

DAVID HARRIS

BARRISTER



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SELECTED RECENT CASES (BY PRACTICE AREA)

Appeals and related

- *Australian Competition and Consumer Commission v Kimberly-Clark Australia Pty Ltd* [\[2019\] FCA 992](#) (on appeal – judgment reserved). “Flushable Wipes” – misleading or deceptive conduct – consumer protection. Acted for Kimberly-Clark in its successful defence of Federal Court proceedings commenced by the ACCC. Led by John Sheahan QC and Jonathon Redwood, instructed by King & Wood Mallesons.
- *Bupa HI Pty Ltd v Chang* [\[2019\] FCAFC 180](#). Use of Medicare Benefits Schedule items – interpretation of statutory instrument – claims of misleading or deceptive conduct, unjust enrichment, breach of contract (subject of trial and appeal) – assessment of damages (heard separately, settled prior to hearing). Acted for Bupa. Led by Noel Hutley SC (on appeal) and Cynthia Cochrane (at trial). Briefed directly by Bupa’s in house counsel.
- *Bandara v Director of Public Prosecutions* [\[2016\] NSWCA 140](#). Judicial review – administrative law. Appeared as amicus in proceedings in the NSW Court of Appeal (led by Michael Heath).

Construction and infrastructure

- *G Developments (NSW) Pty Ltd v INA Latitude One Development Pty Ltd* (NSW Supreme Court proceedings, Technology and Construction List, ongoing). Liquidated damages – contractual penalty – construction defects – date of practical completion. Acting for plaintiff in \$1.3 million construction dispute. Led by Mark Martin QC, instructed by Evans Lawyers.
- Acted for CIMIC in \$1.1 billion commercial arbitration with Chevron concerning the Gorgon LNG jetty project. Instructed by Corrs Chambers Westgarth.
- *Vertikote Corp Pty Ltd v Corcorans NSW Pty Ltd* (2016 NSW Local Court proceedings). Successfully obtained judgment for plaintiff in debt recovery proceedings – dispute as to contractual parties – dispute as to defects and value of works. Unled, instructed by Greenmonts Legal Pty Ltd.

Contract law

- *ETCAB Pty Ltd v Liang* (NSW District Court proceedings, ongoing). Acting for defendants in dispute over sale of taxi cabs – disputed oral contract – alleged declarations of trust – claim for account of profits – successful interlocutory application to obtain security for costs. Unled, instructed by Pigott Stinson Lawyers.
- *G Developments (NSW) Pty Ltd v INA Latitude One Development Pty Ltd* (NSW Supreme Court proceedings, Technology and Construction List, ongoing). Liquidated damages – contractual penalty – construction defects – date of practical completion. Acting for plaintiff in \$1.3 million construction dispute. Led by Mark Martin QC, instructed by Evans Lawyers.
- *Mai v Letcher* (NSW District Court proceedings, ongoing). Claim for recovery of debt – breach of contract – misleading or deceptive conduct – insolvent trading (creditor bringing proceedings with consent of liquidator). Led by Gregory Burton SC, instructed by Du & Associates.
- *Pantos Logistics Australia Pty Ltd v ACFS Port Logistics Pty Ltd* (NSW District Court proceedings, ongoing). Acting for plaintiff, the provider of transportation services for LG in Australia, in breach of contract and debt claim. Unled, instructed by Sojong Lawyers.
- *Dawson v Bartlett* (2020 NSW District Court proceedings, settled after mediation). Breach of contract – allegation of unreasonable refusal to consent to assignment of lease – assessment of damages – successful application to set aside default judgment. Unled, instructed by Everingham Solomons Solicitors.
- *Bupa HI Pty Ltd v Chang* [\[2019\] FCAFC 180](#). Use of Medicare Benefits Schedule items – interpretation of statutory instrument – claims of misleading or deceptive conduct, unjust enrichment, breach of contract (subject of trial and appeal) – assessment of damages (heard separately, settled prior to hearing). Acted for Bupa. Led by Noel Hutley SC (on appeal) and Cynthia Cochrane (at trial). Briefed directly by Bupa’s in house counsel.
- *Pro-Duct Pty Ltd v Airfoil Manufacturing Pty Ltd* (2019 NSW District Court proceedings, settled prior to hearing). Contractual dispute between suppliers of air-conditioning products – oral contract – restitution claim for reasonable price of goods. Unled, instructed by Pigott Stinson Lawyers.
- *Silkroad Technology Pty Ltd v Vocus Group Ltd* (2018 NSW District Court proceedings, settled following mediation). Acted for Vocus, defending breach of contract claim – cross-claim for misleading or deceptive conduct – product suitability representations – software technology. Unled, instructed by Phillips Law & Advisory.
- *BrisConnections Finance Pty Ltd (receivers and managers appointed) & Ors v Arup Pty Ltd*. Acted for Thiess and John Holland throughout 2016-2017 in Federal Court proceedings involving contractual and misleading and deceptive conduct claims about traffic forecasts for the Brisbane M7 Airport Link project. Led by John Sheahan QC and Hugh Stowe, instructed by MinterEllison.

- *Dental Corporation Pty Ltd v Lee & Anor* [\[2016\] NSWSC 1859](#). Acted for plaintiff in Commercial List trial to enforce a contractual restraint of trade – successful interlocutory application for confidentiality orders. Led by Cynthia Cochrane, instructed by MinterEllison.
- *Vertikote Corp Pty Ltd v Corcorans NSW Pty Ltd* (2016 NSW Local Court proceedings). Successfully obtained judgment for plaintiff in debt recovery proceedings – dispute as to contractual parties – dispute as to defects and value of works. Unled, instructed by Greenmonts Legal Pty Ltd.
- *Gutierrez v Packham* (2016 NSW District Court proceedings, unreported). Successfully obtained judgment for plaintiff in debt recovery proceedings – dispute as to enforceability of oral contract. Unled, instructed by Tibby Morgenstern.
- *Voyer v CIMIC Group Ltd* (2015 NSW Supreme Court proceeding, settled prior to hearing). Defended CIMIC in a contract dispute concerning employment entitlements. Led by Ross Foreman (now Senior Counsel), instructed by Herbert Smith Freehills.

Corporations and insolvency

- *Atlas Hall Pty Ltd v Gotsis* (NSW Supreme Court proceedings, ongoing). Acting for plaintiff corporation in claim against former director for breach of directors’ duties and fiduciary obligations. Led by Dominique Hogan-Doran SC, instructed by Athena Touriki Solicitors.
- *Mai v Letcher* (NSW District Court proceedings, ongoing). Claim for recovery of debt – breach of contract – misleading or deceptive conduct – insolvent trading (creditor bringing proceedings with consent of liquidator). Led by Gregory Burton SC, instructed by Du & Associates.
- *Re: Elk Petroleum Ltd (Administrators Appointed)* (2019, NSW Supreme Court, Corporations List, unreported). Successful application for voluntary administrators to extend convening period for second creditors’ meeting. Unled, instructed by Allens.
- *Re Rockgedgiel Pastoral Co Pty Ltd* (2018 NSW Supreme Court, Corporations List proceedings, settled prior to hearing). Acted for defendant in oppression proceedings involving a complex family dispute, multiple cross-claims and allegations of breach of trust. Led by David Pritchard SC, instructed by Pigott Stinson Lawyers.
- *Gotsis & Ors v Kotis & Ors* (2018 NSW Supreme Court proceedings, settled at trial). Acted for defendants – incorporated association – dispute as to election of committee members – application of legislation and regulations – enforceability of arbitration provision. Led by Dominique Hogan-Doran SC, instructed by Athena Touriki Solicitors.
- *Charles Stuart Motel Pty Ltd (in liquidation) & Ors v Suchand Pty Ltd*. (2016 NSW Supreme Court proceedings, settled prior to hearing.) Acted for defendants in expedited proceedings commenced by the liquidators and the financier of a motel business concerning fiduciary duties and misleading and deceptive conduct. Led by Hugh Stowe, instructed by FWO Solicitors.

- *Tropfest Australia Pty Ltd* – Acted for Tropfest in enforcement proceedings to recover sponsorship fees that were lost as a result of the cancellation of the 2015 Tropfest short film festival. Instructed by Simpsons Solicitors.

Equity and trusts

- *Al-Jaber Holding LLC v CIMIC Group Ltd* (NSW Supreme Court, Commercial List proceedings, ongoing). Acting for CIMIC, defending claim for contribution arising out of highway construction project in Qatar. Led by Jeremy Stoljar SC, instructed by Allens.
- *Atlas Hall Pty Ltd v Gotsis* (NSW Supreme Court proceedings, ongoing). Acting for plaintiff corporation in claim against former director for breach of directors' duties and fiduciary obligations. Led by Dominique Hogan-Doran SC, instructed by Athena Touriki Solicitors.
- *ETCAB Pty Ltd v Liang* (NSW District Court proceedings, ongoing). Acting for defendants in dispute over sale of taxi cabs – disputed oral contract – alleged declarations of trust – claim for account of profits – successful interlocutory application to obtain security for costs. Unled, instructed by Pigott Stinson Lawyers.
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- *NB Investment Group Pty Ltd v Edutryfree Australia Pty Ltd & Ors.* (2017 NSW Supreme Court Proceedings, settled prior to hearing). Acted for a defendant in a \$1 million equity and contract dispute - settled prior to hearing of strike out application. Unled, instructed by Loyal One Solicitors.
- *Sproule v Sproule* (2015 NSW Supreme Court proceedings, settled at trial). Equity and trusts – tracing – doctrine of part performance – rectification. Led by Andrew Bulley.

Intellectual property

- *Dyno Nobel Inc v Orica Explosives Technology Pty Ltd* (2019) 148 IPR 442; [\[2019\] FCA 1552](#) (settled mid-trial). Patent validity and infringement – including dispute as to admissibility of Wayback Machine evidence – various interlocutory disputes as to parties' entitlement to discovery. Acted for Dyno. Led by Tony Bannon SC and Cynthia Cochrane, instructed by Shelston IP.

Interlocutory applications, practice and procedure

- *ETCAB Pty Ltd v Liang* (NSW District Court proceedings, ongoing). Acting for defendants in dispute over sale of taxi cabs – disputed oral contract – alleged declarations of trust – claim for account of profits – successful interlocutory application to obtain security for costs. Unled, instructed by Pigott Stinson Lawyers.

- *C.B. Hart Pty Ltd v Campey* (2020 NSW District Court proceedings). Acted for defendant. Successful application to transfer proceedings to Tamworth. Unled, instructed by Everingham Solomons Solicitors.
- *Dawson v Bartlett* (2020 NSW District Court proceedings, settled after mediation). Breach of contract – allegation of unreasonable refusal to consent to assignment of lease – assessment of damages – successful application to set aside default judgment. Unled, instructed by Everingham Solomons Solicitors.
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- *Dental Corporation Pty Ltd v Lee & Anor* [\[2016\] NSWSC 1859](#). Acted for plaintiff in Commercial List trial to enforce a contractual restraint of trade – successful interlocutory application for confidentiality orders. Led by Cynthia Cochrane, instructed by MinterEllison.
- Acted for Adbri Masonry Pty Ltd in successfully setting aside several subpoenas issued in NSW Supreme Court Commercial List proceedings between the Commonwealth Bank of Australia and Iyad Rafidi. Led by Cynthia Cochrane, instructed by MinterEllison.

Mediation appearances

- *Atlas Hall Pty Ltd v Gotsis* (NSW Supreme Court proceedings, ongoing). Acting for plaintiff corporation in claim against former director for breach of directors’ duties and fiduciary obligations. Led by Dominique Hogan-Doran SC, instructed by Athena Touriki Solicitors.
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application of legislation and regulations – enforceability of arbitration provision. Led by Dominique Hogan-Doran SC, instructed by Athena Touriki Solicitors.

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Misleading or deceptive conduct

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Negligence

- *Intertrans Freight Carriers Pty Ltd v Willowcom Pty Ltd* (2018 NSW Local Court proceedings, settled prior to hearing). Acted for defendant in breach of contract claim – cross-claim for negligence and property damage. Unled, instructed by Freestone Law Pty Ltd.
- *Maxwell v Bupa Health Services Pty Ltd* (2017 NSW District Court proceedings, settled prior to hearing). Acted for defendant in professional negligence proceedings – vicarious liability. Unled, briefed directly by Bupa’s in house counsel.
- *Brown v Childs Property Inspections Pty Ltd* (2016, NSW District Court, unreported). Successfully defended negligence and breach of contract claims relating to a pre-purchase property inspection. Led by James Gibson, instructed by Moray & Agnew Lawyers.