

Matthew Lewis: Selected cases

Media/Defamation/Intellectual Property

Dank v Cronulla and Sutherland District Rugby League Club Ltd and Ors [\[2014\] NSWCA 288](#) – Ward JA, Emmett JA and Gleeson JA – Defamation - appeared with Penelope Wass SC for the Cronulla and Sutherland District Rugby League Club and its Chairman Mr Irvine – publication and the participation test – no error requiring appellate intervention.

Frank Ronald Bleyer v Google Inc – [\[2014\] NSWSC 897](#) – McCallum J – Defamation - Appeared with Bruce McClintock SC - Importation of *Jameel (Yousef) v Dow Jones into NSW Law* – Proportionality - Google Inc is not a publisher of its search engine for the purposes of the *Defamation Act 2005 (NSW)*.

R v Odishou [\[2014\] NSWDC \(unreported\)](#) – appeared for News Ltd, News Media Ltd; Fairfax and SBS to oppose a suppression order sought by the defendant who is a member of “Brothers for Life” gang. Whether the defendant will receive a fair trial following publicity. Proceedings are on going and argument has been listed for late 2014;

O’Shane v Harbour Radio Pty Ltd & Jones [\[2014\] NSWSC 93](#) – Beech Jones J - Appeared for the plaintiff Magistrate in relation to the defendants’ subpoena for production of documents by the Judicial Commission – Whether legitimate forensic purpose. Retained by the plaintiff to advise and appear generally with Bruce McClintock SC;

Hamzy v R [\[2013\] NSWCCA 156](#) - Hoeben CJ in CL, Harrison JA, Beech Jones JA -Court of Criminal Appeal – unled – Media Law - Appeared for the Australian Broadcasting Corporation (intervening) in the Court of Criminal Appeal - suppression orders relating to Mr Hamzy perceived to be Australia’s most dangerous prisoner;

Griffith v Australian Broadcasting Corporation & Ors [\[2013\] NSWSC 750](#) – Beech Jones J – Declaratory relief – Defamation - appeared for the Australian Broadcasting Corporation with BW Walker SC - declaratory relief – costs assessment process – whether a costs assessor should determine complex issues of fact and law;

(1) Cush (2) Boland v Dillon [2012] NSWDC – malice only trial – Charteris DCJ – appeared for the defendant on remittal from High Court of Australia – led by G O’L Reynolds SC, currently unreported;

Dillon v (1) Cush (2) Boland [\[2012\] NSWCA 364](#) - Allsop P and McColl JA – leave to appeal – amendment to pleadings – delay between oral delivery of reasons and provision of revised judgment – led by G O’L Reynolds SC;

R v Lord - NSWDC 23 August 2012 - unreported – appeared for the Australian Broadcasting Corporation as intervener successfully lifting suppression orders relating to a relative of a well known Australian soccer player.

(1) Herald & Weekly Times and Ors v ABC [\[2012\] AATA 914](#) (21 December 2012) – *Media Law* – appeared for the Australian Broadcasting Corporation resisting a Freedom of Information Act application brought by the H&WT and David Tenant.

Papaconstuntinos v Holmes a Court [\[2012\] HCA 53](#) – High Court of Australia (10 May 2012) – Defamation - appeared for the defendant with Bruce McClintock SC and Richard Potter - defence of a qualified privilege and whether there must exist “a pressing need” before a stranger can publish a defamatory statement.

Mai v Vietnamese Herald and Ors – February 2012 NSWDC – Gibson DCJ – Defamation - appeared for China TV (second defendant) in defamation proceedings – case settled;

Bissett v Deputy State Coroner [\[2011\] NSWSC 1182](#) – RS Hume J – Media Law - appeared for the Australian Broadcasting Corporation – Non Publication and Suppression Orders;

University of Sydney v Resmed [2011] Federal Court – unreported – Registrar Ng – Intellectual Property - Appeared for Professor Sullivan in an ‘examination’ – Practice and Procedure – Closed Court for Examination (suppression argument);

Papaconstuntinos v Holmes a Court [\[2011\] NSWCA 59](#) – Defamation - assisted Bruce McClintock SC with various aspects of the appellant’s case;

Styles v Izzo and Ors – NSW Supreme Court, 17 December 2010, unreported – Davies J – Defamation and Private International Law – Appeared for Facebook, Inc and Facebook Australia Pty Ltd as subpoenaed parties successfully protesting jurisdiction.

Gilbert v (1) Duthie (2) Facebook – Federal Court of Australia, Melbourne, December 2010 – Marshall J – Copyright and Private International Law – Appeared for Facebook, Inc in a copyright matter protesting jurisdiction of the Federal Court of Australia;

Megna v Marshall [\[2010\] NSWSC 969](#) – assisted Sandy Dawson on various aspects of the defendant's case;

Otherwise:

Frequently instructed to appear on behalf of the media to appear in the NSW Supreme Court, District and Local Courts seeking access to documents and/or to contest non publication or suppression orders – further details on request;

Appear and advise in various defamation/media/Intellectual Property matters. Details on request.

Commercial

Macquarie International Health v South Sydney Area Health Authority [2013] – currently retained as one of many junior counsel to appear with Greg Burton SC and Peter Bruckner for the defendant in an assessment of damages of case following a trespass - valued by the plaintiff in excess of \$200 million.

National Australia Bank Limited v Zerafa - [2013] NSW Supreme Court – appeared for the National Australia Bank in possession proceedings – allegations (amongst other things) of fraud by bank officer;

Vardenaga v Vardenaga – Family Court of Australia – [2013] - appeared National Australia Bank as mortgagee – application by husband to set aside mortgage by reason that its purpose was to defeat a court order.

Total Quality Sports Hire Pty Ltd v National Australia Bank – [2012] NSW District Court - appeared National Australia Bank – reversal of incomplete “intra bank” payment – case settled at mediation.

National Australia Bank v Elixir & Ors [2012] - appeared for National Australia Bank in relation to a purported “mistake” in a deed – rectification – case settled at mediation;

Galileo Japan Funds Management Limited as responsible entity for the Galileo Japan Trust v UBS AG, Australia Branch – Federal Court – Foster J – appeared for the applicant in proceedings that involved approximately AUD\$65 million loan facility – led by Gregory Burton SC – Case settled.

National Australia Bank v Oberg – [\[2012\] FMCA 233](#) – Barnes FM – Bankruptcy – Appeared for NAB as creditor - Creditor’s petition and whether debtor “able to pay his debts” within the meaning of s.52(2) Bankruptcy Act 1966 (Cth);

Control Software SA v Schneider Australia Pty Ltd – [2011 – 2012] – Enforcement of Arbitral Award – International Arbitration - Various judgments (including security for costs) from NSW Supreme Court (unreported) - appeared for Australian defendants sued by a Spanish corporation – purported breach of “best endeavours” clause in an arbitration agreement - instructed by Baker & McKenzie (Sydney).

Australian Fishing Enterprises Pty Ltd v Clipper Kikushio, Federal Court – Admiralty – [2011] – Admiralty - appeared for the defendant with Alexander W Street SC – defendant ship collided with a Blue Fin Tuna-fish pen – Pen was not marked on Commonwealth of Australia Nautical map –cross claim against the Commonwealth of Australia – case settled - led by Alexander Street SC;

National Australia Bank v Oberg [2011] NSWSC – unreported – Einstein J – Appeared for NAB in a motion to secure freezing orders and summary judgment - defendant engaged in “Cheque Kitting” activity;

Park & Anor v Grace & Ors – NSW Supreme Court Commercial List – unreported - property dispute - instructed by Baker & McKenzie (Sydney);

Heperu v Perpetual Trustees, High Court of Australia [2010] – Assisted Gregory Burton SC and John Digby QC in a matter concerning cheque fraud, conversion, change of position and restitution. Matter settled prior to judgment;

Schools & Ors v (1) Blue Chip Financial Services Australia Ltd (in Liq) (2) Turn and Wave Ltd, Supreme Court ACT, 2010 – Private International Law – Led by Andrew Bell SC, defended a stay application brought by New Zealand defendants.

Weller v Williams [\[2010\] NSWSC 716](#) – NSW Supreme Court – Ball J – Criteria for a stay pending appeal;

Weller v Williams [\[2010\] NSWSC 741](#) – NSW Supreme Court – Ball J – successfully appeared for the Commonwealth Bank in an action involving s.43A Real Property Act 1900;

ASIC v Rich & Ors [2010] – one of four junior counsel advising ASIC in relation to the costs argument. The case settled.