

Sharna Clemmett

Solicitor 2007

Barrister 2012

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Sharna Clemmett has practised as a barrister since 2012 and specialises in commercial law and equity, wills and estates, property law, consumer law, insolvency and corporations law, vexatious proceedings matters, proceeds of crime and legal costs. She balances a resolute awareness of the needs of clients and instructing solicitors with her ultimate remit; to provide consistently outstanding verbal and written advocacy, technical advice, and case leadership.

Sharna first discovered her gift for advocacy at university, where her ability to distil arguments into well-articulated and precise submissions led her to success in mooting.

From February 2008 to December 2011, Sharna practised in commercial litigation and Insolvency at Sparke Helmore Lawyers. Her role involved advising on, and acting in relation to, disputes and other matters in the areas of real property, trusts, contracts, fraud, partnership disputes, large and complex liquidation, applications to set aside statutory demands, winding up applications,

receiverships, voluntary administrations, general insolvencies and court procedure.

In her first year as an admitted solicitor, Sharna worked as Tipstaff to the Hon RW White in the Equity Division of the Supreme Court of New South Wales. Sharna is also a volunteer with the Mosman Music Club and has a great interest in painting, ocean kayaking, and playing the violin.

QUALIFICATIONS

- LLB (Hons)

SPECIALISATIONS

- Commercial Law and Equity
- Wills and Estates
- Property Law
- Corporations and Insolvency Law
- Vexatious Proceedings
- Proceeds of Crime
- Legal Costs

PROFESSIONAL RECOGNITION



Doyle's Guide 2021, Wills and Estates Litigation Junior Counsel, New South Wales -- Recommended

Commercial Law & Equity

A.V. Jennings Properties Ltd v Kam Civil Pty Ltd [2013] NSWSC 1900. This was a claim for payment for services and the delivery of landfill. Sharna acted for a small, family-run earthmoving company, KAM Civil, against A.V. Jennings. After a hard-fought Local Court hearing, in which judgment was awarded for the plaintiff, A.V. Jennings appealed to the Supreme Court. Sharna successfully defended the appeal.

Arogen Pty Ltd v O'Meley [2013] NSWSC 1197; Arogen Pty Ltd and Ors v O'Meley and Anor (No 2) [2013] NSWSC 1893. Sharna, led by Miles Condon SC, acted for the plaintiff in a bitterly fought family dispute over equitable ownership of a family-run business and shares in Arogen Pty Ltd. The plaintiff established that purported deeds of trust that the defendants relied on were forged and obtained a release from the 'Harman Undertaking' so the forgeries could be provided to the police. Later, Sharna (with Mr Condon) successfully opposed the defendants' application to reopen their case to adduce evidence, persuading the court that the evidence had been obtained by illegal means.

Consumer Law

Sharna has been briefed by the Australian Competition and Consumer Commission on claims against private colleges for conduct in contravention of the Australian Consumer Law (Phoenix and Empower). Sharna, with Geoffrey Kennett SC, provided advice on, among other things, reasonable grounds for the Phoenix matter.

Corporations Law & Insolvency

James & Ors v James (No. 2) [2019] NSWSC 116. Sharna acted for trustees for sale, who sought approval of their remuneration, costs and expenses in selling a property. One of the co-owners had become bankrupt, and an issue arose as to whether the Supreme Court of NSW could determine the question of distribution of the proceeds of sale as between the co-owners, which included the bankrupt estate of that co-owner. The Court exercised its discretion under section 6(3) of the Jurisdiction of Courts (Cross-Vesting) Act (Cth), to deal with the apportionment dispute.

Bull v The Australian Quarter Horse Association [2014] NSWSC 1665. Sharna, led by Anthony McInerney SC, acted for the plaintiff against the Australian Quarter Horse Association (AQHA). The plaintiff had sought to register a cloned quarter horse and claimed that the AQHA had acted improperly in refusing his application. Although ultimately unsuccessful, the plaintiff's case raised a number of legal issues, including breach of contract, oppression and natural justice.

Corporations Law & Insolvency

Re Moylan Investment Group Pty Ltd (in liq) [2015] NSWSC 353. This case involved a rogue financial adviser. Sharna was briefed to advise and appear for the liquidator, conducting examinations and seeking orders for the production of documents. This judgment was one aspect of the application for the production of documents, pursuant to the liquidator's powers under the Corporations Act 2001.

Legal Costs & Solicitors Duties

Sharna has been briefed to advise and appear in matters concerning:

- professional conduct complaints against solicitors, in relation to legal costs
- legal costs claims brought by clients against solicitors and barristers
- claims by solicitors against clients, for recovery of costs (see *Stankovic v Magee* [2014] NSWCA 439; appeal from *Peter Michael Magee t/as Armstrong Legal v Stankovic* (District Court of New South Wales; unreported, 10 December 2015))
- negligence claims against solicitors (both for the plaintiff and defendant solicitors) (advising and appearing in the Supreme Court of New South Wales)
- disputes about entitlement to funds held in trust by solicitors (see *Joseph Gambino v Johansson Services Pty Limited trading as Contested Wills & Probate Lawyers* [2016] NSWSC 1582 – claim in circumstances where garnishee order had been issued on solicitors by a third party).

Owners Corporation Disputes

McElwaine v The Owners - Strata Plan No 75975 [2016] NSWSC 1589. Sharna appeared with Anthony McInerney SC for the defendant owners corporation, in a dispute about whether a common law negligence claim could be maintained in respect of its obligations under section 62 of the Strata Schemes Management Act 1996 (NSW). Young AJ held that such a claim was inconsistent with the statutory scheme of the Act.

Proceeds of Crime

Sharna is regularly briefed by the Australian Federal Police on proceeds of crime matters, including restraining orders, forfeiture orders, exclusion applications and examinations).

Commissioner of the Australian Federal Police v Lee [2016] NSWSC 915; Commissioner of the Australian Federal Police v Lee (No 2) [2016] NSWSC 1131. Sharna appeared for the Commissioner of the Australian Federal Police in the re-opening of *Commissioner of the Australian Federal Police v Lee* [2016] NSWSC 915. The legal question at issue was the order in which an exclusion from restraining and forfeiture orders must be heard under the Proceeds of Crime Act 2002 (Cth) vis-à-vis the hearing of the final forfeiture application.

Commissioner of the Australian Federal Police v Cui [2016] NSWSC 1118. Sharna appeared for the Commissioner in this case concerning the question of the order in which exclusion from restraining and forfeiture orders must be heard under the Proceeds of Crime Act 2002 (Cth) vis-à-vis the hearing of the final forfeiture application.

Property Law

James v James - [2018] NSWSC 316 and [2019] NSWSC 116. Sharna acted for the trustees for sale of a property, appointed pursuant to s 66G of the Conveyancing Act 1919 (NSW), first to obtain possession of the property in question, in circumstances where one registered proprietor refused to vacate the property; then to obtain orders permitting payment of the trustees' remuneration and expenses in relation to the sale of the property and the proceedings. The trustees' remuneration, legal costs and expenses were allowed.

Stone v Stone (2015) 17 BPR 33,443; [2014] NSWSC 1655. Sharna acted for the New South Wales Trustee and Guardian on behalf of the plaintiff in this application to sell her property so that care could be provided. Sharna successfully defended a claim for a constructive trust over the property.

Fitness First Australia Pty Ltd v Fenshaw Pty Ltd (2016) 18 BPR 35,847; [2016] NSWSC 47, then (2016) 92 NSWLR 128; (2016) 18 BPR 36,239; [2016] NSWCA 207. Sharna acted for the plaintiff on a claim for declarations as to the proper construction of the outgoings clause in a commercial lease. Although unsuccessful at trial, the plaintiff succeeded on appeal. Sharna was led by Ian Jackman SC on appeal.

O'Meley v O'Meley [2013] NSWSC 1496. Sharna, led by Miles Condon SC, acted for a property owner whose grandson sought access to her property to have it valued for sale so that he could ultimately take possession. These proceedings were related to a broader family dispute.

Arogen Pty Ltd v O'Meley [2013] NSWSC 1197 and Arogen Pty Ltd and Ors v O'Meley and Anor (No 2) [2013] NSWSC 1893. This judgment was related to the above case and dealt with the interlocutory orders for access for valuation. Proceedings before the CTTT followed and, ultimately, Sharna acted for the plaintiff in obtaining judgment for possession of the property, by orders given by Pembroke J on 18 November 2013 (O'Meley v O'Meley, unreported).

Vexatious Proceedings

Proceedings involving Milovan Stankovic. Sharna appeared for Peter Magee t/as Armstrong Legal, and the Hills Shire Council, in relation to various matters in which Mr Stankovic ran substantially the same arguments, including *Stankovic v The Hills Shire Council* [2015] NSWCA 279; *Stankovic v Magee (t/as Armstrong Legal)* [2016] NSWCA 125; and *The Hills Shire Council v Stankovic* [2017] NSWSC 464. In the last of those matters, Sharna acted for the Hills Shire Council in successfully obtaining an order pursuant to the Vexatious Proceedings Act 2008 (NSW) preventing Mr Stankovic from instituting proceedings in relation to the matters which had been the subject of previous hearings and determinations in various courts.

Sackelariou, Edward v O'Donnell; Sackelariou, George v O'Donnell [2018] NSWSC 1651.

Sharna acted for beneficiaries of an estate who successfully opposed the making of orders to give effect to a settlement agreement reached between the estate and a plaintiff who had sought further provision from the estate. That application was successful, and the Court declined to approve the orders. That decision was reached in circumstances where a class of the beneficiaries, whose entitlements under the deceased's Will, were substantially reduced; they did not consent; and for reasons that had not been explained in evidence, those beneficiaries bore a disproportionate share of the burden of the additional provision. An order was made that the beneficiaries' costs be paid from the estate.

Maria Coppola v New South Wales Trustee and Guardian as Administrator of Estate of Late Giuseppina Buda (No 2).

Sharna acted for the second defendant, Salvatore Buda, by his tutor, the New South Wales Trustee and Guardian. The plaintiff, his sister, sought a declaration of constructive trust in respect of Mr Buda's interest in a certain property arising from that interest being left to him by their mother's will. The plaintiff's claim failed because the Court was not satisfied that the representations upon which she relied had been made. Much turned on careful cross-examination of the plaintiff's witnesses.

Austin v NSW Trustee and Guardian [2016] NSWSC 1675.

Sharna acted for the New South Wales Trustee and Guardian, the executor of a deceased estate, against whom a grandchild of the deceased sought an order for provision from the estate. The estate cross-claimed and sought orders for possession of the real property that constituted the main estate asset, in which the plaintiff had been living without permission. After cross-examination of the plaintiff, the Court concluded that the reliability of his evidence was affected by his desire to succeed on his claim. The Court found, among other things, that the plaintiff could not prove dependency upon the deceased, because he had taken, not been given, occupancy of the house. The plaintiff's claim was dismissed, and orders for possession were made.

Singh v Singh [2015] NSWSC 1457.

Sharna acted for one of the plaintiffs in a claim for family provision. Another plaintiff challenged the deceased's testamentary capacity. The court considered how section 48 of the Protected Estates Act 1983 or section 83 of the NSW Trustee and Guardian Act operated when certain assets had been transferred pursuant to powers of attorney. The court examined whether those gifts had been deemed - an important issue in the administration of many deceased estates.

Sharna is regularly briefed to advise and appear in estate proceedings, including matters for the NSW Trustee and Guardian. Sharna also regularly acts for and advises executors on issues arising in the course of administering deceased estates.