

André Raymond Zahra SC



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Clerk: Ella Baxendale

Introduction

André has over 25 years of legal experience, including over 19 years practising as a barrister. He was appointed Senior Counsel in 2020.

André was called to the New South Wales bar in 2004. He has a broad and busy commercial practice with a focus on trials and appeals, regularly appearing in the Supreme Court of New South Wales, including the New South Wales Court of Appeal, and the Federal Court of Australia. André has also appeared in various other Courts, Tribunals and Commissions of Inquiry and Inquests, including coronial inquests and at the Independent Commission Against Corruption (ICAC) and has successfully represented clients at countless mediations where negotiated settlements have been achieved.

Particular areas of specialty include various commercial disputes, banking and insolvency, corporations law, equity, insurance, property disputes and acting for solicitors and barristers in professional negligence cases.

André has been recognised by *Doyle's Guide* on multiple occasions as a recommended counsel in a number of discrete fields – namely commercial litigation and dispute resolution, professional indemnity, insolvency and restructuring. He has also been recognised as a leading commercial disputes Senior Counsel by *The Legal 500*. André is regularly briefed by a number of major banks and insurers as well as leading liquidators and a variety of corporations and Government and statutory bodies.

André commenced his legal career as Associate to the Hon. Justice Graham Hill in the Federal Court of Australia. Prior to being called to the Bar in 2004, he was a Senior Associate at a leading Sydney law firm. André is a director and former floor secretary of Ninth Floor Selborne Chambers and he presently chairs the chamber's readership selection committee.

André was a member of one of the Bar Association's Professional Conduct Committees from 2017 to 2022.

Admissions

Appointed Senior Counsel: 2020

Barrister at the New South Wales Bar: 2004

Solicitor of the Supreme Court of New South Wales and the High Court of Australia: 1999

Qualifications

Bachelor of Laws, University of New South Wales

Bachelor of Commerce, University of New South Wales

Secondary Education, Sydney Grammar School

Main Practice Areas

Appellate	Bankruptcy
Banking	Commercial
Contracts	Corporate Insolvency
Corporations Law	Equity
Insurance	Inquests and Commissions of Inquiry
Professional Negligence	Property

Selected cases

A selection of cases in which André has appeared or currently appears include:

- *Cornerstone Investments Aust Pty Ltd (in liquidation)* – André conducted liquidators’ examinations in the Federal Court over about 8 days and continues to act for the liquidators in relation to potential recovery actions as well as representing the Liquidators’ interests in significant proceedings brought in the Federal Court of Australia against Cornerstone by the ACCC and the Commonwealth of Australia: *Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 5)* [2019] FCA 1544.
- *Fuge v Commonwealth Bank of Australia* - Federal Court proceedings involving complicated and extensive claims (initially alleged to be for about \$10 million but reduced at trial) against the Commonwealth Bank, its Receivers and an employee by former customers. The proceedings included allegations of fraud, breach of contract, unconscionable conduct, misleading or deceptive conduct, breaches of Codes and various other matters in connection with multiple loans over an extended period as well as a cross-claim by the Bank. The trial ran for 15 days before Lee J between October 2018 and February 2019. André appeared for all of the Respondents (leading Douglas McDonald-Norman). Judgment was delivered on 30 September 2019: *Fuge v Commonwealth Bank of Australia* [2019] FCA 1621. All claims against the Bank and other respondents were successfully defended and the Bank’s cross-claim was upheld. André continued to act for the Bank in

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successfully resisting an appeal to the Full Court of the Federal Court: *Fuge v Commonwealth Bank of Australia* [2020] FCAFC 217. A special leave application is currently pending in the High Court of Australia in which André continues to represent the Bank.

- Currently acting for William Inglis & Sons in a significant commercial property dispute in the Commercial List of the Supreme Court of New South Wales against the Australian Turf Club and the insurer of SMEC Testing involving the sale of land at Warwick Farm with undisclosed pollution that had not been remediated.
- Currently acting for Hugos Operations Pty Ltd in proceedings in the Commercial List of the Supreme Court of New South Wales against Sydney Opera House Trust and an architect in relation to the conduct of a tender for the Opera Bar at the forecourt of the Sydney Opera House.
- *Redenbach v Redenbach* – complicated multi party proceedings in the Corporations List of the Supreme Court of New South Wales relating to the development and use of software by various businesses and the ultimate sale of shareholdings. The proceedings involved claims of oppression, breach of director's duties and were settled on the second day of the three-week hearing.
- *Liprini v McIntyre & Ors* [2019] NSWSC 355 – successful defence of complicated professional negligence claims brought against solicitors. André appeared for the first instance trial and also the appeal to the NSW Court of Appeal where the claims against the solicitors were successfully defended: *Liprini v McIntyre* [2019] NSWSC 355 and *Liprini v Hale* [2020] NSWCA 130. André also appeared for the solicitors in successfully resisting an application for special leave to the High Court of Australia.
- *Dana Rahme & Anor v Benjamin & Khoury Pty Ltd & Anor* [2018] NSWSC 1753 – defence of complicated professional negligence claims brought against solicitors in the Supreme Court of NSW in which André appeared: *Rahme v Satouris* [2018] NSWSC 1753. André also appeared (leading Frank Tao) for the hearing of the appeal in the NSW Court of Appeal: *Rahme v Benjamin & Khoury Pty Ltd* (2019) 100 NSWLR 550; [2019] NSWCA 211.
- Acted for a large corporation in relation to the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*.
- *IPL Medical Pty Ltd v Charmen Pty Ltd* [2019] NSWSC 1824 – commercial lease dispute conducted in the Commercial List of the Supreme Court of New South Wales in which André appeared for the landlord with claims relating to make good provisions, the right to call on a bank guarantee and other related matters.
- *ASIC & ACCC v ACM Group Ltd (No 2)* [2018] FCA 1115 – defending a large debt collection company against claims for misleading or deceptive and unconscionable conduct in the Federal Court of Australia and also appearing at the subsequent penalty hearing: *ACCC v ACM Group Ltd (No 3)* [2018] FCA 2059
- *Goyal (Administrator), in the matter of Aussie Cherries Ltd (Administrators Appointed)* [2018] FCA 677 – successful application in the Federal Court of Australia for the extension of the convening period for a company in administration
- *Lawcover v Muriniti & Newell* [2018] NSWSC 558 – successful proceedings seeking declarations and injunctive relief against an insured and involving questions of construction of a policy of professional indemnity insurance and allegations of bad faith. The proceedings involved a first instance hearing in the Supreme Court of NSW: *Lawcover Insurance Pty Ltd v Leonardo Muriniti and Robert Newell* [2017] NSWSC 1557 and *Lawcover Insurance Pty Ltd v Muriniti and Newell* [2018]

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NSWSC 558, an appeal to the NSW Court of Appeal *Muriniti; Newell v Lawcover Insurance Pty Ltd* [2018] NSWCA 134 and *Lawcover Insurance Pty Ltd v Muriniti and Newell* [2018] NSWSC 558 and related proceedings *Muriniti v King; Newell v Hemmings* [2019] NSWCA 232 in which André appeared.

- *Michelangelo Alfredo Mascarello & Anor v Registrar-General of New South Wales* [2018] NSWSC 284, reported at (2018) 18 BPR 38,427 – successful defence of professional negligence claim against solicitor brought by the Registrar-General of NSW in the Supreme Court of NSW, Expedition List.
- *Bendigo and Adelaide Bank Limited & Anor v Michael Karl Jaeger*, unreported, 1 December 2017 per Gibb DCJ, District Court of New South Wales – successful recovery action against a borrower in respect of 7 loans to fund investments in the Great Southern Managed Investment Schemes [District Court of New South Wales]. The judgment was upheld on appeal: *Jaeger v Bendigo and Adelaide Bank* [2018] NSWCA 116 [NSW Court of Appeal]. André also subsequently successfully resisted an application in the District Court to set aside the earlier (successful) District Court judgment: *Bendigo and Adelaide Bank Limited v Jaeger* [2018] NSWDC 244.
- *DSHE Holdings Ltd (receivers and managers appointed) (in liquidation) v Nicholas Abboud & Ors and National Australia Bank Limited & Anor v Nicholas Abboud & Ors* [2017] NSWSC 579 – successfully resisted the joinder of Berkley Australia Insurance to complicated and lengthy proceedings arising out of the collapse of Dick Smith with claims of some \$150 million [Supreme Court of NSW, Commercial List]
- *In the matter of Sydney Project Group Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) and S.E.T. Services Pty Ltd (Administrators Appointed (Receivers and Managers Appointed))* [2017] NSWSC 881 – successful proceedings seeking declarations as to the validity of the appointment of Administrators to companies associated with Salim Mehajer.
- *Benson v Rational Entertainment Enterprises Limited* [2017] NSWSC 922 – successful defence on behalf of four companies located in the Isle of Man and associated with online poker playing website [Supreme Court of NSW]. André also appeared in the appeal to the NSW Court of Appeal: *Benson v Rational Entertainment Enterprises Ltd* [2018] NSWCA 111
- *Cox v The Animal Welfare League of New South Wales* [2017] NSWSC 374 – successfully resisted an interlocutory injunction sought against the Animal Welfare League of New South Wales to prevent the holding of an annual general meeting [Supreme Court of NSW]
- *Commonwealth Bank v Aldous* [2017] NSWCA 264 – successful claim on behalf of the Commonwealth Bank against a borrower who cross-claimed against the Bank alleging unconscionable conduct. The Bank was successful at first instance and the judgment was upheld on appeal: *Aldous v Commonwealth Bank* [2017] NSWCA 264 [Supreme Court of NSW and NSW Court of Appeal]
- *Taxa Australia Pty Ltd v Wang & Anor* [2016] NSWSC 1913 – successfully resisted application for leave to bring a derivative action [Supreme Court of NSW]
- *Yoo v Toppro Pty Ltd* [2016] NSWSC 670 – shareholder dispute with professional negligence cross-claim against solicitor [Supreme Court of NSW]
- *Lee v Elgammal* [2016] NSWCA 26 – successful appeal on behalf of a solicitor in the New South Wales Court of Appeal [NSW Court of Appeal]

- *Thiess Pty Ltd v Dobbins Contracting Pty Ltd* [2016] NSWSC 265 – lengthy and complicated negligence claim brought in the Technology and Construction List of the Supreme Court of NSW relating to damage to heavy equipment resulting from a fire at a mine.
- *Sutherland v GHR Accounting* [2015] NSWSC 1946 – successful application on behalf of Macquarie Bank to have the claims against it dismissed at an early stage of the proceedings
- *Mendonca v Chan & Naylor (Parramatta) Pty Ltd (District Court, McLoughlin DCJ); Mendonca v Dooley & Associates Solicitors Pty Ltd* [2016] NSWCA 144 – successfully acted for a barrister in resisting an application for personal costs orders by a former client both at first instance and on appeal [District Court of NSW and NSW Court of Appeal]
- *OXS Pty Ltd v Sydney Harbour Foreshore Authority* [2016] NSWCA 120; *OXS Pty Ltd v Sydney Harbour Foreshore Authority* [2014] NSWSC 1174 – lease dispute (led by Alister Henskens SC at first instance and then on appeal by George Inatey SC).
- *Greer v Pickering* [2015] NSWSC 1131 – successful defence of a solicitor in professional negligence proceedings
- *Benson v Rational Entertainment Enterprises Ltd* [2015] NSWSC 906 – contested application involving questions of conflict of laws and jurisdiction
- *Re Ledir Enterprises Pty Ltd* (2013) NSWSC 1332, also reported at (2013) 96 ACSR 1 – shareholder dispute in relation to related companies with trust arrangements following the removal of one director and involving allegations of breach of directors’ duties, breach of fiduciary duties, equitable fraud and oppression
- *Rich v Westpac Banking Corporation* [2014] NSWCA 136 and at first instance [2013] NSWSC 1759 - successfully acted for Westpac in contested mortgage possession proceedings
- *ICAC Inquiry – Operation Spicer – into political donations* – representing a former New South Wales Government Minister
- *Shield Mercantile v Citigroup* [2013] NSWSC 117 - successfully acted for Citigroup in relation to a complicated contract dispute with its former mercantile agent
- *ilInvest Pty Ltd v Huxley Associates Ltd* [2012] NSWSC 175 – successfully acted for a party seeking to rely on a statutory demand and resisting an application to have it set aside
- *Leybourne v Habkhouk* [2012] NSWCA 212 and [2011] NSWSC 1223 – successful defence of claims against a valuer and attempts to re-open and set aside a settlement both at first instance and on appeal
- *Capital Finance Australia Limited v Bayblu Holdings Pty Ltd & JNW Investments Pty Limited* [2011] NSWSC 24 and *Bayblu Holdings Pty Ltd v Capital Finance Australia Ltd* (2011) 279 ALR 166; (2011) 15 BPR 29,055; [2011] NSWCA 39 - successfully acted for Capital Finance in relation to proceedings by a Mortgagee in Possession seeking to exercise a power of sale and have caveats removed from the title – both at first instance and on appeal
- Appearances at Coronial Inquests
- Numerous additional commercial litigation disputes involving property, contract, banking, bankruptcy, insolvency, estates and other related matters.

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