



ANTHONY MCINERNEY SC

Master of Laws (Hons): Cambridge University - 1997

Master of Laws: Australian National University - 1996

Bachelor of Arts/Bachelor of Laws (Hons): Australian National University - 1995

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Admitted to the legal profession

1996

Admitted as a barrister in NSW

1997

Appointment as Senior Counsel

2012

Also entitled to practise in

All Australian jurisdictions (Commonwealth, State and Territory)

Anthony has over 27 years' experience practising at the NSW Bar. He is well recognised for his practice in complex commercial disputes, class actions, consumer law, corporations, construction, cybersecurity, equity, estates, directors duties, financial services, family law involving complex structures and third parties, insolvency (corporate and personal), insurance, managed investment schemes, real property, superannuation, trusts, and taxation matters.

Anthony also has a well-established common law practice with significant expertise in advising insurers on all policy and indemnity issues, and appearing in professional liability matters including personal injury claims for and against accountants, architects, auditors, barristers, brokers and other intermediaries, engineers, medical professionals, and tax agents.

Anthony regularly appears for and against regulators in administrative law, and disciplinary matters, in courts and tribunals.

Anthony has appeared in the High Court and regularly appears before the Federal Court, Full Court of the Federal Court, New South Wales Court of Appeal and Supreme Court of New South Wales, as well as Courts and Tribunals in Victoria and Queensland. He has appeared in Royal Commissions, commissions of inquiry, coronial inquests and before the ICAC.

Prior to coming to the Bar, Anthony completed a Master of Laws at the Australian National University in 1996 before completing a Master of Laws (Honours) at the University of Cambridge in 1997. Anthony is currently studying a Master of Taxation at the University of New South Wales.

PROFESSIONAL MEMBERSHIPS

NSW Bar Association

Management Committee of the Immigration Advice Rights Centre Inc (IARC) (2009 – 2014)

NSW Bar Association Professional Conduct Committee (2016 – 2018)

ADDITIONAL INFORMATION

Mock Trial Coaching at Loreto Normanhurst since 2009

Advocacy Instructor with the Bar Practice Course since 2009

SELECTED CASES

Anthony has appeared as leading counsel, inter alia, in the following notable cases in the last 3 years:

- **Q (a pseudonym) v E Co (a pseudonym)** [2020] NSWSCA 220 (Meagher, Leeming and Payne JJA) – the Court of Appeal affirmed one of the most significant awards of property by way of proprietary estoppel ever to be made in Australia. The judgment is an authoritative statement of the elements of that equity including encouragement, acquiescence, reliance, detriment and relief.
- **Twigg v Twigg (No 4); Lambert v Twigg Investments Pty Ltd (No 3)** [2020] NSWSC 1159 (Ball J) – a complex trust claim, involving the alleged misappropriation of \$155.8 million of trust property from the sale of the Byron Bay Hotel, involving allegations of breach of fiduciary duty, the principles in *Barnes v Addy*, tracing, promissory and conventional estoppel, ratification, delegation, limitation defences, and laches.
- **Huang v Deputy Commissioner of Taxation** [2020] FCAFC 141 (Besanko, Thawley and Stewart JJ) – an appeal to the Full Federal Court brought by Mr Huang, a Chinese billionaire, to challenge freezing orders obtained by the Deputy Commissioner of Taxation against Mr Huang's ex-Australian assets in the PRC and Hong Kong.
- **Dyczynski v Gibson** [2020] FCAFC 120 (Murphy, Lee and Colvin JJ) – an appeal to the Full Federal Court in a representative action under Part IVA of the *Federal Court of Australia Act 1976* (Cth) concerning Malaysian Airlines flight MH17 where the appellants alleged that their lawyers had denied them procedural fairness by conceding that they were not group members.
- **De Gruchy v Owners of Units Plan No 3989** [2020] ACTSC 65 (McWilliam AJ) – a novel claim in nuisance brought by the owner of a penthouse apartment in the Nishi Residential Building in Canberra in the ACT Supreme Court against the Owners Corporation for an injunction to restrain the continuation of structure borne noise said to be caused by the differential expansion between the roof of the building and the lower level walls and slabs creating a stick-slip effect as the building expands and contracts.
- **Lloyd v Belconnen Lakeview Pty Ltd** (2019) 377 ALR 234 (Lee J); (2019) 142 ACSR 445; [2019] FCA 2177 – a representative action under Part IVA of the *Federal Court of Australia Act 1976* (Cth) involving claims in contract, restitution, and misleading and deceptive conduct concerning GST and the standard form contracts for sale of apartments in the Australian Capital Territory.
- **KRM (Vic) Pty Ltd v Classicbet Pty Ltd** [2019] NSWSC 1773 (Rein J) – a complex contractual dispute heard in the Equity Division concerning the interpretation of an Affiliate Program Agreement, two Share Sale and Purchase Agreements, and allegations of breach of statutory directors' duties under the Corporations Acts, ss 181 and 182, in the statutory context of the *Betting and Racing Act 1998* (NSW).
- **E Co v Q (No 4)** [2019] NSWSC 429 (Ward CJ in Eq) – a nine day hearing on relief in the Equity Division in a complex proprietary estoppel claim involving evidence from land valuers, agronomists, and business valuers.
- **Marra Capital Investments Pty Ltd v Smith (liquidator)** (2018) 132 ACSR 352 (Davies, Markovic and Derrington JJ); [2018] FCAFC 211 – the issue in this appeal to the Full Federal Court was whether the appellant was a creditor of the company in liquidation, which turned on the right of subrogation in favour of surety, as per the principle in *Bofinger v Kingsway Group Ltd* (2009) 239 CLR 268.
- **Gunasegaram v Blue Visions Management Pty Ltd; Blue Visions Management Pty Ltd v Chidiac** (2018) 129 ACSR 265 (Basten, Meagher and Gleeson JJA); 282 IR 15; [2018] NSWCA 179 – an appeal to the NSW Court of Appeal brought by Blue Visions against a former senior employee, Mr Chidiac, alleging that he had acted in breach of fiduciary duty in diverting business opportunities to a third party.
- **ADM v FDGK** [2018] NSWSC 442 (Ward CJ in Eq) – an extraordinarily complicated proprietary estoppel claim heard in the Equity Division over a period of four weeks between three sons and their father in respect of significant rural holdings worth in excess of \$20 million. The case involved detailed consideration of their personal, and business, dealings over a period of three decades.

- **McElwaine v The Owners - Strata Plan 75975** (2017) 18 BPR 37,207 (Basten and White JJA, and Sackville AJA); [2017] NSWCA 239 – an appeal to the NSW Court of Appeal from orders made by the primary judge that the dismissed proceedings on the basis that the *Strata Schemes Management Act 1996* (NSW) excluded a lot owner's common law right to sue the owners corporation for damages in nuisance.
- **Boyd v Thorn** (2017) 96 NSWLR 390 (Macfarlan and Leeming JJA, Emmett AJA); 18 BPR 37,101; [2017] NSWCA 210 – an appeal to the NSW Court of Appeal from declarations and orders the nature of proprietary relief, as well as orders for the appointment of trustees for sale of property pursuant to the *Conveyancing Act 1919* (NSW), s 66G.
- **Reavill Farm Pty Ltd v Burrell Solicitors Pty Ltd** [2017] NSWCA 156 (Bathurst CJ, Leeming JA and Emmett AJA) – an appeal to the NSW Court of Appeal involving allegations of professional negligence, and misleading and deceptive conduct, made against a solicitor for providing a misleading estimate of legal costs in the context of extensive Land and Environment Court proceedings for expansion of a quarry.
- **Ryde Developments Pty Ltd v Property Investors Alliance Pty Ltd** [2017] NSWCA 40 (Beazley P, Payne JA and Barrett AJA); BC201801601 – an appeal to the NSW Court of Appeal involving difficult issues concerning the interpretation, and application, of the *Property, Stock and Business Agents Act 2002* (NSW), and the *Property, Stock and Business Agents Act 2002* (NSW).

Earlier cases on appeal in which Anthony appeared as leading counsel:

- **Cummins Generator Technologies Germany GmbH v Johnson Controls Australia Pty Limited** (2015) 326 ALR 556 (Beazley P, Gleeson and Leeming JJA); [2015] NSWCA 264 – an appeal to the NSW Court of Appeal involving misleading conduct related to the supply and installation of a generator set (the additional generator set) to augment the existing emergency power supply of a Data Processing Centre operated by IBM Australia.
- **Ekes v Commonwealth Bank of Australia** (2014) 313 ALR 665 (Bathurst CJ, Beazley P, and Emmett JA); [2014] NSWCA 336 – an appeal to the NSW Court of Appeal involving *Anshun* estoppel and abuse of process, and concerned whether the relationship of principal debtor and guarantor was one of privity of interest.
- **Owners Strata Plan 50276 v Thoo** (2013) 17 BPR 33,789 (Barrett JA, Tobias AJA, and Preston CJ); [2013] NSWCA 270 – an appeal to the NSW Court of Appeal in respect of a lot owner's claim that the owners corporation had acted in breach of the *Strata Schemes Management Act 1996* (NSW), s 62, and that the breach gave rise to a common law right of action for damages for breach of statutory duty.
- **Pritchard v DJZ Constructions Pty Ltd & Ors; Gilles & Anor v DJZ Constructions Pty Ltd & Ors** (2012) 16 BPR 31,141 (Bathurst CJ, Whealy and Barrett JJA); [2012] NSWCA 196 – an appeal to the NSW Court of Appeal in respect of a claim in professional negligence against a solicitor in respect of the drafting of a deed of guarantee and release, and involved consideration of the principles governing the circumstances in which a guarantor is discharged from its obligations as a result of a variation to the principal agreement.
- **Edwards v Australian Securities and Investments Commission** (2009) 264 ALR 723 (Spigelman CJ, Campbell and Macfarlan JJA); (2009) 235 FLR 207; (2009) 76 ACSR 369; [2009] NSWCA 424 – Anthony appeared as leading counsel in a complex three day appeal concerning allegations that a director had engaged in insolvent trading in contravention of the Corporations Act, s 588G(2). Anthony had appeared at the four week trial: **Australian Securities and Investments Commission (ASIC) v Edwards** (2005) 220 ALR 148 (Barrett J); (2005) 54 ACSR 583.
- **Byers v Overton Investments Pty Ltd** (2001) 109 FCR 554; (2001) 186 ALR 280 (Branson, North and Stone JJ) – an appeal to the Full Federal Court concerning the interpretation, and application of, the *Wills Probate and Administration Act 1898* (NSW), ss 40, 41 and 61, and whether an executor can commence an action prior to the grant of probate, and whether such proceedings are a nullity. Anthony had appeared at the hearing at first instance before Emmett J: **Byers v Overton Investments Pty Ltd** (2000) 182 ALR 757 (Emmett J).

PRINCIPAL AREAS OF PRACTICE

COMMERCIAL LAW

Appellate

Banking and Financial Services

Bankruptcy and Insolvency

Building, Construction and Technology

Contracts

Corporations and Securities

Class actions

Insurance and Reinsurance

Trade Practices

EQUITY

Property

Trusts

Wills and Estate

INDUSTRIAL/EMPLOYMENT

Government Inquiries

INQUESTS AND INQUIRIES

Coronial Inquests

Commissions of Enquiry

PUBLIC AND ADMINISTRATIVE LAW

Administrative Law

TAXATION AND REVENUE