

## ROGER MARSHALL SC

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### Select Cases Last 12 years

#### Appeals

- *Wakim v Senworth Capital Pty Ltd* [2024] NSWCA 102 - Unconscionability
- *Data Transfer Services Pty Ltd v White* (2023) 111 NSWLR 25 – Estoppel
- *Goo v Kim (No. 2)* [2023] FCA 1285 – Bankruptcy/specific performance
- *Davis v Peterson* (2023) Fam LR 110 – Bankrupt wife, land held on trust for parents
- *Rowe v Metroll SA Pty Ltd* [2021] NSWCA 96 – Personal guarantee
- *Tome Bros Pty Ltd v Ken Crossman & Co Pty Ltd* (2023) 296 FCR 241 – Auditor
- *Valmont Interiors Pty Ltd v Giorgio Armani Australia Pty Ltd (No 2)* [2021] NSWCA 93 - Promissory estoppel
- *Jaeger v Bendigo and Adelaide Bank Ltd* [2018] NSWCA 116 – Equitable assignments
- *ABCD Corp Pty Ltd v Sampson* [2017] NSWCA 117 - Stay on Receivership pending appeal
- *Hanson Construction Materials v Roberts* [2016] NSWCA 240 – s74MA RPA removal of caveat to permit refinance
- *Conference and Exhibition Organisers v Johnson* [2016] NSWCA 118 – Anshun estoppel
- *Toyota Finance Australia Limited v Gardiner* [2016] NSWCA 162 – Director’s guarantee of finance contracts
- *Colbron v Freeman* [2014] NSWSC 1210 (McCallum J) - Appeal under *Legal Profession Act*
- *Seller v Jones* [2014] NSWCA 19 - Appeal against indemnity costs awarded against director of wrongdoer company
- *Lahoud v Bankwest* [2013] FCA 861 (Katzman J) - Bankruptcy appeal
- *Suburban Property Owner and Commissioner of Taxation* [2012] AATA 394 - Income tax appeal
- *Brock v Roads and Maritime Services* [2012] NSWCA 404 - Appeal in regard to disturbance in land valuation case
- *Sadcas Pty Ltd v Business and Professional Finance Pty Ltd* [2011] NSWCA 267 - Appeal in conversion case in business context
- *Patey-Dennis v MUT Constructions (NSW) Pty Ltd* [2011] NSWSC 497 (Rothman J) - Misleading and deceptive conduct by land developer
- *Old v McInnes* [2011] NSWCA 410 - Appeal regarding partnership accounts and costs

- *NA Investments Holdings Pty Ltd v. Perpetual Nominees Ltd* (2010) 79 ACSR 544 (C of A) - Appeal regarding creditors statutory demand on limited recourse loan

## **First Instance Cases**

### **Receivers**

- *Topp v Nazdia* [2020] FCA 1780, 149 ACSR 152 (Rares J) - Remuneration
- *Topp v Nazdia Pty Ltd* [2020] FCA 1764 (Rares J) - Apportioning between two trusts
- *Topp v Aidzan Pty Ltd (In Liq)* [2019] FCA 313 (Yates J)
- *Re: Australasian Barrister Chambers Pty Ltd* [2016] NSWSC 1767 (Brereton J) - Receiver appointed
- *Re: Australasian Barrister Chambers Pty Ltd* [2016] NSWSC 1939 (Brereton J) - Stay of Receivership
- *Re: Australasian Barrister Chambers Pty Ltd (In Liq)* [2017] (Black J) NSWSC 245 - Receivership
- *Re: Australasian Barrister Chambers Pty Ltd (In Liq)* [2017] (Black J) NSWSC 597 – Receivership
- *Re: Australasian Barrister Chambers Pty Ltd (In Liq)* [2017] (Black J) NSWSC 627 - Receivership
- *Re: Australasian Barrister Chambers Pty Ltd* [2019] NSWSC 799 (Brereton J) – Receiver’s remuneration
- *Gleeson (Liquidator); In the Matter of Kingston Property Holdings Pty Limited (In Liq) (No 2)* [2017] FCA 974 (Markovic J) – Receiver’s judicial advice
- *Gleeson (Liquidator); In the Matter of Kingston Property Holdings Pty Limited (In Liq)* [2016] FCA 1093 (Foster J) – Receiver appointed to self-managed superfund

### **Winding Up**

- *Re: Vaucluse 29 Pty Ltd* [2023] NSWSC 631 (Black J) – Winding up, share register rectification
- *Elevate NSW Pty Ltd v Canada Bay Hospital Pty Ltd* (2019) 138 ACSR 186 (Griffiths J) - Statutory demand/offsetting claim
- *Gillion Pty Ltd (as trustee for the Summerfield Trust) v Wet Fix Holdings Pty Ltd* [2016] FCA 1424 (Gleeson J) – Winding up defended, s459S

### **Bankruptcy**

- *Goo v Kim (No. 2)* [2023] FCA 1285 (Halley J) – Petition appeal/specific performance
- *Peterson and Davis* [2022] FedCFam1F 402 – Leave refused to bankrupt wife
- *Peterson and Davis (No. 2)* [2022] FedCFam1F 406 – Vested rights

- *Kite (Trustee), Murray (Bankrupt) v Murray* [2023] FCA 198 (Raper J) – Section 139DA recovery
- *Scott (Trustee), Stolyar (Bankrupt) v Stolyar* [2022] FCA 691 (Markovic J) – Recovery
- *Condon Re Rayhill v ANZ Bank* [2020] FCA 1674 (Stewart J) – Vesting of residuary interest
- *Weston v Pennisi* [2020] FCCA 1256 Baird FCCJ – Income contribution
- *Weston v McAuley* [2020] FCCA 1135 Manousaridis FCCJ – Income contribution
- *Peterson v Davis (No 2)* (Foster J) [2020] Fam CA 994 - Costs of Trustee
- *Mehajer v Weston (Trustee)* [2018] FCA 608 (Lee J) - Stay on bankruptcy
- *Leroy v Koutavas (No 2)* [2017] FCA 912 (Robertson J) – Land Recovery
- *Boston Management v O'Donnell* [2017] FCCA 957 – Set aside Personal Insolvency Agreement
- *Silvia (Trustee) v Williams (Bankrupt)* [2018] FCA 189 (Wigney J) - Recovery
- *Weston v McAuley* [2017] FCCA 1 – Recovery action
- *Deputy Commissioner of Taxation; ACN 154 520 199 Pty Ltd (In Liq), Re ACN 154 520 199 Pty Ltd (In Liq) (No2)* [2017] FCA 755 (Gleeson J) – Limited recourse indemnity for SPL
- *Re ACN 092 745 330 Pty Ltd (In Liq)* [2017] NSWSC 241(Barrett J) – Recovery action
- *Leroy (Trustee); In the matter of Vitale v Vitale* [2016] FCA 999 (Wigney J) – Bankruptcy trustees court directions on compromise of action
- *Adelaide Bank v Phontos* [2016] FCA 824 (Robertson J) – Jurisdiction in Bankruptcy
- *Health Services Union v Kathy Jackson* [2015] FCA 694 (Tracey J) – Leave to proceed against bankrupt
- *Taylor (Trustee) in the matter of Jarvie* [2015] FCA 590 (Katzmann J) – s50 *Bankruptcy Act*
- *Roufeil (Trustee) in the matter of Jarvie (Bankrupt)* [2015] FCA 232 (Gleeson J) – Distribution application
- *Lahoud v Ernst & Young* [2015] FCA 89 (Foster J) – Application to remove bankruptcy trustee

#### Liquidations/Vas

- *Viterra BV v Shandong Ruyi Technology Group Co Ltd* (2022) 291 FCR 640 (Stewart J) – International mareva
- *Fogo Brazilia Holdings Pty Ltd (In Liq)* (2022) 162 ACSR 380 (Williams J) – Removal of liquidator
- *Lewis v Battery Mineral Resources Ltd (In Liq)* (2021) 156 ACSR 162 (Griffiths J) – Special purpose liquidator
- *Australasian Barrister Chambers Pty Ltd* [2020] NSWSC 304; 146 ACSR (Rees J) - Liquidator's release

- *DCT v ACN 154 520 199 Pty Ltd (In Liq)* [2020] FCA 609; 145 ACSR 1 (Jagot J) - Cost against liquidator
- *DCT v ACN 154 520 199 Pty Ltd (In Liq)* [2020] FCA 134 (Jagot J) - Special purpose liquidator
- *Smith, RE Buddy Management Pty Ltd (In Liq) v Buddy Management Pty Ltd (In Liq)* [2019] FCA 566 (Gleeson J)
- *Hathway, Stacey Apartments Pty Ltd (In Liq) v Southern Cross Estate Developers Ltd (Deregistered)* [2019] FCA 1218 (Jagot J) – Pooling
- *Melhelm Pty Ltd v Boka Beverages Pty Ltd (In Liq)* (2019)138 ACSR 95 (Gleeson J) – Special purpose liquidator
- *Melhelm Pty Ltd v Boka Beverages Pty Ltd (In Liq) (No 2)* [2019] FCA 1809 (Gleeson J) – Liquidator’s right of indemnity/costs
- *Re Central Management (NSW) Pty Ltd* [2017] NSWSC 1258 (Black J) – Liquidator’s recovery
- *Re: ACN159 605 188 Pty Ltd* [2017] NSWSC 1642 (Brereton J) – Review ordered of creditor approved remuneration
- *Re: ACN159 605 188 Pty Ltd (formerly Securimax Pty Ltd)* [2018] NSWSC 356 (Black J) – VA remuneration & replacement
- *Re: Australasian Barrister Chambers Pty Ltd* BC 201912266 (Black J) – Liquidator’s remuneration
- *Atlas Construction Group Pty Ltd (In Liq); Fitzjersey Pty Ltd v Fraser* (2018) 129 ACSR 238 (Ward CJ) – Replacing Liquidators
- *Weston in his capacity as liquidator of Starcom Group Pty Ltd (In Liq) v Rajan* [2018] FCA 1737 (Lee J) – Stay of Director’s Insolvent Trading case
- *Owners SP 84741 v Iris Diversified Property Pty Ltd (In Liq)* (2018) 128 ACSR 106 (Black J) – Removal of Liquidator
- *Loi (Administrator) v Veraz Enterprises Pty Ltd* [2016] FCA 1109 (Foster J) – VA recovery
- *In the matter of Joe and Joe Developments Pty Ltd* [2014] NSWSC 1444 (Black J) - Challenge to DOCA administrators’ conduct
- *HWY Rent Pty Ltd v HWY Rentals Pty Ltd (in Liq) (No. 2)* [2014] FCA 449 (Perry J) - Vexatious litigant application in liquidation recovery context

- *In the matter of Colorado Products Pty Ltd (in prov. liq.)* [2013] NSWSC 1613 (Black J) - Cause of action assignment from liquidator
- *Re: Goyal, ACN 154 520 199 Pty Ltd (In Liq)* [2018] FCA 129 (Gleeson J) – SPL / Coy examinations
- *The Old Kiama Wharf Co. Pty Ltd v Betohuwisa Pty Ltd* [2011] NSWSC 823 (Pembroke J) - Recovery action
- *In the matter of Lawrence Waterhouse Pty Ltd (in Liq.)* [2011] NSWSC 964 (Ward J) - Director's breach of fiduciary duty, wilful default accounting ordered
- *Re. Green and Another (as voluntary administrators of Bevillesta Pty Ltd* (2011) 84 ACSR 215 (Bergin CJ in Eq.) - Contested directions regarding significant creditor's trust under DOCA
- *HFGC Nominees (No. 2) Pty Ltd v Hancock as Liquidator of 246 Arabella Investments Pty Ltd (in Liq)* [2010] FCA 1005 (Perram J) - Leave to proceed in name of liquidated company to review amended income tax assessment
- *In the matter of SSET Construction Pty Ltd (in Liq) - Sims v Khattar* [2010] NSWSC 102 (Austin J) - Director's insolvent trading recovery by liquidator
- *Young & Anor v Commissioner of Taxation* [2010] NSWSC 288 (Palmer J) - Liquidator's recovery against ATO

#### Succession

- *AW V WW* [2023] NSWSC 724 – Appeal against NCAT Guardianship Division
- *Hughes v Sharp* [2017] NSWSC 962 (Hallen J) – Family Provision
- *Petronaitis v Petronaitis* [2016] NSWSC 765 (Black J) – Specific performance of agreement reached in mediation re probate/FPA issues
- *In the Estate of the late Ronald Robert Irvine; Evans v Gibbs* [2015] NSWSC 432 (Stevenson J) – Informal will admitted to probate
- *West v France* [2010] NSWSC 845 (Hallen J) - Succession claim
- *Jeffery v Guider* [2010] NSWSC 705 (Ball J) - Succession claim

#### Other Interesting Cases

- *K & A Laird (NSW) Pty Ltd (In Liq) v Aidzan Pty Ltd (In Liq)* (2022) NSWSC 510 (Williams J) – Freezing Order
- *Premier Protection Agency (Aust) Pty Ltd v ASIC* (2021) NSWSC 374 (Slattery J) – Government contract

- *Galati v Deans* [2021] NSWSC 1094 (Ward CJ in Eq) – Partnership
- *South Townsville Developments Pty Ltd v Luran Pty Ltd* (2021) FCA 941 (Stewart J) – Anshun estoppel
- *Norcross Pictorial Calendars Pty Ltd v Central Coast Council* [2020] NSWSC 1201 (Stevenson J) - Privity of contract
- *Condon, Re Rayhill v Australia and New Zealand Banking Group Ltd* [2020] FCA 1674 (Stewarts J) – Trustee sues over negligent mortgage sale
- *Central Coast Council v Pastoral Investment Land & Loan Pty Ltd* [2020] NSWSC 777 (Darke J) - Specific Performance
- *Re: Application of Aesthete Pty Ltd* [2019] NSWSC 965 (Henry J) - Trustee’s Court directions
- *TJ and RF Fordham Pty Ltd v Starhill Property Group Pty Ltd* [2017] NSWSC 240 (Campbell J) – Sequestrator appointed in common law
- *Midcoast Petroleum Pty Ltd v Keldros Pty Ltd* [2019] NSWSC 970 (Ward CJ) - Contract
- *GFIN Pty Ltd v Gooden* [2019] FCA 1313 (Gleeson J) – Strike out
- *Re Karinya Haulage Pty Ltd* [2017] NSWSC 888 (Brereton J) – Derivative action/fraud
- *Norcross Pictorial Calendars Pty Ltd v Central Coast Council* [2018] NSWSC 1475 – Strike out
- *Braye v Tjarnawskyj* (2019) 19 BPR 39213 (Darke J) – Adverse possession
- *Re Cougar Mining Group Pty Ltd* [2016] NSWSC 1050 (White J) - Strike out
- *Ronald Coshott v Michelle Parker* [2015] NSWSC 998, [2015] NSWSC 1020 (Davies J) – Subrogation
- *Smith & HWY Rentals v Russell Jarvie* [2014] NSWSC 1823 (McCallum J) – Vexatious litigant declaration
- *Sturt and Anor v the Right Reverend Dr Brian Farran Bishop of Newcastle and Ors* [2012] NSWSC 400 (Sackar J) - Challenge in equity to Anglican Church by defrocked priests
- *Old v Hodgkinson* [2010] NSWSC 1335; [2009] NSWSC 1160; [2008] NSWSC 697; [2004] NSWSC 1202 (Young CJ in Eq.) - Contested partnership accounts