

HENRY DURACK

Some Recent Cases

Insolvency, Receiverships, Statutory Trusteeships and Bankruptcy

- *Australia and New Zealand Banking Group Limited v James* [2021] FCA 768 (Cheeseman J) – for the respondent to the bank’s Creditor’s Petition, which was in respect of an amount of \$11,751,606.73. The bank sought to bankrupt the respondent on a judgment debt arising from a consent judgment in the amount of \$13,928,818.66. The respondent sought to go behind the judgment (*Ramsay Health v Compton*) and to controvert the existence of the underlying liability which founded the consent judgment - led by M Condon SC
- *In the matter of Damons Insurance Brokers Pty Ltd (in liquidation) ACN 003 097 158 and Brian Arrow* (District Court, NSW) – for the liquidator on a claim for loss and damage for alleged breach of director’s duties (current) - unled
- *In the matter of SPG Projects Pty Ltd ACN 601 486 864 (in liquidation)* (Federal Court of Australia) - for the liquidator on public examinations (2021) - unled
- *Dmaaj Pty. Ltd. v V-BEK Investments Pty. Ltd. & Anor* (Supreme Court, NSW) - for the plaintiff on an application to appoint a receiver of trust property, which was allegedly in jeopardy due to the conduct of the trustee (2020/21) - led by R D Marshall SC (settled)
- *Christina Huizing & Anor v Stephen Carley-Conway & Anor* [2020] NSWSC; unreported (Kunc J) - for the plaintiffs on a successful application to appoint a Receiver (D Levi, Registered Liquidator) to the assets of two partnerships, comprising multiple properties throughout New South Wales, following a serious breakdown in relations between partners - unled
- *Pantos & Ors v Georgopoulos* [2018] NSWSC; unreported (Kunc J) - for the plaintiffs on a successful application to appoint a statutory trustee for sale (D Levi, Registered Liquidator) to a mixed commercial / residential property in New South Wales, following a protracted and difficult dispute between multiple family members who were co-owners - unled
- *Weston in his capacity as liquidator of Starcom Group Pty Ltd (in liq) v Rajan* [2018] FCA 1737 (Lee J) - on an application for a permanent stay of an attempted directors’ insolvent trading recovery by a liquidator - led by Mr R D Marshall SC
- *In the matter of Central Management (NSW) Pty Ltd* [2017] NSWSC 1258 (Black J) - for the company and its liquidator on claims for breach of directors’ duties (including as de facto director) in causing, or failing to prevent, the company from making payments to its detriment and whether the payments were recoverable against the payee as a loan - led by R D Marshall SC
- *In the matter of ACN 159 605 188 Pty Ltd (aka Securimax)* [2017] NSWSC 1642 (Brereton J) - for a member and officer on a successful application for a review of the remuneration paid to the voluntary administrators of the company - led by Mr R D Marshall SC
- *Jiang & Anor v Mansour* [2019] FCCA 2004 (Judge Manousaridis) - for the judgment creditor on a successful application for summary dismissal of proceedings to set aside a bankruptcy notice – unled

- *Gillion Pty Limited (Trustee) v Wet Fix Holdings Pty Limited* [2016] FCA 1424 - for the defendant on a successful application for leave to oppose the plaintiff's winding up application on the ground that the defendant disputed the debt in the statutory demand - led by R D Marshall SC
- *Singtel Optus Pty Ltd & Ors v Weston & Ors* [2013] NSWSC; unreported (Bergin CJ in Eq) - on an application concerning the special purpose liquidator's entitlement to be indemnified for costs and expenses incurred by him in that role - led by Mr S Golledge (now of senior counsel (SC))
- *Toppi & Anor v Lavin* [2013] NSWSC 1931 (White J) - on the question of a co-surety's right to subrogation - led by Mr S Golledge (now of senior counsel (SC))
- *New Age Constructions v Etlis, in the matter of Etlis* [2013] FCA 884 (Yates J) - successful application to set aside a personal insolvency agreement and for a sequestration order - led by Mr S Golledge (now of senior counsel (SC))
- *Lahood v Bank of Western Australia (No 3)* [2013] FCA 861 (Katzmann J) - on an appeal against a sequestration order - led by Mr R D Marshall (now of senior counsel (SC))
- *Smith v Jarvie* [2014] NSWSC 1823 (McCallum J) - successful application for a vexatious proceedings order in a liquidation recovery context - led by Mr R D Marshall (now of senior counsel (SC))

General commercial

- *Donghao Capital Pty Ltd & Anor v Shaoyong Guo* (Supreme Court, NSW) - for the plaintiffs on a breach of contract claim for approximately \$6,000,000, where the defendant alleges undue influence, duress and unconscionable conduct in connection with the execution of the contract (current) - unled
- *Rahal v Abedin* [2022] NSWSC 232 (Walton J) - for the plaintiffs in successfully opposing an application to set aside a default judgment for almost \$1,000,000, pursuant to breach of a loan agreement, on the basis that there was no bona fide defence on the merits - unled
- *Midcoast Petroleum Pty Limited v Keldros Pty Limited & Anor* [2019] NSWSC 970 (Ward CJ in Eq) - for the defendants, including the former tenant of a petrol station, in the successful defence of a substantial claim for land contamination (failed underground fuel tanks) and failure to make good the above ground improvement - led by Mr R D Marshall SC
- *Midcoast Petroleum Pty Limited v Keldros Pty Limited & Anor* [2019] NSWSC 1406 (Ward CJ in Eq) - for the defendants on a successful application for indemnity costs from the making of a calderbank offer two years prior to the final hearing - led by Mr R D Marshall SC
- *Midcoast Petroleum Pty Limited v Keldros Pty Limited & Anor* (NSW, Court of Appeal) - appeal of above decisions - led by Mr R D Marshall SC (settled)
- *Desmond Grigor v Doreen Grigor & Anor* [2018] NSWSC; unreported (Robb J) – for the plaintiff on a successful *ex parte* application for a freezing order in respect of \$1,000,000 in funds, being the proceeds of sale of jointly owned property - unled
- *Hyde v Tabone* [2018] NSWSC 1601 (Adamson J) - successful at first instance and as defendant on appeal on a claim for restitution of money had and received - unled

Banking and finance

- *Westpac Banking Corporation v Jeffrey Bruce Walton & Ors* [2016] NSWDC; unreported (Robison DCJ) - instructed by Gadens Lawyers - successful application for summary judgment on behalf of the bank relating to the customer's default under equipment finance facilities secured by guarantees - unled
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Wills and estates, Probate and Family Provision

- *Boyd v Couch; Estate of Janice Couch*; for the claimant / adult daughter on an application for a family provision order regarding her late mother's estate. Where it was alleged that the claimant was estranged from her mother for some time (2021/22) - unled (settled)
- *Burgess v Wilson; Estate of Frank Burgess* (Supreme Court) - for the estate on an application for a family provision order by the deceased's estranged wife (2019) - unled (settled)
- *Catania v Catania; Estate of Charles Catania* (Supreme Court) - for the estate on claims for family provision orders by two adult sons (2019) - unled (settled)
- *Grigor v Grigor; Estate of Desmond Grigor* (Supreme Court) - for the claimant / adult son on an application for a family provision order regarding his late father's estate. Also dispute as to the will to be admitted to probate on the grounds of alleged incapacity (2019) - unled (settled)
- *Burgess v Barnes; Estate of Kathleen Burgess* (Supreme Court) - for the defendants on a recovery action in a protracted dispute as to whether the deceased had capacity to make certain *inter vivos* gifts (2017-19) - led by Mr R D Marshall SC (settled)
- *Hughes v Sharp; Estate of Beryl Hughes* [2017] NSWSC 962 (Hallen J) - for the estate on an application for a family provision order by an adult son - led by Mr R D Marshall SC
- *Ham v Matthews & Ors; Estate of John Sanday* (Supreme Court) - for the claimant / adult stepson on an application for a family provision order regarding his late stepfather's estate (2016-17) - led by Mr R D Marshall SC (settled)
- *Coffey v Coffey* [2015] NSWSC 137 (Slattery J) - on an administration suit – unled
- *Henry v Northern* [2013] NSWSC 1843 (Darke J) - for the estate on an application for a family provision order by an adult daughter in relation to her late father's estate - led by Mr R D Marshall (now of senior counsel (SC))

Real property

- *Graham Rodney Friend v Lorraine May Sole* [2013] NSWSC 1046 (Kunc J) - successful application for leave to file a further caveat – unled
- *Unlimited Property Solutions trading as Harcourts Real Estate v Hui Zhang, Cross Claimant Hui Zhang v Cathy Thuy Ngyuen* NSWLC 241961/2013 - on a claim by a real estate agent for unpaid commission. Successful cross-claim against purchaser of residential property for breach of an agency warranty - unled

Tax Crime

- *Caratti v Commissioner of the Australian Federal Police* [2017] FCAFC 177 (Logan, Rangiāh & Bromwich JJ) - for the appellant/taxpayer, in seeking to set aside search warrants as part of an ATO/AFP joint investigation - led by Mr P K Bruckner

Practice and procedure

- *RFD Australia Pty Limited v Hanney Hamza & Anor* [2015] NSWSC; unreported - successful application in the Equity Division for disclosure of documents prior to the parties having served their evidence - unled
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