

ELLY LOUISE PHELAN

Barrister

Nine Wentworth Chambers

A 9/180 Phillip Street, Sydney NSW 2000

T 02 8815 9295 | F 02 9233 4464 | E ephelan@ninewentworth.com.au

Principal areas of practice

Domestic and Cross-Border Insolvency, Building and Construction, Commercial and Equity, International Law, Superannuation Law, Crime and Inquests.

Admissions

- 2021 Called to the New South Wales Bar
- 2016 Admitted to the legal profession
- 2016 Admitted to the High Court of Australia

Qualifications

- 2018 Advanced Certification in Insolvency, Australian Restructuring Insolvency and Turnaround Association
- 2015 Bachelor of Laws with First Class Honours / Bachelor of Politics, Government and International Relations

Employment history

- 2020-2021 Commonwealth Director of Public Prosecutions, Sydney
Federal Prosecutor, *Commercial, Financial & Corruption and Revenue & Benefits Fraud*
- 2018-2020 Gilbert + Tobin, Sydney
Lawyer, *Disputes + Investigations*
- 2017-2018 Rostron Carlyle Rojas Lawyers, Brisbane
Associate, *Insolvency and Restructuring*
- 2016-2017 MinterEllison, Brisbane
Lawyer, *Corporate and Energy and Resources*
- 2014-2017 Griffith University, Queensland
Research Assistant to Dr Roshan de Silva-Wijeyeratne
- 2013-2016 Mills Oakley Lawyers, Brisbane
Paralegal, *Commercial Disputes and Insolvency*

Publications and presentations

Elly Phelan, 'Dealing with Winding up Actions on behalf of both Creditors and Debtors: Where Proceedings Come Undone', (Presentation and Paper, Legalwise Seminar on Debt Recovery: A Practical Guide, Sydney, 30 August 2023).

Elly Phelan, 'Bystander policies and their importance in combating sexual harassment and bullying', (Presentation, NSW Bar Association Newcastle CPD Conference, 12 March 2022).

Kai Luck and Elly Phelan, 'Employee Entitlements: Legal Update: A New Liability Landscape for Employee Entitlements in Liquidation' (2019) 31(3) *Australian Restructuring Insolvency & Turnaround Association Journal* 32, 32-35.

Committees and memberships

Elly is the co-chair of the NSW Bar Association New Barristers Committee and a committee member of the Diversity and Equality Committee.

Elly is also a committee member of the Law Council of Australia Young Lawyers' Committee.

Elly is a member of the Junior Counsel Panel for the Commonwealth Director of Public Prosecutions (appointed 2021).

Selected cases as counsel

Led: *Patrick John Fox & Anor v XO Developments Pty Ltd & Ors* (Supreme Court of New South Wales Proceeding No.: 2024/00096683, 20 March 2024, Hammerschlag J), led by Pouyan Afshar [interlocutory injunction].

Spotpress Pty Ltd & Ors v Spotpress Newspapers Pty Ltd & Ors (Supreme Court of New South Wales Proceeding No.: 2023/00432453, 8 March 2024, Ball J), led by Christian Bova SC [interlocutory injunction].

Greylag Goose Leasing 1410 Designated Activity Company v P.T. Garuda Indonesia Ltd [2023] NSWCA 134 (Bell CJ, Meagher JA and Kirk JA), led by Emma Beechey [upheld claim of foreign state immunity].

Application by SCS Super Pty Limited atf Australian Catholic Superannuation and Retirement Fund [2022] NSWSC 686 (Hallen J), led by Dominique Hogan-Doran SC [application for judicial advice].

Exp No 1 National Park Street Pty Ltd v Abe Froman Pty Ltd, Foleys Music Pty Ltd and Sandra Lindsay (Supreme Court of New South Wales Proceeding No.: 2021/00290691, 22 October 2021, Sackar J), led by Greg McNally SC [obtained an order for expedition].

In the matter of Hydrodec Group Plc [2021] NSWSC 755, led by Emma Beechey [successfully opposed an order for recognition of an application for recognition of a UK moratorium proceeding under the UNCITRAL Model Law on Cross-Border Insolvency].

In the matter of Hydrodec Group Plc (No 2) [2021] NSWSC 1491, led by Emma Beechey [costs].

Restricted [2021] NSWCCA 266, led by Kieran Ginges [successfully opposed a permanent stay application].

Unled: *Rose Ives Pty Ltd & Anor v City Garden Australia Pty Ltd & Ors* (Supreme Court of New South Wales Proceeding No.: 2023/00461689, 22 March 2024, Hammerschlag J) [short service].

Patrick John Fox & Anor v XO Developments Pty Ltd & Ors (Supreme Court of New South Wales Proceeding No.: 2024/00096683, 13 March 2024, Parker J) [short service].

Inquest into the death of Jasmynd Gibbs (2021/129807) [2024] NSWCorC 7 [appeared for the family who petitioned for the inquest].

R v Beth Ngoc Stohyar (Local Court of New South Wales, 13 February 2024, Magistrate Manea) [successful prosecution pursuant to the *Bankruptcy Act 1966*].

Ronald Subarta v Builtcorp Group Pty Ltd (NSW Civil & Administrative Appeals Tribunal File No.: HB 23/00225, 24 May 2023, L Wilson) [successfully defended a builder in a claim under the *Home Building Act 1989*].

Charith Tharanga Fernando v Meg 52 Pty Ltd ACN 635 077 744 (Supreme Court of New South Wales Proceedings No.: 2022/00163044, 3 June 2022, Richmond J) [obtained an ex parte injunction to restrain the sale of a property].

Perpetual Trustees Victoria Limited v Babasa [2021] NSWSC 1062 [obtained an order for possession and release of mortgage for a third party].

Guo Hui Zhong v Galleria Suv Pty Ltd and Hoang Vincent Tran (District Court of Queensland Proceeding No.: 1996/21, 6 August 2021, Dick SC DCJ) [obtained an order for possession and seizure of collateral pursuant to s 123 of the *Personal Property Securities Act 2009*].

Polyfone Telecom Pty Limited v Enseco Services Pty Limited (Federal Court Proceeding No.: NSD375/2021, 9 July 2021, Lee J) [obtained an order pursuant to s 1322(4)(b) of the *Corporations Act 2001* requiring the removal of a Form 519 from the ASIC company register].

Notable cases as solicitor

As advocate: *R v Karen Williams* (Local Court of New South Wales, 9 April 2021, Magistrate Farnan) [Prosecutor without counsel, obtained extradition order].

Nathan Wright v R (District Court of New South Wales, April 2021, Williams J) [Prosecutor without counsel, severity appeal].

Kelly, in the matter of Halifax Investment Services Pty Ltd (In Liquidation) (No 9) [2020] FCA 925 [Solicitor without counsel, appeared for a class of investors in a joint hearing of Australian and New Zealand courts].

As solicitor: Acted for a class of investors in the Halifax Investment Services Pty Ltd (In Liquidation) proceedings that were jointly heard between the Federal Court of Australia and the High Court of NZ.

Acted for New Hope Corporation Limited and a number of its subsidiaries in proceedings in the Supreme Court of New South Wales against Wiggins Island Coal Export Terminal Pty Ltd in connection with a contract claim for A\$155million.

Acted for BB Retail Capital Pty Limited, Honey Birdette (Aust) Pty Ltd and other shareholders in legal proceedings in the Supreme Court of Queensland against a minority shareholder in connection with a shareholder oppression and unconscionable conduct claim.