HIGH COURT OF AUSTRALIA

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### Details of Filing

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### Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

**BIRKETU PTY LTD**
**ACN 003 831 392**
First Appellant

**WIN CORPORATION PTY LTD**
**ACN 000 737 404**
Second Appellant

and

**JOHN LJUBOMIR ATANASKOVIC**
First Respondent

**LAWSON ANDREW JEPPS**
Second Respondent

**MAURICE JOCELYN CASTAGNET**
Third Respondent

## APPELLANTS' REPLY

### Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

### Part II: Reply

2. Central to the Respondents' Submissions ("**RS**") at [33]-[36], is the contention that the outcome in the present case concerning the entitlement of a self-represented law firm to recover costs incurred of an employed solicitor, must accord with the entitlement of governments and corporations to recover the costs of their employed solicitors in litigation to which they are parties. The positions are not analogous.
3. These matters arise in the context of considering how the statutory award of costs is affected by judge made law, particularly concerning any significant similarity or

difference between expenses incurred by a law firm employing a solicitor and the expense incurred by a non-lawyer entity such as a public authority or a bank.

4. Broadly, the reasoning of Brereton JA at first instance correctly focused these issues: see AS [37.g.]. Equally, the approach of the Victorian Court of Appeal, as noted in AS [36], highlighted the distinction in approach between solicitors who are parties representing themselves and parties who are represented by an employed solicitor.

5. It is an overstatement to characterise the appellants' argument as devising a new gloss on the indemnity principle as if the principle were an enacted text calling for appropriate judicial restraint.

6. As to RS [43], the basal reason in principle for importance of representation is to respect the core of the notion of '*indemnity*' in the indemnity principle. Lawyers employed by non-lawyer entities represent those entities as lawyers in a way that cannot be true of lawyers who work for their employer partners who happen to be litigants. The latter does not constitute representation in any reasonable meaning of this word.

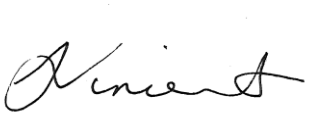
7. As to RS [63] – [68], argument is not advanced by invidious comparisons to observances of professional detachment. Rather the point is better seen as flowing from an appreciation of lawful directions given by a solicitor to his/her employed solicitor concerning the conduct of the employer solicitor's own litigation, compared with the unlawful nature of directions concerning litigation in matters governed by the law of legal professional duties, being directions by a person not bound by those duties. In the latter case, there is no question that the employed solicitor acting in litigation for a non-lawyer cannot be subject to any such unlawful direction. The point is closely related to the sense in which '*representation*' or not produces a different outcome.

8. As to RS [70]-[74]: it goes too far to say the reasoning criticised in RS [70]-[74] involves a fiction, legal or otherwise. The differences are real, with justification for differences in outcome.

9. The fallacy in the argument that the appellants' position leads to perverse outcomes, in RS[77], arises from that argument treating non-lawyer entities for whom their own employed solicitors act in litigation as being "self-represented". They are not. Their lawyers are not agents in relation to the performance of legal work in the same way a law firm's solicitors are.

Dated: 11 July 2024

**Counsel for the appellants**



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