

RALPHED NOTLEY

BARRISTER

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INTRODUCTION

Ralphed is a leading senior junior in commercial litigation at the New South Wales Bar.

His expertise includes bankruptcy and corporate insolvency, building and construction and planning, and real property and strata schemes.

His knowledge and expertise across a broad range of commercial practice areas has seen him act for and advise clients in numerous complex commercial matters in a wide variety of jurisdictions.

Since coming to the Bar, Ralphed has appeared in the Local, District and Supreme Courts of New South Wales, as well as the Federal Circuit and Family Court, the Federal Court, the New South Wales Land and Environment Court, the Administrative Appeals Tribunal and the New South Wales Civil and Administrative Tribunal.

He has also appeared for Members of Parliament in public inquiries being conducted by the Independent Commission Against Corruption.

Ralphed is commended by his long-standing clients and instructing solicitors on his commercial and strategic advice, together with his advocacy, negotiation skills and judgment.

Ralphed was appointed a part-time Senior Member of the New South Wales Civil and Administrative Tribunal for the period 1 February 2021 to 31 January 2022 and was assigned to the Consumer and Commercial Division. During his appointment he heard and determined numerous matters concerning retail lease disputes, home building disputes, strata scheme disputes and general commercial disputes. Several of his decisions were published as unreported judgments.

Since 1 June 2023, Ralphed has been the New South Wales Bar Practice Course Director. He had previously been an advocacy coach and instructor for the New South Wales Bar Practice Course for the many years. Ralphed is also a mentor and tutor to more junior barristers.

Prior to coming to the Bar Ralphed was a solicitor at Atanaskovic Hartnell from April 2008 to December 2009. During this time Ralphed primarily acted for four former directors of James Hardie Industries in civil penalty proceedings commenced by the Australian Securities and Investments Commission (*ASIC v Macdonald (No 11)* [2009] NSWSC 287 and *ASIC v Macdonald (No 12)* [2009] NSWSC 714).

Prior to Atanaskovic Hartnell, Ralphed was a solicitor at Norton Rose Fulbright (formerly Deacons) in the Commercial Dispute Resolution Group from January 2006 to April 2008 and in the Corporate & Commercial Group from February 2005 to December 2005.

ADMISSIONS

Called to the Bar: 5 January 2010
Legal Practitioner: 25 February 2005

EDUCATION

2008 Master of Laws (Corporate & Commercial Law)
University of New South Wales

2004 Bachelor of Laws/Diploma of Legal Practice (Honours I)
University of Newcastle

2002 Bachelor of Commerce
University of Newcastle

SELECTED CASES

Bankruptcy and corporate insolvency

- *Hathway v Stacey Apartments Pty Ltd (In Liquidation), in the matter of Stacey Apartments Pty Ltd (In Liquidation)* [2023] FCA 776 – application for a pooling order for twenty-nine (29) companies – application for ancillary orders – unled
- *Fourteen Consulting Services Pty Ltd (in liq) v A.O.B Holding Pty Ltd* [2023] FCA 704 – application for winding up, examination and asset preservation orders and application for appointment of receiver over trust assets – led by M Pesman SC
- *Banerjee (Liquidator), in the matter of Eastside Formwork Pty Ltd (in liq) v Stojic* [2022] FCA 1315 – application for the issue of warrants pursuant to s 530C of the Corporations Act 2001 (Cth) – unled
- *Krecji (Liquidator), in the matter of Plasterboard & Render Pty Ltd (in liq) v Raber* [2022] FCA 1180 – application for freezing orders under section 1323(3) of the Corporations Act 2001 (Cth) where material non-disclosures by defendants and risk of dissipation of assets – unled
- *Boardman (liquidator) v Australian Boutique Spirits Pty Ltd, in the matter of Europa International Pty Ltd (in liq) (No 2)* [2021] FCA 1614 – application for reinstatement of deregistered company – unled
- *Naidenov (liquidator) v Davey, in the matter of Josa Civil Group Pty Ltd (in liq)* [2021] FCA 1175 – application for the issue of warrants pursuant to s 530C of the Corporations Act 2001 (Cth) – unled
- *Bailey, in the matter of Australian Recruiting Group Pty Ltd (in liq) v Young* [2020] FCA 1473 – application for the issue of warrants pursuant to s 530C of the Corporations Act 2001 (Cth) – unled

- *Bailey, in the matter of Australian Recruiting Group Pty Ltd (in liq) v Young* [2020] FCA 1319 – application by liquidator for leave to proceed against bankrupt pursuant to s 58(3)(b) of the Bankruptcy Act 1966 (Cth) – unled
- *In the matter of Gulf Energy Limited (subject to deed of company arrangement)* [2020] NSWSC 1323 – application under s 444GA of the Corporations Act 2001 (Cth) for leave to transfer shares – unled
- *In the matter of D & D Corak Investments (In Liquidation) Pty Limited* [2020] NSWSC 1197 – application under s 488(2) of Corporations Act 2001 (Cth) for special leave to distribute surplus – unled
- *Wykrota v Polish Club Ltd* [2020] NSWSC 239 – associations and clubs – whether resolution that property of Club be “non-core property” is one dealing with alienation of Club’s property – whether Associate Members of club entitled to vote – where any such entitlement made no difference to the outcome – whether validating order should be made under s 1322 of the Corporations Act 2001 (Cth) – led by M McCulloch SC
- *Hathway, in the matter of Stacey Apartments Pty Ltd (in liq) v Southern Cross Estate Developers Pty Ltd (deregistered)* [2019] FCA 1218 – application to reinstate the registration of a company – application to set aside a deed of company arrangement – appointment of liquidators – pooling of the group pursuant to pooling orders – winding up of the company – led by M Pesman SC
- *Purina, In the matter of Aircraft Support Industries Engineering Pty Ltd (in liquidation)* [2019] FCA 898 – application for freezing orders under s 1323 of the Corporations Act 2001 (Cth) – unled
- *Albarran, in the matter of BCJWY Aboriginal Society Limited* [2019] FCA 491 – application by administrators to extend the convening period for the second meeting of creditors – unled
- *In the matter of AA Management Co Pty Limited* [2019] NSWSC 1443 – application to set aside statutory demand under s 459G of Corporations Act 2001 (Cth) – unled
- *Lukaszewicz v Polish Club Limited* [2019] NSWSC 446; [2019] NSWSC 595; [2019] NSWSC 669; [2019] NSWSC 860 – company limited by guarantee and registered club under the Registered Clubs Act 1976 (NSW) – numerous alleged acts of oppression – sections 232 and 233 of the Corporations Act 2001 (Cth) – led by M McCulloch SC
- *David & Anor v Cohen* [2018] FCCA 3936; [2019] FCCA 70 – application for sequestration order – service of bankruptcy notice – meaning of “last known address” – whether last-known address is address communicated by debtor to creditor or to world at large – meaning of “in absence of proof to the contrary” in reg16.01(1) – unled
- *GDK Projects Pty Ltd, in the matter of Umberto Pty Ltd (in liq) v Umberto Pty Ltd (in liq)* [2018] FCA 541 – application to appoint special purpose liquidators to investigate and prosecute claims arising from transactions with related companies – application for approval of funding agreement – unled

- *Centric Group Pty Ltd v Oxford Construction Pty Ltd* [2018] NSWSC 1808 – application to wind up company in insolvency under section 459P of the Corporations Act 2001 (Cth) – unled
- *Commonwealth Bank of Australia v Pascoe and Scott as trustees of the estate of Usha Wati Charan* [2018] NSWSC 1332 – sale of properties by mortgagee – surplus paid into court – competing claims to surplus – unled
- *In the matter of Eurool Traditional Owners Aboriginal Corporation* [2018] NSWSC 1485 – application to wind up company under s 526.15 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) – unled
- *In the matter of Say Enterprises Pty Ltd* [2018] NSWSC 396 – application for approval of remuneration of receivers and managers – unled
- *In the matter of Swan Services Pty Limited (in liquidation)* [2016] NSWSC 1724 – claim by liquidator under ss 558G and 588M of the Corporations Act 2001 (Cth) for insolvent trading – where liquidator contended that one defendant was de facto director of companies – whether companies were insolvent or became insolvent by incurring the debts – whether presumption of insolvency arose under s 588E(4) of the Corporations Act 2001 (Cth) – whether contravention of s 588G established – whether “loss or damage” in s 588M of the Corporations Act 2001 (Cth) is reduced by recoveries by the liquidator that would allow distribution to creditors – whether creditors with benefit of retention of title clause whose security vests in company due to company’s winding up fell within scope of s 588M of the Corporations Act 2001 (Cth) – whether defences under s 588H of Corporations Act 2001 (Cth) established – whether Court should relieve defendant wholly or partly from liability under s 1317S of the Corporations Act 2001 (Cth) – unled
- *In the matter of Commercial Indemnity Pty Limited* [2016] NSWSC 1125 – plaintiff claimed to be beneficially entitled to half of shares in defendant company – whether plaintiff was purchaser under contract with standing to enforce – effect of s 439A of the Corporations Act 2001 (Cth) – unled
- *Freelance Global v Bensted* [2016] VSC 181 – application by liquidator for declarations and directions regarding entitlement of beneficiaries to monies held on trust – unled
- *Hooper v Lock* [2016] FCA 298 – appeal against rejection of proof of debt by liquidator – unled
- *Hathway (Liquidator), in the matter of Tighrope Retail Pty Ltd (in liq) v Tripolitis* [2015] FCA 1003 – orders ancillary to freezing orders made requiring disclosure of assets by way of affidavit – whether leave should be granted to cross-examine deponent – unled
- *PCL Holdings Pty Limited v Kassem* [2015] NSWSC 1823 – liability of appointor of receivers and managers for their fees – whether effectively capped by Deed of Appointment - receivers’ lien – unled
- *In the matter of Connec Pty Limited* [2014] NSWSC 157 – application to set aside statutory demand under s 459G of Corporations Act 2001 (Cth) – unled

- *George and Australian Securities and Investments Commission* [2014] AATA 167 – application by mortgage broker for review of decisions made by Australian Securities and Investments Commission banning him permanently from providing a financial service or engaging in a credit activity – unled
- *In the matter of Black Opal IP Pty Limited ACN 151 765 356 (Subject to Deed of Company Arrangement)* [2013] NSWSC 1225 – application by deed administrator seeking extension of time to register security interests pursuant to s 588FM(1) of the Corporations Act 2001 (Cth) – unled
- *Catalano v Managing Australia Destinations Pty Ltd (No 2)* [2013] FCA 672 – numerous alleged acts of oppression – sections 232 and 233 of the Corporations Act 2001 (Cth) – unled

Building and construction and planning

- *Growthbuilt Pty Ltd v Modern Touch Marble & Granite Pty Ltd* [2021] NSWSC 290 – dispute between head contractor and subcontractor arising out of four residential building projects in Surry Hills, Mosman, Balgowlah and Putney – where subcontracts provided for an extension of time regime including a power for the contractor to extend time “in its absolute discretion” and with “no obligation to extend, or to consider whether it should extend” – whether contractor obliged to act reasonably with regard to the prevention principle or in good faith – whether liquidated damages clause a penalty – unled
- *Myles William Johnson & Anor trading as LMJR Concreting v Scott Bruce Eagleston* (unreported, District Court of New South Wales, Kearns ADCJ, 24 December 2020) – claim by concreting subcontractor against builder for unpaid invoice in respect of concreting works for a residential dwelling near Dubbo – cross claim by builder alleging numerous defective works by concreting subcontractor – identification of the terms of the contract, including whether it was an express term of contract that concrete slab be constructed with a higher quality finish suitable for a polished floor finish and whether it was an implied term that the concrete slab be level pursuant to the relevant Australian Standards and comply with the relevant Australian Standards – alleged breaches of express and implied terms, including statutory warranties under the Home Building Act 1989 – identification of relevant Australian Standards with respect to the levels of concrete slabs, including whether Guide to Standards and Tolerances 2017 had any application – whether levels of concrete slab compliant with Australian Standards and Guide to Standards and Tolerances 2017 – whether compressive strength of concrete slab compliant with Australian Standards – whether other alleged defects such as spalling and honeycombing, exposed tie wires, minor cracking and extension of damp proof membrane up to the outside of the edge beams – unled
- *2M Projects Pty Ltd v Melanie Esteban and Alfredo Esteban; Melanie Esteban and Alfredo Esteban v 2M Projects Pty Ltd* (unreported, Civil and Administrative Tribunal New South Wales, Senior Member G Meadows, 7 January 2020) – home building contract – breach of statutory warranties – collateral contract to supervise works – variations – unled
- *The Owners-Strata Plan No. 30791 v Southern Cross Constructions (ACT) Pty Limited (In liquidation)* [2017] NSWSC 1660 – application for adoption of referee report – whether report

should be rejected for actual or apprehended bias – whether referee failed to comply with rules of natural justice – led by I Roberts SC

- *Oppidan Homes Pty Ltd v Baldwin & Granofsky* [2016] NSWCATAP 109 – appeal from decision of Tribunal Member in Consumer and Commercial Division – home building contract – whether Tribunal Member failed to take evidence into account – whether issues could be raised on appeal that were not raised or argued below – whether challenge to factual findings permissible in absence of error of law – unled
- *Oppidan Homes Pty Ltd v Baldwin & Granofsky; Baldwin & Granofsky v Oppidan Homes Pty Ltd* (unreported, Civil and Administrative Tribunal New South Wales, Senior Member S Thode, 15 September 2015) – home building contract – breach of statutory warranties – termination of contract – variations – unled
- *DSK Kitchens & Furniture Pty Limited v Botany Bay Council* [2015] NSWLEC 1509 – appeals against refusal of an application to modify a development consent and an application for a building certificate seeking to ratify the installation of a dust extraction and collection system which had been installed without consent – unled
- *The Owners – Strata Plan No. 70030 v Decon Australia Pty Ltd* [2014] NSWSC 347 – judicial review – construction of s 48K of the Home Building Act 1989 (NSW) – jurisdiction of Consumer, Trader and Tenancy Tribunal – whether plaintiff was denied procedural fairness – unled
- *Gittany v Director-General Department of Finance and Services NSW Fair Trading* [2014] NSWCATOD 119 – administrative review of decision to refuse the applicant's application for a contractor licence to contract to undertake residential building work – applicant a director of an externally-administered corporation within three years prior to making his application – whether the applicant took all reasonable steps to avoid the liquidation of these corporations – whether the applicant a fit and proper person to be issued with a contractor licence – unled
- *Sorose Pty Limited (in liquidation) v The Owners – Strata Plan 80638 and Ors* [2013] NSWLEC 1215 – extension of time for development scheme pursuant to s 28QA of the Strata Schemes Freehold Development Act 1973 – unled
- *NC Refractories Pty Ltd v Consultant Bricklaying Pty Ltd* [2013] NSWSC 842 – application to quash adjudication determination made under the Building and Construction Industry Security of Payment Act 1999 (NSW) – unled
- *Tamer v Blacktown City Council* [2012] NSWLEC 1292 – appeal against refusal of a development application for the construction of an eight unit, two-storey, infill affordable housing development – unled
- *Ecological Centre Pty Limited v Council of the City of Sydney* [2011] NSWLEC 1203; *Ecological Centre Pty Limited v Council of the City of Sydney (No 2)* [2011] NSWLEC 1206 – appeal against refusal of a staged development application for the construction of a mixed use retail and residential development – led by A Galasso SC

- *Freshwater Village Developments Pty Ltd v Warringah Council* [2011] NSWLEC 5; [2011] NSWLEC 1127 – appeal against refusal of a development application by the Sydney East Joint Regional Planning Panel for the construction of a mixed use retail and residential development – led by A Galasso SC
- *Dooralong Residents Action Group Pty Limited v Wyong Shire Council & The Salvation Army* [2011] NSWLEC 251 – whether development consent granted for a hospital under Wyong Local Environment Plan 1991 invalid – led by A Galasso SC
- *Michael Safi trading as Michael's Building Services v Stanaway Pty Ltd trading as David Payne Constructions* (unreported, District Court of New South Wales, Woods ADCJ, 17 October 2011) – claim by concreting subcontractor against builder in respect of concreting works for the Civic Theatre and Convention Centre at Dubbo – whether certain works were within the scope of works - whether oral variations were requested or agreed to – claim for quantum meruit where valid and enforceable agreement covering the claimant's right to payment – unled

General commercial

- *Kenxue Pty Ltd ATF The Susan Investment Trust v Westpro Finance Pty Ltd* [2020] NSWSC 1146; *Kenxue Pty Ltd ATF The Susan Investment Trust v Westpro Finance Pty Limited (Quantum of Damages and Costs)* [2020] NSWSC 1163 – mortgage broker introduced a borrower to a lender who lent approximately \$6 million to the borrower who then defaulted – breach of contract – misleading and deceptive conduct – unconscionable conduct – damages for alternative transaction – led by M McCulloch SC
- *Toyota Material Handling Australia Pty Ltd v Cardboard Collection Service Pty Ltd* [2020] NSWDC 667 – application for a stay of proceedings under s 20 of the Service and Execution of Process Act 1992 (Cth) – unled
- *SA Metropolitan Fire Service v ACN 008 275 296 Pty Ltd (in liq) & Ors* [2020] SADC 45 – whether the liability of an insured to the South Australian Metropolitan Fire Service pursuant to subsection 42(5) of the Fire and Emergency Services Act 2005 (SA) fell within the insuring clause of a public and products liability policy – whether section 141 of the Fire and Emergency Services Act 2005 (SA) extended the cover under the policy to the costs recoverable by the South Australian Metropolitan Fire Service under subsection 42(5) of the Fire and Emergency Services Act 2005 (SA) – led by M McCulloch SC
- *Broughton v Leslie* [2019] NSWSC 827; [2019] NSWSC 984 – unincorporated association formed by deed to operate scheme for the supply of stock and domestic water – dispute over members' entitlement to water – whether implied power of members to resign – led by D Pritchard SC
- *Cho v Kwon* (unreported, Supreme Court of New South Wales, Pembroke J, 20 November 2018) – whether oral agreement to vary arrangement for the repayment of a loan set out in deed – operation of s 23C and s 54A of the Conveyancing Act 1919 (NSW) – unled
- *Douglas Allen Lloyd v Andrew John Doust* [2018] NSWDC 463 – whether harvesting contractor made a contractual promise to start harvesting ten days after the property owner commenced

windrowing his canola crop – time being of the essence – consideration of usual practice in Western NSW between croppers and harvesters – whether alleged contract plausible – contract purely oral – consideration of fallibility of human memory with the passage of time whether alleged contract the subject of reconstruction – unled

- *Tyre & Tube Australia (Services) Pty Limited v Martins Stock Haulage (Scone) Pty Limited* [2016] NSWSC 703 – whether contract existed between road transport business and tyre supply and associated services business – implication of contractual terms – promissory estoppel and estoppel by convention – led by M McCulloch SC
- *The Owners – Strata Plan 74602 v Eastmark Holdings Pty Ltd; Eastmark Holdings Pty Ltd v The Owners – Strata Plan 74602* [2015] NSWSC 1981; [2016] NSWSC 496; [2016] NSWSC 558 – mixed residential, commercial, retail and car parking development – allocation of the costs of shared services – whether building manager liable to owners corporation in relation to allocation of costs of shared expenses – led by M McCulloch SC
- *Rosecell Pty Ltd & Ors v JP Haines Plumbing Pty Ltd & Ors* [2015] NSWSC 1238 – conversion – unauthorised sale of goods to bona fide purchaser – ostensible authority – estoppel by silence or inaction – estoppel by negligence – s 26 of the Sale of Goods Act 1923 (NSW) – unled
- *Clear Wealth Pty Ltd v Kwong (No 2)* [2012] NSWSC 1233 – whether confidential client lists copied by former employee – enforcement of restraint of trade clause in employment contract – measure of damages – unled
- *Jerry Schwartz v Albert Hadid & Anor, Albert Hadid v Jerry Schwartz* [2011] NSWSC 1041 – deed of agreement to undertake joint venture – whether terms of deed evidence intention to have legal effect – whether terms of deed sufficiently certain for deed to have legal effect – agreement for loan – terms of agreement – whether agreement to defer payment came into existence – led by M McCulloch SC
- *Adelaide Bank Limited v John Abdelkodous & Anor* [2011] NSWSC 32 – interlocutory application to set aside default judgment – interlocutory application asserting a claim for legal professional privilege – no claim for legal professional privilege made at time of production – whether claim for privilege waived – application of s 122(2) Evidence Act 1995 (NSW) – unled

Inquiries

- *Operation Spicer* – inquiry by the Independent Commission Against Corruption investigating allegations that, during the lead up to the 2011 NSW state election, certain NSW Liberal Party candidates and others solicited and received political donations which were not declared as required by the Election Funding, Expenditure and Disclosures Act 1981 - the allegations included that some of these political donations were made by and received from prohibited donors

(property developers) and some exceeded the applicable caps on political donations – appeared for Craig Baumann MP, Member for Port Stephens – unled

Real property and strata schemes

- *Owners Strata Plan 72250 v/ats Yangura PL and Nugent* [2021] (unreported, Civil and Administrative Tribunal New South Wales, Senior Member G K Burton SC, 14 May 2021) – application for appointment of compulsory strata manager – validity of levies – statutory pre-requisites for levies – unled
- *Turek v The Owners – Strata Plan No 70871* (unreported, Civil and Administrative Tribunal New South Wales, Senior Member C Paull, 30 November 2020) – whether an owners corporation refused to grant owners of a lot in a strata scheme a licence to use common property for the purposes of the Tribunal having jurisdiction to make orders under section 131 of the *Strata Schemes Management Act 2015* (NSW) – unled
- *Wubin Yan v Fang Xu* (unreported, Supreme Court of New South Wales, Rein J, 25 November 2020) – claim by purchaser under contract for sale of land of a lot in an unregistered strata plan for recovery of deposit and others money paid – contract not completed, vendor deregistered and strata plan not registered – whether contract repudiated and deposit and other monies paid by the purchaser payable by the vendor – directors of vendor guaranteed due performance and punctual payment to the purchaser of all monies due and payable by the vendor under the contract for sale – declaration that contract terminated without completion for the purposes of section 50 of the *Duties Act 1997* (NSW) – unled
- *The Owners – Strata Plan No 70871 v Turek* [2020] NSWSC 1027 – appeal from NSW Civil and Administrative Tribunal Appeal Panel – whether proceedings were required to be dismissed if commenced before Tribunal had power to make order sought – unled
- *The Owners – Strata Plan No 70871 v Turek* [2020] NSWCATAP 28; *The Owners - Strata Plan No 70871 v Turek (No 2)* [2020] NSWCATAP 89 – application for leave to appeal interlocutory decision – unled
- *Campbell v Hamilton* [2019] NSWCA 22 – easements – whether registered proprietor granted easement that bound his successors in title — whether instrument granting easement “clearly indicates” the land to which easement is appurtenant for the purpose of s 88(1) of the *Conveyancing Act 1919* (NSW) – led by T Alexis SC
- *Frampton v The Owners – Strata Plan No 35012* [2019] NSWCATAP 265 – application for leave to appeal costs decision – unled
- *Budiyanto v KPI 6 Pty Ltd* [2018] NSWSC 1313 – contract for sale of land – failure by purchaser to replace deposit bond within a certain time – whether a breach of an essential term giving vendor right to terminate contract – time stipulation not essential – no notice to perform issued so as to make performance by new time essential – vendor not entitled to terminate contract – unled
- *Campbell v Hamilton & Ors* [2018] NSWSC 806 – easements – whether registered proprietor granted easement that bound his successors in title — whether instrument granting easement

“clearly indicates” the land to which easement is appurtenant for the purpose of s 88(1) of the Conveyancing Act 1919 (NSW) – led by T Alexis SC

- *J & P Edwards Super Ltd v Indian Tandoori Restaurant Bright Pty Ltd & Ors* (unreported, Civil and Administrative Tribunal New South Wales, Senior Member D Goldstein, 6 June 2017) – retail lease – abandonment of lease – mitigation of loss – unled
- *Loretta Suiwen Shen, Sarah Bonita, Joshua Lie, Timothy Go* [2015] NSWCATCD 49 – unregistered lease – whether unregistered lease destroyed on registration of transfer – duty to mitigate loss – unled
- *TC (Tallwoods) Pty Ltd v Mustapha* [2013] NSWSC 1551 – contract for sale of land – construction of contractual term – where obligation in contractual term susceptible of more than one meaning – intended meaning of contractual term in context of contract – whether defendants required to execute transfer granting easement – unled