



## HIGH COURT OF AUSTRALIA

5 February 2025

BIRKETU PTY LTD ACN 003 831 392 & ANOR v JOHN LJUBOMIR ATANASKOVIC & ORS  
[2025] HCA 2

Today, the High Court dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The appeal concerned whether an order for costs in favour of an unincorporated law firm entitles the firm to obtain recompense for legal work performed by an employed solicitor of the firm.

The appellants are former clients of the unincorporated legal practice Atanaskovic Hartnell, of which the first and second respondents are the only remaining partners. By proceedings commenced in the Supreme Court of New South Wales, Atanaskovic Hartnell claimed to recover fees and disbursements for legal services rendered to the appellants. Mr Atanaskovic, the first respondent, was the solicitor on the record for Atanaskovic Hartnell throughout those proceedings. The Supreme Court upheld most of Atanaskovic Hartnell's claim and made orders for costs. Atanaskovic Hartnell then filed an application for assessment of costs, seeking, in the assessment a sum for professional fees. Its claim for professional fees was limited to professional fees for work done by its employed solicitors. It made no claim for work done by Mr Atanaskovic or any other partner.

The assessment was referred to the third respondent, a costs assessor, who refused to accede to a request by the appellants that he determine as a preliminary issue whether Atanaskovic Hartnell was entitled to claim professional fees for work done by its employed solicitors. This refusal led to the appellants commencing proceedings against the respondents in the Supreme Court. The primary judge declared that, under the costs order, the current partners of Atanaskovic Hartnell were "not entitled to recover costs for work done by the employed solicitors of their own firm". This conclusion was consistent with the holding of the Court of Appeal of the Supreme Court of Victoria in *United Petroleum Australia Pty Ltd v Herbert Smith Freehills* [2020] VSCA 15 ("*United Petroleum*").

Atanaskovic Hartnell appealed. By majority, the New South Wales Court of Appeal allowed the appeal. Each member of the majority considered, by reference to the applicable statutory context, that a costs order in favour of an unincorporated law firm, consistently with *Bell Lawyers Pty Ltd v Pentelow* (2019) 269 CLR 333, entitled the firm to be compensated for legal work done by an employed solicitor of the firm. Each considered *United Petroleum* to be distinguishable.

The High Court, by majority, held that an unincorporated law firm is entitled to claim professional fees under a costs order for work done by its employed solicitors. The majority held that the "in-house solicitor rule" or "in-house lawyer rule", that a litigant represented by a lawyer employed by the litigant could obtain recompense for legal work performed by the lawyer is an application of the general common law principle by which professional legal costs are confined to those actually incurred by a litigant for legal services rendered to the litigant in the conduct of litigation. To adopt the approach preferred by the Court of Appeal of the Supreme Court of Victoria in *United Petroleum* would be to depart from the application of that general common law principle. Accordingly, the decision in *United Petroleum* was overruled and the appeal was dismissed.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*