

Auditor best practice – a workshop examining our responsibilities in light of McGoldrick and Baumgartner

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Belinda Aisbett, Director, Super Sphere Pty Ltd and
Shirley Schaefer, Partner, BDO Audit (SA) Pty Ltd





Belinda Aisbett

Belinda is a director of Super Sphere Pty. Ltd., a specialist self managed superannuation company, where she is responsible for providing audit, consulting and training services in relation to self managed super funds.

Belinda established Super Sphere in 2003 to specialise in SMSF auditing and audit related services. This is in addition to providing an SMSF Audit Toolkit to other auditing professionals and undertaking numerous training engagements each year.

Belinda is a member of the CAANZ, and holds a Bachelor of Business (Accounting). Belinda is also a specialist member of the SMSF Association, co-chairperson of their audit discussion group, and a member of the SMSF Association education and conference committees.





Heather Gray

Heather is a partner at law firm Hall & Wilcox, where she heads the superannuation practice. She is one of Australia's most experienced superannuation and financial services lawyers, having practised in the area for more than 30 years, and has been recognised as one of Australia's leading superannuation lawyers in the annual 'Best Lawyers' reports published by the Australian Financial Review from 2010 to 2018 inclusive. She was named as the 'Best Lawyers' Melbourne Superannuation Lawyer of the Year for 2014 and 2018. She acts for superannuation fund trustees, financial institutions, employers, associations and other entities involved in superannuation, across the full range of legal issues facing the industry, and has a special interest in self managed superannuation.

Heather has been involved in the development and implementation of superannuation policy through her roles as a member (and former Chair) of the Superannuation Committee of the Law Council of Australia and as a member of regulatory consultative committees and of the Board of Taxation Advisory Panel. A frequent speaker at superannuation conferences, she is a Chartered Tax Adviser, and holds Honours degrees in Law and in Arts from the University of Melbourne.





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Shirley Schaefer


Shirley is an auditor by training and a SMSF expert by choice. She established a separate Superannuation division at BDO in 1996, recognising the need to provide high quality technical services to clients with self-managed superannuation funds.

Shirley is a regular speaker at SMSF & Audit conferences. She provides SMSF competency training for accountants and auditors and is the co-author of the Thomson Reuters SMSF Audit Guide.

Shirley is the 2017 winner of the SMSF Adviser Awards for Specialist SMSF Accountant and the Editors Choice Award. And has won SMSF Auditor of the Year for the Australian Accounting Awards in 2018 and Auditor of the Year for the Women in Finance Awards in 2018.

She is an Accredited Specialist Adviser and Accredited Specialist Auditor of the SMSF Association (SMSFA); an authorised representative of Godfrey Pembroke, under a limited ASPL authority; a Fellow of the Association of Superannuation Funds Australia (ASFA); a Fellow of the Chartered Accountants Australia and New Zealand (CAANZ); a Registered SMSF Auditor; and a Registered Company Auditor.


Cam & Bear Pty Ltd v McGoldrick [2018] NSWCA 110

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Facts

- Cam & Bear Pty Ltd trustee of SMSF – Dr Bear and Mrs Campbell were members/directors
- Investments managed by Lewis Securities – company owned by Dr Bear’s friend
- Cash paid to SMSF was lent on an unsecured basis to company related to the friend
- Recorded as Cash – LSL Holdings P/L in financial statements

Cam & Bear Pty Ltd v McGoldrick [2018] NSWCA 110

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- Mr McGoldrick was auditor between 2003 and 2007
- Queried cash descriptions but did not qualify accounts
- Did not inform Dr Bear and Mrs Campbell of issues
- September 2008 – Dr Bear tried unsuccessfully to make cash withdrawal from SMSF
- November 2008 – Friend’s company went into voluntary administration - \$950,000 loss for SMSF

Cam & Bear Pty Ltd v McGoldrick
[2018] NSWCA 110

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- Cam & Bear sued Mr McGoldrick for damages for negligence and misleading and deceptive conduct
- Supreme Court of NSW found that Mr McGoldrick had breached his duty of care and made false and misleading statements
- But - conduct did not cause loss – loss caused by Dr Bear's trust in his friend
- Appeal

Cam & Bear Pty Ltd v McGoldrick
[2018] NSWCA 110

#INC2018



Decision

- Mr McGoldrick breached his duty of care because he failed to qualify audit certificate – required to make proper enquiries about recoverability of cash amounts and report to trustee
- Negligence caused loss – contributions would not have continued to be made if true position known

Cam & Bear Pty Ltd v McGoldrick
[2018] NSWCA 110

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- Mr McGoldrick was employed for the purpose of protecting the fund and its trustee against financial risks
- Mr McGoldrick did cause the loss and was liable for the majority of the SMSF's loss
- 90% of loss apportioned to Mr McGoldrick, 10% of loss apportioned to Cam & Bear

Cam & Bear Pty Ltd v McGoldrick
[2018] NSWCA 110

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Comment

- Auditors have a duty to ensure that financial statements are accurate; duty to advise trustees about recoverability of investments
- High standard of care expected of auditors

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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Facts

- SMSF established by Mrs Crittle in 2006; Ryan Wealth Holdings Pty Ltd was trustee; Mrs Crittle sole shareholder and director
- \$7m transferred to financial planning firm MRS
- Mr Moylan was director, shareholder and authorised representative of MRS referred by Mrs Crittle's trusted solicitor

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Funds invested into unsecured loans and two unit trusts
- Loans made to finance development of several projects of entities associated with Mr Moylan and solicitor
- Between 2012 and 2014 various persons and entities connected to property ventures were placed into bankruptcy or liquidation
- 2013 - MRS insurance lapsed; deregistered

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Mid 2013 - Mrs Crittle contacted by a unitholder who expressed concerns about one of the trusts
- Mrs Crittle engaged a forensic accountant and solicitors
- Took steps to recover loans and investments by taking actions against solvent borrowers, guarantors and third parties
- Recovered \$3,277,785

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

#INC2018



- Defendant Baumgartner was auditor of SMSF between 2007 and 2009
- Mrs Crittle brought proceedings for failure to detect irregularities in SMSF and consequential loss

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Claims were that Baumgartner:
 - Failed to enquire into and report accurately whether loans and investments made in accordance with investment strategy that had regard to all of the circumstances of the SMSF and Reg 4.09 of SIS Regs
 - Failed to audit SMSF to be able to reasonably form the opinion as to whether there had been compliance in all material respects with requirements of SIS Act and Regs

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Failed to bring to Mrs Crittle's attention, by notation, qualification or other communication, serious misdescriptions and misstatements in financial statements
- Failed, acting reasonably, to form and express certain opinions
- Failed to exercise due care and skill

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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Decision

- Baumgartner had a "significant ability" to prevent the kind of loss that eventuated and thus were liable for the loss suffered by Mrs Crittle
- Baumgartner knew that the loans and investments were highly risky, and high possibility of failure
- Baumgartner failed to qualify audit reports

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Baumgartner did not tell Mrs Crittle of the concerns regarding the loans and investments
- Breached audit contracts and common law duties to take reasonable care in performance of their engagement to provide audit reports
- Did not confirm whether SMSF's investment strategy had given enough consideration to risk, return, liquidity and diversification as per Reg 4.09 of SIS Regs

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Did not confirm if SMSF's investments were made in line with its investment strategy
- Baumgartner negligent in failing to exercise reasonable care in preparation of audit reports, failing to report serious misdescriptions and other circumstances to Mrs Crittle
- Consequently Mrs Crittle was unaware of the deficiencies, was delayed in bring actions to recover losses

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Had a qualified audit report been issued in 2008 or subsequent years, Mrs Crittle would have called in the loans and investments and would have made a greater recovery than she did
- Loss of opportunity to make recovery because of breaches of contract and duty and misleading and deceptive representations

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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- Damages awarded of \$2,260,140 exclusive of interest
- Damages apportioned 90% to Baumgartner and 10% to Mrs Crittle (contributory negligence)
- The 90% was apportioned 80% to Baumgartner and 20% to accountant and tax agent

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

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Comment

- Auditors will be held accountable if they fail to meet professional standards
- Auditors have responsibility to make adequate enquiries about suspicious investments and to qualify accounts when necessary – failure to do so may lead to liability
- Auditors have a duty to communicate directly with trustees on concerns

Disclaimer

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