

### **Barry Dean: Selected cases**

*Zhang v Ehrenfeld* [\[2015\] FCCA 877](#) (Judge Lloyd-Jones) – Appeared unled for the respondent – successful opposition to creditor’s petition based on the failure of the applicant to satisfy the Court that the bankruptcy notice had been served at the respondent’s “last known address” within the meaning of the *Bankruptcy Regulations*.

*CMB v AG (NSW)* (2015) 317 ALR 308; [\[2015\] HCA 9](#) (French CJ, Kiefel, Bell, Gageler, and Keane JJ); – Appeared with C Loukas SC and GA Bashir SC for appellant (and special leave application: [\[2014\] HCATrans 206](#) (French CJ, Gageler JJ))– successful appeal against decision of the NSW Criminal Court of Appeal to allow a Crown appeal by the Attorney General under *Criminal Appeal Act*, s5D against a sentence that the DPP had conceded was available before the sentencing judge and decided not to appeal – High Court held that that Criminal Court of Appeal erred in inverting the onus on the Crown with regard to the exercise of the discretion to dismiss the appeal notwithstanding *House* error and in failing to consider in accordance with *Crimes (Sentencing Procedure) Act 1999*, s23(3) and *R v Ellis* whether it was open to the sentencing judge to determine that non-custodial sentences were not unreasonably disproportionate to the nature and circumstances of the offences given the appellant in finding manifest inadequacy.

*ZBVK v Cmr of Taxation* [\[2014\] AATA 576](#) (Frost DP) - Appeared with JS Gleeson SC (now Gleeson J of the Federal Court of Australia) for the applicant – application for review of respondent’s decision on an objection to his notices of assessment which was successful in part – application established against the respondent’s opposition that \$370,000 lost in an overseas fraud was a deductible capital loss under the *Income Tax Assessment Act 1997*.

*AT Air Group Pty Limited v Dieter Siewert (No 3)* [\[2014\] NSWSC 1129](#) (Brereton J) – Appeared unled for the plaintiff – successful opposition to defendant’s application to discharge interlocutory injunction restraining the transfer of real property valued more than \$2million due to the plaintiff’s failure to comply with undertakings made to the court with respect of the injunction – successful on plaintiff’s application to vary undertakings to the court to permit the plaintiff to sell the property and ensure the proceeds held in trust pending final hearing – underlying proceedings involve a dispute about multi-million dollar sale of aviation businesses.

*Macquarie International Health Clinic v Sydney Local Health District* (ongoing, Supreme Court of New South Wales, 2013 to present) – Briefed as one of many junior counsel to act for the defendant with G Burton SC, H Stowe and P Bruckner - inquiry into damages for trespass to partially developed commercial property with development consents for construction and use as private hospital and car-park and related cross-claims on commercial agreements between the parties – damages claimed total in the hundreds of millions of dollars.

*SZRIQ v Federal Magistrates Court of Australia* (2013) 139 ALD 252; [\[2013\] FCA 1284](#) (Foster J) – Appeared with JD Smith (now Judge Smith SC of the Federal Circuit Court of Australia) for the applicant – unsuccessful application under *Judiciary Act*, s39B to establish that inferior court judgment was infected with jurisdictional error when it failed to extend time to appeal from a decision of a statutory tribunal.

*Storey v Harmse* [\[2013\] NSWSC 1641](#) (Beech-Jones J) – Appeared unled for the defendant – successful opposition to appeal from inferior court decision to dismiss claim for outstanding principle and interest under loan agreement due to the expiry of the limitation period – judgment dealt with construction of the loan agreement and the interpretation of the power to amend under *Civil Procedure Act*, s65 to join trustee in bankruptcy after the expiration of the limitation period.

*Cole v Sappideen* (unreported, Supreme Court of New South Wales, Windeyer AJ, 10 October 2013) – Appeared unled for the plaintiffs – successful application for single freezing order for almost \$2million, based on allegations of investment fraud against the defendant, to protect seven District Court actions for different plaintiffs to recover their lost funds – defendant subsequently subject to banning order from ASIC for same or related conduct.

Various matters acting for and advising individuals working in the financial services industry in relation to ASIC inquiries and investigations – the individuals acted for were involved with hedge funds, insurance brokers, AFSL holders and speculative mining companies – matters involve allegations of investor fraud, market manipulation and dishonest conduct in the course of carrying on a financial services business – stages of the ASIC inquiries include initial complaint, surveillance, formal civil and criminal investigation, administrative banning hearing and appeal to the AAT, and potential referral for criminal prosecution.

*VPlus Holdings Pty Ltd v Bank of Western Australia Ltd* (2012) 91 ACSR 545; [\[2012\] NSWSC 1327](#) (Stevenson J) – Appeared with RC Scruby for the defendant bank and administrators – successful application to strike-out various shareholder claims under the *Corporations Act*, *Contracts Review Act*, in equity, and in tort arising from the appointment of administrators and subsequent administration of various companies.