



Anthony McInerney SC

NEW/CHAMBERS

Master of Laws (with Honours): Cambridge University - 1997
Masters of Laws: ANU - 1996
Bachelor of Arts/Bachelor of Laws (with Honours): ANU - 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)

Principal areas of practice

Appellate	Equity
Administrative law	Government inquiries
Banking and financial services	Insurance and reinsurance
Bankruptcy and insolvency	Professional indemnity
Building and construction	Property
Commercial law	Trade practices and competition
Coronial inquests	Wills and estates

Previous summary

Anthony is a Senior Counsel at New Chambers. He practises principally in New South Wales and has appeared in a wide variety of complex trials and appeals, including appeals to the High Court. He regularly appears in the Federal Court and the New South Wales Supreme Court, including the Court of Appeal. Anthony has a diverse practice and has particular expertise in the areas of equity, commercial, building and construction, banking and finance, property, insurance and professional negligence. He has broad experience advising and appearing for and against insurers and has also appeared before ICAC, at coronial inquests, conducted section 19 examinations on behalf of ASIC and conducted liquidator's examinations.

Additional information

Mock Trial Coaching at Loreto Normanhurst since 2009
Advocacy Instructor with the Bar Practice Course since 2009

Professional memberships

NSW Bar Association
Management Committee of the Immigration Advice Rights Centre Inc (IARC) (2009 – 2014)
NSW Bar Association Professional Conduct Committee (2016 –)

Professional profiles

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Selected cases

Anthony has appeared, inter alia, in the following notable cases:

- *Hoyts Pty Ltd v Burns* (2003) 201 ALR 470; (2003) 77 ALJR 1934 (High Court)
- *Murphy v Overton Investments Pty Ltd* (2004) 216 CLR 388; (2004) 204 ALR 26; (2004) 78 ALJR 324; (2004) 8 ATPR 41-973; (2004) Aust Contract R 90-189 (High Court)
- *Drinkwater v Caddyrack Pty Ltd* (1999) 17 ACLC 1592 This case concerned the valuation of shares, in respect of an order for a buy-back of shares of members of company by other members, determined by Master McLaughlin. Anthony's opponent was Ashhurst SC (then of junior counsel).
- *Byers v Overton Investments Pty Ltd* (2000) 182 ALR 75 This case concerned whether an executor can commence an action prior to the grant of probate, and whether such proceedings are a nullity, and whether a subsequent grant of probate can cure such nullity, and consideration of Wills, Probate and Administration Act 1898 (NSW), ss 40, 44 and 61. Anthony appeared for the applicant on the application. The trial judge was Emmett J. The application was successful.
- *Byers v Overton Investments Pty Ltd* (2001) 109 FCR 554; (2001) 186 ALR 280 This was an appeal to the Full Court of the Federal Court of Australia from the decision of Emmett J in *Byers v Overton Investments Pty Ltd* (2000) 182 ALR 757. Anthony appeared for the respondent to the appeal. The decision of the trial judge was upheld by Branson, North and Stone JJ.
- *Australian Securities and Investments Commission (ASIC) v Edwards* (2005) 220 ALR 148; (2005) 54 ACSR 583 The case was heard by Barrett J over eighteen days, and concerned whether a company director had caused a company in respect of a large property development to incur debts whilst insolvent, and involved difficult issues as to whether there was a contract and, if not, debts on a quantum meruit, and consideration of Corporations Act 2001 (Cth), ss 95A, 588G, 588H and 1317E(1).
- *Australian Securities and Investments Commission (ASIC) v Edwards* (2005) 56 ACSR 290 This case was heard by Barrett J and concerned an application for a stay of a penalty hearing pending determination of appeal, and considered Corporations Act 2001 (Cth), ss 588G(2) and 1317E(1). Anthony appeared for ASIC, the respondent to the application. The application was dismissed.
- *Maddy v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 233 ALR 503 This case concerned the refusal by the Minister to grant a Subclass 835 visa, review of a decision of the Migration Review Tribunal, and whether there was a failure to comply with s 359A of the Migration Act 1958 (Cth). Anthony appeared for the Minister.
- *Dinsdale bht Protective Commissioner v Arthur* (2006) 12 BPR 23,509 This case concerned a resulting trust, arising from unequal contributions to purchase money for the purchase of real property, how mortgage money was to be treated, the equity of exoneration and contribution between co-owners of property, and the requirement to do equity by offering to pay an occupation fee.
- *Kell & Rigby Pty Ltd v Flurrie Pty Ltd* (2006) 67 NSWLR 113 This case concerned a building and engineering contract, and the enforceability of a provision purporting to create a charge over land in favour of a contractor, and whether that provision was prohibited by Home Building Act 1989 (NSW), s 7D, and whether estoppel could prevail against the statutory provision.
- *Australian Securities and Investments Commission (ASIC) v Edwards (No 2)* (2006) 57 ACSR 147 The case concerned an application for a stay of hearing on penalty pending a decision in the High Court on another matter concerning, among other matters, the effectiveness of the transitional provisions of the Corporations Act 2001 (Cth).
- *Australian Securities and Investments Commission (ASIC) v Edwards (No 3)* (2006) 57 ACSR 209 The case concerned a penalty hearing, and whether a director should be relieved from liability, and consideration of Corporations Act 2001 (Cth), ss 206C, 206G, 588G(2), 1317E(1), and 1318.
- *Sydney Airport Corp Pty Ltd v Baulderstone Hornibrook Engineering Pty Ltd* (2007) 14 ANZ Ins Cas 61-718 This case concerned an application by an insurer to be joined to technology and construction list proceedings heard by Einstein J. Mr Smith SC led Mr M Jones SC (then of junior counsel) for the insurer. Anthony appeared for Baulderstone leading Mr N Kabilafkas.
- *Kazacos v Migration Agents Registration Authority* (2007) 46 AAR 248 This was an appeal against suspension of registration of a migration agent before Allsop J. Anthony appeared on behalf of the respondent, the Migration Agents Registration Authority.
- *Massih v Esber* (2008) 250 ALR 648 This case concerned an application to set aside a bankruptcy notice, and the issue of whether in respect of an order for costs not yet assessed, a costs assessor could entertain a cross-claim, and consideration of Bankruptcy Act 1966 (Cth), ss40(1)(g), 40(3), 41(1), 41(2) and 41(7).
- *Australian Securities and Investments Commission (ASIC) v Sydney Investment House Equities Pty Ltd* (2008) 69 ASCR 1 This case ran for twenty-one days before Hamilton J, and concerned an unregistered managed investment scheme, breach of directors duties, and misleading conduct. Anthony appeared for ASIC leading Mr D J Barnett.
- *Spittles v Michael's Appliance Services Pty Ltd* (2008) 71 NSWLR 115 This was an appeal before the Court of Appeal. Anthony appeared for the respondent to the appeal. Mr B Rayment QC appeared for the appellant leading Mr C Locke. The issue concerned the proper construction, and application, of Trade Practices Act 1974 (Cth), s75AD.
- *Nassar v Innovative Precasters Group Pty Ltd* (2009) 71 ASCR 343 This was an oppression suit, and an application for winding up, heard by Barrett J. The case concerned whether the members were in a quasi-partnership, and whether there had been an irreconcilable breakdown in relations. Mr I Pike SC (then of junior counsel) appeared for the plaintiff. Anthony appeared for the second defendant, on instructions from the Protective Commissioner.
- *Australian Securities and Investments Commission (ASIC) v Sydney Investment House Equities Pty Ltd* (2009) 253 ALR 616; 69 ACSR 648 This was a penalty hearing following judgment by Hamilton J in *Australian Securities and Investments Commission (ASIC) v Sydney Investment House*.
- *Equities Pty Ltd* (2008) 69 ASCR 1. Anthony appeared for ASIC leading Mr D J Barnett. The defendant was disqualified from managing corporations for twenty-five years.
- *Hearse v Pallister* (2009) 14 BPR 26,947 This case concerned an application to set aside default judgment in respect of claim for breach of a contract for sale, and the issuing of a notice to complete.

Selected cases

Anthony has also appeared in the following reported and unreported cases:

- The Recyclers (NSW) Pty Ltd v Ayoub (No 3) [2016] NSWC 576
- McElwaine v The Owners Strata Plan No 75975 [2016] NSWSC 1589
- The Owners Strata Plan 50276 v Thoo [2013] NSWCA 270
- Edwards v Australian Securities and Investments Commission (ASIC) (2009) 264 ALR 723; (2009) 235 FLR 207; (2009) 76 ACSR 369
- Thoo v The Owners Strata Plan 50276 (2011) 15 BPR 29,309
- Avenhouse and Anor v The Council of the Shire of Hornsby (1998) 44 NSWLR 1
- Clancy v Salienda Pty Ltd (2000) 11 BPR 20,425
- Director-General of the Department of Fair Trading v Vasey Housing Association NSW (2002) 55 NSWLR 347
- Goozee v Graphic World Group Holdings Pty Ltd (2002) 42 ACSR 534
- Murphy v Overton Investments Pty Ltd (2001) 182 ALR 138
- Rickard Constructions Pty Ltd v Rickard Hails Moretti Pty Ltd (2004) 220 ALR 267; (2004) 188 FLR 278
- Rickard Constructions Pty Ltd v Rickard Hails Moretti Pty Ltd [2006] NSWCA 356
- AMP General Insurance Ltd v Kull (2005) 44 MVR 339; (2006) 14 ANZ Ins Cas 61–687
- Boulderstone Hornibrook Engineering Pty Ltd v Gordian Runoff Ltd (2006) 14 ANZ Ins Cas 61 – 701
- Boulderstone Hornibrook Engineering Pty Ltd v Gordian Runoff Ltd [2008] NSWCA 243
- Kyrwood v Drinkwater (2008) Aust Contract R 90 - 273
- Australian Securities and Investments Commission (ASIC) v Somerville (2009) 259 ALR 574; (2009) 74 ACSR 89
- Australian Securities and Investments Commission (ASIC) v Storm Financial Ltd (recs and mgrs apptd) (admin apptd) (2009) 71 ACSR 81
- Advice practice