment to the respondent – whether the primary judge erred in the interpretation of the appellants' pleadings, particularly in respect of the claims for damages for breach of contract and unconscionable conduct under the Australian Consumer Law – whether the primary judge erred in failing to address the appellants' claims for damages for misleading and deceptive conduct – whether the primary judge erred in failing to find loss of rent – whether the primary judge erred in the construction of the contract – whether the primary judge erred in adopting the referee's report – whether the primary judge erred in failing to find that the respondent had breached the contract –– whether the primary judge erred in the determination of costs – whether the primary judge erred in failing to disqualify himself for actual bias (in respect of the Matthew proceedings) – whether the primary judge erred in failing to find that the $60,000 payment had occurred (in respect of the Giuseppe proceedings).
Carbone v Fowler Homes Pty Ltd [2023] NSWDC 29 (Weber SC DCJ)

TUESDAY 23 JULY 2024

SAWANEH v FLINTWOOD DISABILITY 2023/458235 (Walton J – 15/12/23)
ADMIN LAW (judicial review) – application for leave to appeal from the dismissal of a Summons seeking judicial review of a decision of a Medical Appeal Panel – 10 April 2020 the Applicant was in the course of her employment when she allegedly slipped on a wet floor and sustained injuries to her lower extremity and lumbar spine – her claim was provisionally accepted by her employer's insurer, iCare, but was subsequently disputed by iCare – following internal review and an external application to the Personal Injury Commission of NSW, the case was referred for medical assessment – denial of procedural fairness not found and no jurisdictional error found as to the opinion as to whole person impairment.
Sawaneh v Flintwood Disability Services Ltd [2023] NSWSC 1589

CRITCHLEY v GOWAY 2024/14521 (Slattery J – 15/12/23)
EQUITY – the respondent (through an employee, Ms Comito) sold international travel services (the services) to the appellants between 2013 and 2018 – the services were sold through a Staff Family and Friends travel scheme (the Scheme) through which the appellants were offered discounted travel at rates substantially below market rates and below the likely wholesale cost of providing the travel services – in July 2018, the respondent discovered that Ms Comito was responsible for irregularities in the Scheme, and that the services had been marketed and sold through the Scheme without the respondent's authority and in breach of Ms Comito's fiduciary duty to the respondent

– the respondent sought recovery of the cost of the services – the respondent contended that Ms Comito offered the appellants services so substantially below their retail market value that they must have been aware that she could not have been acting in the course of her duties as an employee of the respondent or in the interest – the primary judge found that from March 2015, the appellants were not entitled to deal with the respondent on the basis that Ms Comito had ostensible authority to act on behalf of the respondent – the primary judge ordered the appellants to restore to the respondent the net benefits received by the appellants under the Scheme – whether the primary judge erred in finding that the appellants' reliance on the respondent's representations was not reasonable – whether the primary judge erred in finding that Ms Comito breached her fiduciary duty to the respondent – whether the primary judge erred in failing to find that Ms Comito had ostensible authority to bind the respondent when providing travel services to the appellants – whether the primary judge erred in finding that the appellants had knowledge (in the *Baden* categories (2)-(4) sense, from various times) of Ms Comito's breaches of fiduciary duty – whether the primary judge erred in finding that the appellants were on notice of a real and not remote risk that Ms Comito was breaching her fiduciary duty to the respondent – whether the primary judge erred in failing to find that the appellants were only liable for any products and services used after 19 June 2018.
GOWAY Travel Pty Limited v Critchley & Anor [2024] NSWSC 2

WEDNESDAY 24 JULY 2024

TOLTZ v CITY GARDEN 2023/461689 (Rees J – 5/12/23 and 31/1/24)
EQUITY – the respondent, a property developer, undertook a development in North Rocks with a related company (the builder) – three loans were obtained for the builder but in the name of (or guaranteed by) the respondent – each successive transaction was partially used to pay out the lender on the previous transaction – the respondent, now in administration, brought proceedings against the lenders (seeking declarations that the finance documents are void and unenforceable), against one of its directors and its secretary (seeking damages for breach of director's duties and a declaration that the secretary was not validly appointed), and against the appellant (the respondent's solicitors) for breach of fiduciary duty where the appellant acted for the lenders on the transactions – the primary judge (among other orders) entered judgment against the appellant for 75% of the amount owing by the respondent under the third transaction ($16.4 million) – whether the primary judge erred in the assessment of the scope of the appellant's retainer to the respondent at the time of the first transaction – whether the primary judge erred in finding that it was "not clear" if independent legal advice had been provided to the respondent regarding the first transaction – whether the primary judge erred in finding that the appellant owed a fiduciary duty to the respondent in relation to the first transaction and that the appellant was therefore in a position of conflict – whether the primary judge denied the appellant procedural fairness in finding that the appellant was liable for a breach of fiduciary duty – whether the primary judge erred in finding that the respondent did not give fully informed consent to the appellant – whether the primary judge erred in finding that causation against the appellant was made out on the basis of a counterfactual argument – whether the primary judge erred in determining that the appellant's breach of duty caused loss in the form of 75% of the respondent's indebtedness – whether the primary judge erred in the assessment of loss – whether the primary judge erred in finding that s 34 of the *Civil Liability Act 2022* did not apply.
City Garden Australia Pty Ltd (in administration) as trustee for the Ming Tian City Garden Unit Trust v Meng Dai [2023] NSWSC 1498
City Garden Australia Pty Ltd (in administration) as trustee for the Ming Tian City Garden Unit Trust v Dai (No 2) [2024] NSWSC 22

CRITCHLEY v GOWAY 2024/14521 (Slattery J – 15/12/23)

Day 2

MANHATTAN HOMES v BURNETT 2024/63874 (Schmidt AJ – 8/2/24)
TORT (negligence) – in February 2019, the first respondent, whilst employed by the second respondent, was seriously injured whilst working on a construction site controlled by the appellant – the appellant claimed that the second respondent, as employer, owed the first respondent a non-delegable duty – the second respondent accepted that it owed a duty of care to the first respondent, but sought an indemnity and/or contribution under the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (LRMP Act), and also advanced claims against the appellant in relation to workers compensation payments it had made to the first respondent – the SafeWork Inspector who attended the workplace and spoke to the first respondent concluded that the conduct of both the first respondent and appellant had contributed to his fall – the primary judge found that the statutory notification was an admission – the primary judge found that the appellant had breached the duty it owed to the first respondent regarding its requirement to exercise reasonable care in relation to the safety of its building site, and that the second respondent owed a non-delegable duty to the first respondent, and caused the injuries – the primary judge found that the first respondent was not contributorily negligent – the primary judge found that the appellant had the primary responsibility for the injuries suffered by the first respondent, assessed at 80% – the primary judge awarded damages for future care, finding that it could not be presumed that the first respondent's partner would continue to provide care - whether the primary judge erred in admitting into evidence the representations contained the SafeWork Report as an admission – whether the primary judge erred in not accepting the evidence of the SafeWork Inspector – whether the primary judge erred in finding that the appellant was 80% liable for the harm suffered by the first respondent – whether the primary judge erred in finding that the first respondent had no residual earning capacity – whether the primary judge erred in including in the award an element for commercial domestic assistance – whether the primary judge erred in the quantum of damages as manifestly excessive.
Burnett v Manhattan Homes Pty Ltd [2023] NSWSC 1431

THURSDAY 25 JULY 2024

TOLTZ v CITY GARDEN 2023/451689 (Rees J – 5/12/23 and 31/1/24)

Day 2

FRIDAY 26 JULY 2024

TOLTZ v CITY GARDEN 2023/451689 (Rees J – 5/12/23 and 31/1/24)

Day 3

Supreme Court
of New South Wales

YI v PARK 2024/146740 (Elkaim J – 22/3/24)

CONTRACT – the parties are the children of Mrs Young Ja Yi (the deceased) – the deceased died on 4 June 2020 – probate of the deceased's will dated 2 June 2020 was granted to the appellant – the respondent contended that she was entitled to $500,000 from the estate of the deceased, on account of a "Dead of Loan Agreement" made on 13 July 2017 between the respondent and the deceased (the Loan Agreement) – the appellant contested the validity of the Loan Agreement on several bases, including that the respondent had not given any valuable consideration – the primary judge found that the respondent had provided consideration, in the form of forbearance that the respondent would not seek repayment of a loan made to the deceased – the primary judge entered judgment for the respondent – whether the primary judge erred in finding that the respondent provided valuable consideration for the Loan Agreement.

Eun Ju Park v Chong Eun Yi as executor of the late Young Ja Yi [2024] NSWSC 294