

Andrew Harding SC



Curriculum Vitae

QUALIFICATIONS

Professional

Appointed Senior Counsel (September 2020)

Admitted to the NSW Bar (February 2004)

Admitted as a solicitor of the Supreme Court of NSW, Federal Court of Australia and High Court of Australia (1998)

Tertiary Education

BCom LLB (University of New South Wales)

AREAS OF PRACTICE

Commercial, Equity, Property, Intellectual Property, Corporations law, Banking, Trade Practices and Competition, Insolvency, Insurance, Professional Negligence, Employment and Industrial Law, Wills and Probate.

PROFILE

Before coming to the Bar, Andrew was a solicitor at Freehills, Sydney office, practising in the areas of commercial litigation, mergers and acquisitions and employment and industrial law.

Andrew placed first in the New South Wales bar examinations and commenced practice as a barrister in February 2004.

Andrew has a strong and diverse commercial and equity practice, predominantly in the Supreme Court of New South Wales, the Federal Court of Australia and their respective appellate courts but also in jurisdictions including the Supreme Court of Victoria and the High Court of Australia. Andrew regularly

appears in commercial causes. Areas of focus include commercial contracts, equity and trusts, real property, trade practices and corporations. Andrew is also briefed to advise and appear in cases involving building and construction, wills and probate, restraints of trade, confidential information, professional negligence and banking and insolvency.

SELECTED AND RECENT MATTERS

- *Raffy Nominees Pty Ltd v nib Holdings Ltd (No 2)* [2023] NSWSC 1294 (non-party costs order successfully resisted on jurisdictional grounds);
- *Australian Securities and Investments Commission v Firstmac Limited* (Federal Court of Australia) (civil penalty proceedings for contraventions of the design and distribution obligations in Part 7.8A of the *Corporations Act 2001*);
- *Australian Securities and Investments Commission v eToro Limited* (Federal Court of Australia) (civil penalty proceedings for contraventions of the design and distribution obligations in Part 7.8A of the *Corporations Act 2001*)
- *Kraft v BPR Audit Pty Ltd* (Federal Court of Australia) – class action against auditors arising from events involving financial adviser Melissa Caddick
- *Hong v Gui* [2022] NSWCA 245 and at first instance [2022] NSWSC 431; [2022] NSWSC 598 (contract for sale of land; repudiation)
- *McMillan v Coolah Home Base Pty Ltd (No 4)* [2022] NSWSC 584 (company administrators; shareholder dispute)
- *Laird v K. & A. Laird (N.S.W.) Pty. Ltd (In Liq) v Aidzan Pty. Ltd (In Liq) & Ors* (Supreme Court of NSW, Black J, 8 November 2022 - successful application to strike out whole of cross-claim alleging breach of fiduciary duty)
- *Australian Securities and Investments Commission v Membo Finance Pty Ltd & Anor* (Federal Court) (civil penalty proceedings under the *National Consumer Credit Protection Act 2009* (Cth))
- Commercial leasing: *Goldfish Bar and Restaurant Pty Ltd v Roche Group Pty Ltd* [2022] NSWSC 1481; *Coastal Service Centres Pty Ltd v United Petroleum Pty Ltd* (Supreme Court of NSW – option to renew lease; relief against forfeiture); *Left Bank Investments Pty Ltd v Ngunya Jarjum Aboriginal Corporation* [2020] NSWCA 144 (appeal) [2019] NSWSC 1352; (2019) 19 BPR 39,687 (first instance) (whether enforceable agreement for lease)
- Joint ventures: current dispute involving JVA for redevelopment of a prominent hotel site in Sydney (Supreme Court of NSW, Expedition List); another dispute involving 10 local councils and an agreement for the provision of library services (commercial arbitration)
- *Sandpiper Kooragang Pty Ltd v Fortis Products Pty Ltd* [2020] NSWSC 1256; (2020) 19 BPR 40,689 (sale of land; land tax issues, specific performance); *Wheatley v Kavanagh* [2018] NSWSC 1359; (2018) 19 BPR 38,691 (sale of land; resulting trust)
- Options: *BP7 Pty Ltd v Gavancorp Pty Ltd* (2021) 104 NSWLR 359; [2021] NSWSC 265 (whether “option to purchase” in Division 9 of Part 4 of *Conveyancing Act 1919* (NSW) includes put options)
- Building/development contracts: *Carmelita Paolucci v Makedyn Pty Ltd* [2020] NSWSC 1871; (2020) 20 BPR 41,101; on appeal *Paolucci v Makedyn Pty Ltd* (2021) 20 BPR 41,749 (claim for specific performance of agreement to build lots in a residential subdivision); *Steel Building Systems Pty Ltd (in liq) v Decmil Australia Pty Ltd* Supreme Court of NSW (construction contract to build modular homes for a mining village); *Ditchfield v Local Government Engineering Services Pty Ltd* (Supreme Court of NSW – defective build).

- Breach of fiduciary duties: *Tonna v Mendonca* [2019] NSWSC 1849; *Tonna v Mendonca (No 2)* [2020] NSWSC 306 (claims against an accountant for breaches of fiduciary duty, guarantees under the Australian Consumer Law and duties owed at common law)
- Shareholder disputes: oppression suits (e.g. *In the matter of Leone Holdings Pty Ltd* (Supreme Court of NSW); *In the matter of Graziers Pastoral Pty Ltd*; *Parilo v Graziers Pastoral Pty Ltd* (Supreme Court of NSW); derivative actions (e.g. *McGuinness v Workplace Eye Protection Pty Ltd* [2020] FCA 626.
- Wills and probate: proceedings against executor for self-dealing in assets of estate: *Carrington v Wallace* [2022] NSWSC 1078
- Resulting trust: *Metzner v Metzner* [2021] NSWSC 1336; *Kurzyp v Kurzyp* [2021] NSWSC 851 (first instance); [2022] FedCFamC1A 31 (appeal)
- Commercial contracts/misleading and deceptive conduct: *Green Camel Pty Ltd v Urban Ecological Systems Ltd* (Supreme Court of NSW - joint venture for exploitation of a licence to commercialise a sustainable aquaponic food production system); *Global Cars (Aus) Pty Ltd v Fatidin* (Federal Court – claim to set aside lease for misleading and deceptive conduct)
- Professional negligence: *Ryan Wealth Holdings Pty Ltd v Baumgartner* [2018] NSWSC 1502; (2018) 131 ACSR 236 (claim against auditors of a superannuation fund); *Deep Investments Pty Ltd v Casey* [2018] FCA 603; (2018) 125 ACSR 564; *Robinson v Deep Investments Pty Ltd* [2018] FCAFC 232; (2018) 364 ALR 305; *Robinson v Deep Investments Pty Ltd (No 2)* [2019] FCAFC 50 (claim against solicitor for breach, inter alia, of fiduciary duty).
- Banking and finance: *Burkett v Bendigo and Adelaide Bank Ltd (No 2)* [2018] VSC 723; (2018) 133 ACSR 411.

Other matters in which Andrew has advised or appeared include:

- claims for declaration of trust;
- restraint of trade matters;
- confidential information suits;
- proprietary/promissory estoppel cases;
- appointment of trustees for sale of jointly owned property;
- commercial list proceedings for conversion of assets;
- proceedings against a solicitor for knowing involvement in breach of fiduciary duty;
- oppression suits;
- applications by trustees for judicial advice;
- enforcement of equitable mortgages;
- inquiries as to damages;
- conducting workplace investigations;
- interlocutory applications including for injunctions, freezing orders, security for costs, stay pending appeal.