

## ANDREW BAILEY

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### PRACTICE AREAS

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Administrative law; bankruptcy and insolvency; construction law (including Security of Payment Act matters); corporate/commercial litigation; costs; employment law; equity.

### EDUCATION

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- 2003 – 2005    **Master of Laws (University of Sydney)**
- 1998 – 2001    **Bachelor of Laws (Queensland University of Technology)**
- 1994 – 1998    **Bachelor of Arts (University of Queensland)**

### ADMISSIONS

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- 2003:            Supreme Court of New South Wales
- 2002:            Supreme Court of Queensland / High Court of Australia

### PREVIOUS EMPLOYMENT

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| Nov 2010 – Nov 2013   | <b>TressCox Lawyers</b> , Solicitor*, Commercial Litigation   | Sydney, Australia     |
| June 2008 – Sept 2010 | <b>Church &amp; Grace</b> , Solicitor, Litigation   | Sydney, Australia     |
| June 2006 – June 2008 | <b>Andrew Priestley &amp; Associates</b> , Solicitor,<br>Commercial litigation (Victorian) & commercial<br>practice | Sydney, Australia     |
| 2005 – 2006           | <b>Burns and Roe Worley Pty Ltd</b><br>(subsidiary of WorleyParsons Ltd),<br>Commercial Officer                     | Nth Sydney, Australia |
| Dec 2003 – Mar 2005   | <b>Doyles Construction Lawyers</b> , Solicitor,<br>Construction litigation  | Sydney, Australia     |
| 2002 – 2003           | <b>Toogoods Solicitors</b> , Solicitor,<br>Mixed commercial & litigation practice                                   | Brisbane, Australia   |
| 2002                  | <b>Office of the DPP</b> , Committals Clerk   | Brisbane, Australia   |

\* Denotes appointment as Senior Associate with effect from 1 July 2012.

## SELECTED CASES

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### As counsel

\* indicating matters in which I appeared alone.

### *Administrative law*

*Bookarelli Pty Ltd v Katanga Pty Ltd* [2017] NSWCA 69 – for successful respondent in supervisory jurisdiction – review after appeal from *Legal Profession Act* costs assessment and review of ordered costs – “rule of thumb” “vacated costs order” – indemnity costs in judicial review proceedings (with M. Castle).

*eInduct Systems Pty Ltd v 3D Safety Services Pty Ltd & Ors.* (2015) 90 NSWLR 451, [2015] NSWCA 284 – for successful respondent in supervisory jurisdiction – review after appeal from *Legal Profession Act* costs assessment and review of ordered costs – “costs indemnity principle” “proportionality” “refusal to grant leave to amend summons on appeal” (with M. Castle).

\* *Rahman v Commissioner of Taxation* [2016] FCA, unreported (pro bono) – for successful applicant for leave to appeal from grant of summary judgment – finding by primary judge there were alternative means of reviewing decision where APS employee terminated after judgment reserved but before it was delivered (and termination of employment communicated to the primary judge).

### *Bankruptcy & Insolvency*

\* *DCT v Bradchelle Pty Ltd* [2017] FCA – for defendant in respect of Commissioner’s application to wind up in respect of unpaid tax and SGC debts – resolved prior to hearing.

\* *Ox Engineering Group Pty Ltd v Doridee Consulting Pty Ltd* [2016] NSWSC – for plaintiff on application for setting aside of creditor’s statutory demand – genuine dispute/offsetting claim grounds in respect of particular sums claimed or overpaid to defendant who was a contractor.

### *Commercial Law*

*Bock v Lawrence Dry Cleaners Pty Ltd & Rodrigues* [2017] NSWLC (Small Claims) – for successful defendant (bridal boutique owner) – plaintiff sued in contract / negligence where ‘sample’ wedding dress had no care label – found: no relevant duty of care between store proprietor and customer and in any event, the dress here was ‘second hand’ in sense described in *LR McLean & Co Ltd v Commissioner of Inland Revenue* [1994] 3 NZLR 33 and a care label was not required to be attached.

*Saffo Jewellery Pty Ltd v Tawil* [2017] NSWDC – liquidated claim: jewellery purchased on consignment; *Cheques Act* 1986 (Cth) claim for part of monies owing.

### *Construction Law*

#### *Home Building Act matters*

\* *Zenith Developments Pty Ltd t/as Zenith Homes Australia v Pamulapati & Anor* [2017] NSWCATAP – for respondent homeowners in builder’s appeal against award of completion costs where finding of abandonment had been made which was not contended for by either party – resolved prior to hearing.

\* *Ikonomopoulos v Climbmax Constructions Pty Ltd* [2017] NSWCATCD, unreported – for owners in a claim for defective work – cross-application by builder for payment.

#### Security of Payment Act matters

*Bencee Pty Ltd t/as Les Wilson Detailed Cabinetmaker v Perich Constructions (NSW) Pty Ltd* [2017] NSWDC – application for judgment pursuant to s.15(2)(a)(i) of the Act – five payment claims and two separate construction contracts between same parties – resolved prior to hearing.

\* *Dan & Hao Pty Ltd v Fortis Development & Construction Pty Ltd* [2017] NSWLC – application for judgment pursuant to s.15(2)(a)(i) of the Act – service where photographs of payment claim documents transmitted by SMS message by mobile telephone - defence to claim identified on solicitor's affidavit adduced in opposition to claim – resolved on adjournment for a period in applications list for hearing.

*Peter Zeilic Pty Ltd trading as Dimension 5 Design Architecture & Project Management v Starhill Property Group Pty Ltd* [2016] NSWLC – application for judgment pursuant to s.15(2)(a)(i) of the Act – claim in respect of architectural services provided.

\* *Australian Dewatering Systems (NSW) Pty Ltd v Perich Constructions (NSW) Pty Ltd* [2016] NSWDC, unreported – uncontested application pursuant to s.15(2)(a)(i) of the Act – dewatering services supplied to construction site.

\* *Rotunno v Balafas* [2016] NSWDC, unreported – application for judgment pursuant to s.15(2)(a)(i) of the Act - service of payment claim within s.13(2) of the Act – construction work in respect of heritage listed building used for pre-school.

#### **Costs assessment appeals**

*eInduct Systems Pty Ltd v 3D Safety Services Pty Ltd & Ors* [2016] NSWDC, unreported – *Legal Profession Act* appeal – application for leave to amend notice of appeal to address matters arising after review panel determination (including *Wende v Horwath* issue) (with M. Castle)

#### **Local Court**

\* *The Athlete's Foot Australia Pty Ltd v Samasm Pty Ltd & Anor* [2017] NSWLC, unreported – for plaintiff on assessment hearing following default judgment in application for the recovery of franchise fees.

#### **NCAT**

*Chen v Rental Car Holdings Pty Ltd t/as East Coast Car Rentals* [2017] NSWCATCD, unreported – submissions as to jurisdiction of NCAT concerning claim by hirer of car in NSW, using website published by New Zealand company, for the rental of a car from Australian company (with offices in Queensland and Western Australia) for use in Tasmania.

#### **Personal injury**

*Danielle Marie Kent aka Osman v Luxurious Stone Investments Pty Ltd t/as Hualei Properties* [2016] NSWLC – for defendant (managing agent for rented premises) in respect of a defence of no duty of care arising between agent and tenant – resolved prior to second directions hearing.

## ***Real Property***

*Rubino & Ors v Pineview Property Holdings Pty Ltd & Ors* [2016] NSWSC, unreported – on application for freezing orders, relief concerning caveats and other matters (with Pritchard SC).

## ***Solicitors***

*Coshott v Coshott* [2015] FCA 1284 – re: solicitor’s liens over certificate of title to land – whether lien effective re statute barred debts, position in *Coshott v Barry & Anor.* [2012] NSWSC 850 considered (with M. Castle.)

## ***Wills & Estates***

Instructions for plaintiffs and defendants in applications for further provision from estate.

## ***As a solicitor***

*Eastmark Holdings Pty Ltd v Kabraji* [2013] NSWSC 1763 – for the body corporate re developer lot owner seeking equitable relief against body corporate office holders (instructing Finch SC, KC Morgan, as she then was).

*Moore, as debtor in possession of Australian Equity Investors, an Arizona Limited Partnership v Australian Equity Investors, an Arizona Limited Partnership* [2012] FCA 1002 - respondent to Federal Court proceedings as contradictor to the application for recognition of a US Chapter 11 Bankruptcy as a foreign main proceeding under the *Cross Border Insolvency Act 2008* (instructing AJ McInerney, as he then was).

*Australian Equity Investors, an Arizona Limited Partnership v Colliers International NSW Pty Limited (No 5)* [2011] FCA 1041 and *Australian Equity Investors, an Arizona Limited Partnership v Colliers International NSW Pty Limited* [2012] FCAFC 57 - application for security for costs and appeal in complex claim for misleading and deceptive conduct arising out of a development at Crows’ Nest (instructing Bannon SC, AJ McInerney (as he then was)).

*Singleton, in the matter of Mad Canoe Advertising Pty Ltd (In Liq)* [2009] FCA 625 – liquidators as applicants in a termination of the winding up of a corporate trustee.

*Lemery Holdings Pty Limited v Reliance Financial Services Pty Limited* [2008] NSWSC 1344 – for the Liquidator – trustee’s liens.

## **PUBLICATIONS AND PAPERS (REVERSE CHRONOLOGICAL ORDER)**

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### **Publications**

Castle, M. & Bailey, A. "Solicitor estopped from claiming fees: how did that happen?", Law Society Journal, Issue 25, August 2016, p78.

Johnson, J., Castle, M. & Bailey, A. "The Chorley Exception: Three Strikes and Out?", Law Society Journal, Issue 24, July 2016, p80.

Castle, M. & Bailey, A. "Yours, Mine or Ours? Access to a solicitor's file when a retainer ends", Law Society Journal, Issue 23, June 2016, p 88.

Castle, M. & Bailey, A. "Consequences of inaccurate costs estimates and negligently performed work", Law Society Journal, Issue 22, May 2016, p84.

Castle, M. & Bailey, A. "Costs Assessments: Unravelling the mysteries of certificate judgments", Law Society Journal, Issue 18, December 2015, p 94.

Castle, M. & Bailey, A. "Costs Assessments: Recent cases in the Court of Appeal", Law Society Journal, Issue 17, November 2015, p84.

### **Papers delivered**

*"Permissible re-litigation or an abuse of process? Some issues for consideration for litigation lawyers"*: for Legalwise, Litigation Masterclass (15 Sept 2017).

*"Proportionality & legal costs: what does it all mean? (a good question)"*: for the Law Society of New South Wales, Specialist Accreditation conference (4 Aug 2017)

*"Applications for judgment under the Building and Construction Industry Security of Payment Act 1999"*: for the Law Society of New South Wales CPD program (7 Mar 2017)

*"Proceed with caution: inaccurate costs estimates, negligent work & consequences"*: Legalwise, Personal Injury conference (3 Mar 2017).

*"Aspects of the enforcement of judgments"*: for the Law Society of New South Wales CPD program (11 Oct 2016).

*"Jumping the low bar required to succeed on an application to set aside a statutory demand"*: for the Law Society of New South Wales CPD program (1 Mar 2016).

*"Through the Looking Glass': examining the bankruptcy jurisdiction of the Family Court"*: for the Law Society of New South Wales CPD program – family law symposium (17 Feb 2016), to the NSW State Legal conference – Family Law session (23 Mar 2016).