

FILED

19 MAY 2025



AMENDED NOTICE OF APPEAL



COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2024/00444848

TITLE OF PROCEEDINGS

First Appellant	ENGADINE MEDICAL IMAGING SERVICES PTY LTD ATF THE ENGADINE UNIT TRUST ACN 613 194 219
Second Appellant	ALI KYATT
Third Appellant	ADVANCED IMAGING PTY LTD ATF THE KYATT FAMILY TRUST ACN 138 834 509
First Respondent	MENA IBRAHIM
Second Respondent	ENGADINE MEDICAL IMAGING PTY LTD ACN 658 177 014
Third Respondent	NABEEL CHAUDHRY

PROCEEDINGS IN THE COURT BELOW

Title below	Engadine Medical Imaging Services Pty Ltd as trustee for the Engadine Unit Trust v Mena Ibrahim
Court below	Supreme Court of New South Wales
Case number below	2023/00134691
Date of hearing	13, 15 and 16 May 2024
Material date	6 November 2024
Decision of	McGrath J

FILING DETAILS

Filed for	Engadine Medical Imaging Services Pty Ltd as trustee for the Engadine Unit Trust & Ors
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Appellants

Filed in relation to	Whole of the decision below
Legal representative	Toufic Bazouni New South Lawyers
Legal representative reference	TB:GB:RO:240366
Contact name and telephone	Rory O'Connor; 02 9891 6388

I, Toufic Bazouni, solicitor on record for the Appellants, hereby certify this and the following 14 pages is the Amended Notice of Appeal for publication pursuant to paragraph 27 of Practice Note SC CA 1.

Signed:

17 November 2025

Contact email

litigation@nsl.legal

HEARING DETAILS

This Notice of Appeal is listed for directions at

TYPE OF APPEAL

Corporations - Directors' Duties - Constructive Trust

DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1) of the *Supreme Court Act 1970*.
- 2 This Notice of Appeal is not filed pursuant to leave to appeal.
- 3 The Appellants appeal from the whole of the decision below.

APPEAL GROUNDS

- 1 The Primary Judge erred in the approach taken to fact finding:
 - (a) by failing to consider objectively determined matters, being contemporaneous communications, and the logic of events; and/or
 - (b) by failing to properly apply the rule in *Jones v Dunkel* informed by those matters in (a) above,

in making the contested factual findings contained in UCPR 51.18 Schedule commencing at page 3 of this Notice of Appeal.
- 2 The Primary Judge erred at [422] to [426] in dismissing the Appellants' claim seeking a constructive trust over the competing radiology practice owned and operated by the Second Respondent, Engadine Medical Imaging Pty Ltd (EMI).
- 3 The Primary Judge erred in dismissing the Appellants' claim against each Respondent.
- 4 The Primary Judge erred at [372] and [377] by:
 - (a) failing to consider all relevant circumstances when considering and determining the factual question of reliance;
 - (b) characterising clause 13.2 of the Deed of Settlement (which on the Appellants' case was unenforceable) as a "solemn disclaimer of reliance" by the Appellants, thereby placing significant weight on it; and
 - (c) misapplied the no exclusion principle by failing to find that clause 13.2 of the Deed of Settlement, or any part of the Deed of Settlement, could not

be relied on in any way whatsoever as a bar to the claim for misleading or deceptive conduct;

UCPR 51.18 SCHEDULE

Whether the Primary Judge erred:

- 1.1 At [91] in finding that there was no evidence of what, if any, action was taken in response to the request from the First Respondent, Mr Ibrahim (**Mr Ibrahim**), to take out \$300,000.00 from the First Appellant, Engadine Medical Imaging Services Pty Ltd (**EMIS**).

Particulars

- (i) Pages 31, 54, 55 and 72 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

- 1.2 At [91] in failing to find that the sum of \$300,000.00 was taken out from EMIS at the request of Mr Ibrahim.

Particulars

- (i) Pages 31, 54, 55 and 72 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

- 2.1 At [144] and [415] in finding that the Third Respondent, Mr Chaudhry (**Mr Chaudhry**), was not directly or actively involved in EMI obtaining the lease for Suite 3, 24 Station Street, Engadine (the **New Lease**).

Particulars

- (i) Primary Judgment at [116] to [124], [127], [178], [411] and [412].
- (ii) Further particulars may be provided by way of submissions.

- 2.2 At [144] and [415] in failing to find that Mr Chaudhry was directly or actively involved in obtaining the New Lease.

Particulars

- (i) Primary Judgment at [116] to [124], [127], [178], [411] and [412].
- (ii) Further particulars may be provided by way of submissions.

- 3.1 At [197] in finding that effort was not made in September 2022 to conceal the Focus Radiology rebranding from EMIS.

Particulars

- (i) Primary Judgment at [276], [277], [278], [411] and [412].
- (ii) Further particulars may be provided by way of submissions.

- 3.2 At [197] in failing to find that effort was made in September 2022 to conceal the Focus Radiology rebranding from EMIS.

Particulars

- (i) Primary Judgment at [276], [277], [278], [411] and [412].
- (ii) Further particulars may be provided by way of submissions.

- 4.1 At [348(8)] in finding that Mr Ibrahim was not involved in decision making with respect to when to take profits out of EMIS.

Particulars

- (i) Primary Judgment at [276], [277], [278], [411] and [412].
- (ii) Further particulars may be provided by way of submissions.

- 4.2 At [348(8)] in failing to find that Mr Ibrahim was involved in decision making with respect to when to take profits out of EMIS.

Particulars

- (i) Pages 31, 54, 55 and 72 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

- 5.1 At [348(9)] in finding that Mr Ibrahim's conduct in relation to the Lease did not entail the holding out of Mr Ibrahim as a person entitled to make a significant decision on behalf of EMIS.

Particulars

- (i) Further particulars may be provided by way of submissions.

5.2 At [348(9)] in failing to find that Mr Ibrahim's conduct in relation to the Lease did entail the holding out of Mr Ibrahim as a person entitled to make a significant decision on behalf of EMIS.

Particulars

- (i) Further particulars may be provided by way of submissions.

6.1 At [352] in finding that Mr Ibrahim was not an officer of EMIS.

Particulars

- (i) Further particulars may be provided by way of submissions.

6.2 At [352] in failing to find that Mr Ibrahim was an officer of EMIS.

Particulars

- (i) Further particulars may be provided by way of submissions.

7.1 At [374(5)] in finding that the Second Appellant, Dr Kyatt (**Dr Kyatt**) did not rely on the representations about the Competing Business.

Particulars

- (i) Further particulars may be provided by way of submissions.

7.2 At [374(5)] in failing to find that Dr Kyatt did rely on the representations about the Competing Business.

Particulars

- (i) Further particulars may be provided by way of submissions.

8.1 At [374(6)] in finding that Dr Kyatt did not rely on the value of \$700,000.00 for a 30% interest in EMIS and the Engadine Practice in the offer contained in the letter from Bridges Lawyers dated 3 November 2022.

Particulars

- (i) Further particulars may be provided by way of submissions.

8.2 At [374(6)] in failing to find that Dr Kyatt relied on the value of \$700,000.00 for a 30% interest in EMIS and the Engadine Practice in the offer contained in the letter from Bridges Lawyers dated 3 November 2022.

Particulars

- (i) Further particulars may be provided by way of submissions.

9.1 At [374(7)] in finding that Dr Kyatt did not rely on the statement contained in the email from Bridges Lawyers of 15 February 2023 that "there would be no loss to your client to include this release".

Particulars

- (i) Further particulars may be provided by way of submissions.

9.2 At [374(7)] in failing to find that Dr Kyatt did rely on the statement contained in the email from Bridges Lawyers of 15 February 2023 that "there would be no loss to your client to include this release".

Particulars

- (i) Further particulars may be provided by way of submissions.

10.1 At [378] in finding that it was not misleading or deceptive for Mr Ibrahim to stay silent about the detail of the plans he had for establishing a new radiology practice in Engadine in competition with the Engadine Practice.

Particulars

- (i) Further particulars may be provided by way of submissions.

10.2 At [378] in failing to find that it was misleading or deceptive for Mr Ibrahim to stay silent about the detail of the plans he had for establishing a new radiology practice in Engadine in competition with the Engadine Practice.

11.1 At [414] in finding that there was no evidence that Mr Chaudry had any involvement:

- (1) in the operations or management of EMI;
- (2) in the steps taken in July 2022 by Mr Ibrahim to obtain the New Lease of the Engadine Premises in the name of EMI; and
- (3) in the steps taken across September, October and November 2022 by Mr Ibrahim to obtain the Focus Engadine Lease of the Focus Engadine Premises.

Particulars

- (i) Further particulars may be provided by way of submissions.

11.2 At [414] in failing to find that there was evidence that Mr Chaudry had any involvement:

- (1) in the operations or management of EMI;
- (2) in the steps taken in July 2022 by Mr Ibrahim to obtain the New Lease of the Engadine Premises in the name of EMI; and
- (3) in the steps taken across September, October and November 2022 by Mr Ibrahim to obtain the Focus Engadine Lease of the Focus Engadine Premises.

Particulars

- (i) Pages 90 to 95, 98, 102, 212, 214, 245, 265 and 312 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

12.1 At [416] in finding that the only evidence of steps being taken to have employees of EMIS leave and join EMI involving Mr Chaudhry was in March 2023.

Particulars

- (i) Further particulars may be provided by way of submissions.

12.2 At [416] in failing to find that the only evidence of steps being taken to have employees of EMIS leave and join EMI involving Mr Chaudhry was in March 2023.

Particulars

- (i) Further particulars may be provided by way of submissions.

12.3 At [416] in finding that the only evidence of steps being taken to have employees of EMIS leave and join EMI involving Mr Chaudhry was in March 2023.

Particulars

- (i) Further particulars may be provided by way of submissions.

12.4 At [418] in finding that there was no evidence that Mr Chaudhry canvassed, solicited and accepted approaches from customers of the Engadine Practice, or alternatively assisted Mr Ibrahim to do this.

Particulars

- (i) Pages 419 to 421, 432, 433, 437 to 472 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

12.5 At [418] in failing to find that Mr Chaudhry canvassed, solicited and accepted approaches from customers of the Engadine Practice, or alternatively assisted Mr Ibrahim to do this.

Particulars

- (i) Pages 419 to 421, 432, 433, 437 to 472 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

12.6 At [419] in finding that there was no evidence that Mr Chaudhry had any involvement in establishing the Focus Engadine Practice.

Particulars

- (i) Pages 137 to 139, 141, 144, 177 to 185, 187 to 189, 191 to 202, 204 to 207, 215, 216, 241 to 258, 273, 350, 353, 354, 361 to 405 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

12.7 At [419] in failing to find that Mr Chaudhry was involved in establishing the Focus Engadine Practice.

Particulars

- (i) Pages 137 to 139, 141, 144, 177 to 185, 187 to 189, 191 to 202, 204 to 207, 215, 216, 241 to 258, 273, 350, 353, 354, 361 to 405 of Exhibit B.
- (ii) Further particulars may be provided by way of submissions.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Orders 1 to 2 made by McGrath J on 6 November 2024 be set aside.
- 3 A declaration that the First Respondent:
 - (a) was an officer within the meaning of the *Corporations Act 2001* (Cth) (the **Act**) of the First Appellant;
 - (b) engaged in conduct that was in breach of his fiduciary duties to the First Appellant;
 - (c) engaged in conduct in breach of section 180 of the Act;
 - (d) engaged in conduct in breach of section 181 of the Act;
 - (e) engaged in conduct in breach of section 182 of the Act; and
 - (f) engaged in conduct in breach of section 183 of the Act.
- 4 An Order pursuant to section 1317H(1) of the Act that the First Respondent compensate the First Appellant.
- 5 In the alternative to Order 4 above, an Order that the First Respondent pay equitable compensation to the First Appellant.
- 6 A declaration that the First Respondent holds his shareholding in the Second Respondent, Engadine Medical Imaging Pty Ltd, on trust for the benefit of the First Appellant.
- 7 An Order that the First Respondent transfer all of his shareholding in the Second Respondent to the First Appellant.
- 8 In the alternative to Orders 6 to 8 above, an Order that the First Respondent pay equitable compensation to the First Appellant.

- 9 An Order under section 237 of the ACL that the Deed of Settlement and Release dated 23 February 2023 be set aside or alternatively an Order varying the Deed of Settlement by:
- (a) removing and severing the clauses referred to below:
 - (i) Recital H;
 - (ii) Clause 4;
 - (iii) Cause 5; and
 - (iv) Clause 13,
 - (b) or alternatively, an Order that the clauses referred to in 10(a) above are void and unenforceable.
- 10 An Order under section 243 of the ACL that the First Respondent indemnify and hold harmless the First Appellant and the Second Appellant from any claim made by or liability to Don Zafiropoulos & Helen Zafiropoulos, their successors and assigns pursuant to the Deed of Assignment of Lease dated 23 February 2023 or the First Appellant's occupation of Suite 3, 24 Station Street, Engadine.
- 11 A declaration that the Second Respondent holds its entire interest in the business known as "Focus Radiology Engadine" trading from 1-3 Station Street, Engadine on trust for the benefit of the First Appellant.
- 12 An order that accounts and inquiries be taken and made including:
- (a) the Second Respondent's transactions, including transactions recording financing arrangements for radiology equipment, financial position and performance from since 12 February 2018 to date;
 - (b) all transactions between the Second Respondent on the one hand and the other Respondents on the other;
 - (c) all moneys and/or assets of the Second Respondent in the hands of each other Respondent, or anyone on behalf of each other Respondent since 12 February 2018 to date; and
 - (d) the profit derived by any business or other asset owned and operated by the Second Respondent since 12 February 2018 to date.
- 13 An Order for the payment by the Second Respondent to the First Appellant 100% of the net profit found upon the taking of such an account.
- 14 In the alternative to Orders 12 and 13 above, an Order that the Second Respondent

- pay equitable compensation to the Second Appellant.
- 15 An Order under section 243 of the ACL that the Second Respondent indemnify and hold harmless the First Appellant and the Second Appellant from any claim made by Don Zafiropoulos & Helen Zafiropoulos, their successors and assigns pursuant to the Deed of Assignment of Lease dated 23 February 2023.
- 16 A declaration that the Third Respondent:
- (a) was a director of the First Appellant;
 - (b) engaged in conduct that was in breach of his fiduciary duties to the First Appellant;
 - (c) engaged in conduct in breach of section 180 of the Act;
 - (d) engaged in conduct in breach of section 181 of the Act;
 - (e) engaged in conduct in breach of section 182 of the Act; and
 - (f) engaged in conduct in breach of section 183 of the Act.
- 17 An Order pursuant to section 1317H(1) of the Act that the Third Respondent compensate the First Appellant.
- 18 In the alternative to Order 17 above, an Order that the Third Respondent pay equitable compensation to the First Appellant.
- 19 Respondents to pay the Appellants' costs.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

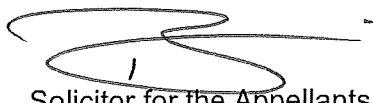
I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the Appellants that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature



Solicitor for the Appellants

16 May 2025

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this Notice of Appeal.

FURTHER DETAILS ABOUT APPELLANTS

First Appellant

Name Engadine Medical Imaging Services Pty Ltd ATF the Engadine Unit Trust ACN 613 194 219
Address c/- Suite 3, 24 Station Street, Engadine NSW 2233

Second Appellant

Name Ali Kyatt
Address c/- Suite 3, 24 Station Street, Engadine NSW 2233

Third Appellant

Name Advanced Imaging Pty Ltd ATF the Kyatt Family Trust ACN 658 177 014
Address c/- Suite 3, 24 Station Street, Engadine NSW 2233

Legal representative for Appellants

Name Toufic Bazouni
Firm New South Lawyers
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DETAILS ABOUT RESPONDENTS

First Respondent

Name Mena Ibrahim
Address 22 Burlington Street, Monterey NSW 2217

Second Respondent

Name Engadine Medical Imaging Pty Ltd ACN 658 177 014
Address 22 Burlington Street, Monterey NSW 2217

Third Respondent

Name Nabeel Chaudhry
Address 144 Terry Street, Albion Park NSW 2527