SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY
COURT OF APPEAL

Case Title:	**Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Limited**
Citation:	**[2017] ACTCA 29**
Hearing Date:	1 May 2017
Decision Date:	21 July 2017
Before:	Murrell CJ, Burns and Collier JJ
Decision:	Appeal dismissed.
Catchwords:	**APPEAL – PRACTICE AND PROCEDURE – RESTITUTION** – General principles – quantum meruit – where appellant identified potential sponsor for sports team – whether unjust enrichment of the respondent – whether primary judge applied the wrong causation test – whether primary judge erred in finding the appellant had not made a material contribution to sponsorship agreement – whether primary judge erred in making various factual findings
Legislation Cited:	*Common Law Procedure Act 1852* (UK) *Court Procedures Rules 2006* (ACT) *Human Rights Act 2004* (ACT) ss 8, 21, sch 1
Cases Cited:	*Amaca Pty Ltd v Booth* [2011] HCA 53; 246 CLR 36 *Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* [2002] VSC 248; 5 VR 577 *Baltic Shipping Company v Dillon* (1993) 176 CLR 344 *Brealey v Board of Management Royal Perth Hospital* [1999] WASCA 158; 21 WAR 79 *Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221 *Castlepines (IBM) Pty Ltd v Residential Housing Corporation Ltd* [2002] NSWSC 232 *Challenger Group Holdings Ltd v Concept Equity Pty Ltd* [2008] NSWSC 801 *Chappel v Hart* [1998] HCA 55; 195 CLR 232 *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55; 1 WLR 1752 *David Leahy (Aust) Pty Ltd v Macpherson's Ltd* [1991] 2 VR 367 *David Securities Pty Ltd v Commonwealth Bank of Australia* (1992) 175 CLR 353 *Equuscorp Pty Ltd v Haxton* [2012] HCA 7; 246 CLR 498 *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22; 230 CLR 89 *Horton v. Jones (No. 1)* (1934) 34 SR (NSW) 359 *Kendirjian v Ayoub* [2008] NSWCA 194 *Legal Practitioner "M" v Council of the Law Society of the Australian Capital Territory* [2015] ACTSC 312; 302 FLR 254 *LJ Hooker Ltd v WJ Adams Estates Pty Ltd* (1977) 138 CLR 52 *Lumbers v W Cook Builders Pty Ltd (in liquidation)* [2008] HCA 27; 232 CLR 635 *Mazzitelli v The Queen* [2002] NSWCCA 436; 135 A Crim R 132

Moneywood Pty Ltd v Salamon Nominees Pty Ltd [2001] HCA 2; 202 CLR 351
Pavey & Matthews Pty Ltd v Paul (1987) 162 CLR 221
RailPro Services Pty Ltd v Flavel [2015] FCA 504; 242 FCR 424
Roxborough v Rothmans of Pall Mall Australia Ltd [2001] HCA 68; 208 CLR 516
Ryan v Vizovitis [2017] ACTCA 3
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Superyacht Technologies Pty Ltd v Mackeddie Marine Pty Ltd [2012] QSC 401
Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd [2014] VSC 455; 108 IPR 52
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Parties:

John Stanley Beagle (Appellant)

Australian Capital Territory and Southern New South Wales Rugby Union Limited (Respondent)

Representation:

Counsel

Dr D Hassall (Appellant)

Mr R Arthur (Respondent)

Solicitors

Nelson & Co Solicitors (Appellant)

Bradley Allen Love Lawyers (Respondent)

File Number: ACTCA 53 of 2016

Decision under appeal:

Court:	ACTSC
Before:	Mossop J
Date of Decision:	16 September 2016
Case Title:	Beagle v Australian Capital Territory and Southern New South Wales Rugby Union Limited
Citation:	[2016] ACTSC 271

THE COURT:

1. This is an appeal from a decision of a Judge of the Supreme Court in which his Honour dismissed the appellant's claim against the respondent, which was framed as a *quantum meruit* claim.

2. The respondent company is a professional football organisation which fields a team known as "the Brumbies" in the international Super XV rugby competition. In proceedings at first instance, the appellant claimed that he assisted the respondent by brokering a sponsorship deal for the Brumbies between the respondent and the Aquis group of companies ("Aquis"), and that he was entitled to a commission of 10–35% of the value of that deal. The sponsorship deal involved a sum in excess of $8.4 million.

3. Most facts are not in dispute. His Honour sets out a detailed account of the background in the primary judgment. It is appropriate to summarise the background as well as the decision of his Honour before we turn to the appeal in this Court.

Background facts

4. The appellant described himself as a gaming industry consultant who, following a career in the public service and operating a coin shop in Tasmania, moved to Canberra in 1991. He stated that between 1985 and 2001 he worked as a full-time consultant, writer, speaker and representative of the casino and allied industries throughout Australia and overseas. Other than in respect of his activities as a gaming industry consultant, the appellant has been substantially retired since 2001.

5. We have already noted that the respondent fields the Brumbies rugby union team. Between February 2014 and December 2014 the chief executive officer of the respondent was Mr Douglas Edwards. Mr Edwards was succeeded in that role by Mr Michael Jones. Mr Simon Chester held the position of general manager of commercial operations for the respondent from October 2013, and in that capacity was responsible for sponsorships for the Brumbies under the direction of the chief executive officer.

6. At material times Aquis was wholly or majority owned by Mr Tony Fung, and included Aquis Entertainment Ltd, Aquis Canberra Pty Ltd, Casino Canberra and Aquis Developments Pty Ltd. Other than Mr Tony Fung, relevant persons associated with Aquis at material times were:

    (a) Mr Justin Fung, the son of Mr Tony Fung, who was involved in the management of Aquis' businesses in Australia.

    (b) Ms Jessica Mellor, the Executive Director of Aquis Entertainment Ltd, Aquis Developments Pty Ltd, Aquis Canberra Pty Ltd and Casino Canberra Ltd.

    (c) Mr Ben Ready of RG Communications, who was Aquis' public relations adviser in respect of all Australian businesses up until December 2014. Following that time he remained responsible for activities of Aquis in Australia outside the Australian Capital Territory.

    (d) Mr Warren Apps, who was a director of a communications and public relations business known as "Coordinate". After 4 December 2014 Mr Apps' business

was engaged to coordinate media and public relations activities in relation to Aquis' purchase of the Canberra Casino.

7. At some time prior to June 2014, Mr Beagle became aware that Aquis was negotiating to purchase the Reef Casino in Cairns from its then owner. Mr Beagle formed the view that, in that event, it was likely that Aquis would also purchase the Canberra Casino.

8. Mr Beagle prepared a two page document, dated 9 June 2014, entitled "CONFIDENTIAL FOR ACT GOVERNMENT ONLY, A TRANSFORMATIONAL PROPOSAL FOR CANBERRA, A CONCEPT SUGGESTED BY JOHN BEAGLE, RESIDENT" ("Transformational Proposal"). At [13] in the primary judgment his Honour observed that, in the Transformational Proposal, Mr Beagle suggested that Aquis might be able to provide Canberra with a "world-class" viable casino in a convention and exhibition complex. Mr Beagle made suggestions in the Transformational Proposal of ways in which then-impediments to the operation of poker machines in the Australian Capital Territory could be overcome, and the need for a partnership between the ACT government, Aquis, the "ACT Club Movement", and the ACT community. A copy of the proposal was sent to Mr Gary Rake, an ACT government official.

9. On 13 June 2014, Mr Beagle telephoned Mr Ready, telling Mr Ready that he had a deep knowledge of Canberra Casino and that he had an interest in assisting the Fung family. On 23 and 24 June 2014, Mr Beagle again spoke with Mr Ready, who informed Mr Beagle that the person in Aquis primarily dealing with Canberra matters was Ms Mellor.

10. At around the same time, Mr Chester became aware that the University of Canberra did not intend to continue its sponsorship of the Brumbies beyond the 2014 rugby season. It was imperative that the respondent find a new major sponsor for the team. Mr Chester prepared a powerpoint presentation entitled "The Brumbies Rugby – 2015 Major Sponsor Presentation", and circulated approximately 300 copies of that presentation to various organisations in order to gauge interest in potential sponsorship.

11. In November 2014, Mr Chester attended a function arranged by the Canberra Business Chamber, and at that stage became aware that Aquis was a potential purchaser of the Canberra Casino. In the same month, Mr Beagle contacted Mr Pathak, a Melbourne partner of law firm Gilbert + Tobin. At that time, Gilbert + Tobin was acting for Aquis in relation to the acquisition of the Canberra Casino. Mr Beagle contacted Mr Pathak on the basis that he (Mr Beagle) had been associated with the casino industry for a long time and Aquis personnel might wish to talk with him. Mr Pathak mentioned this contact to Ms Mellor, and suggested that Ms Mellor might like to talk with Mr Beagle.

12. Ms Mellor contacted Mr Beagle. The essence of their conversation was that Mr Beagle was a retired gambling consultant in Canberra who would like to meet with Ms Mellor concerning the acquisition of the Canberra Casino, and that Ms Mellor was open to meeting with Mr Beagle if the acquisition occurred.

13. Ms Mellor emailed Mr Beagle on 1 December 2014 indicating that she and Mr Justin Fung would be in Canberra and would be interested in a meeting. A meeting was arranged for 15 December 2014. Between the meeting being arranged and the meeting itself, Mr Beagle called Ms Mellor a number of times. In these calls, Mr Beagle emphasised that he was well-connected in Canberra, and in particular had deep knowledge of the City to the Lake Scheme. His Honour found at [28] that during the

course of these calls Ms Mellor became concerned that Mr Beagle's connections were not as substantial as he had indicated. An example of this was Mr Beagle's ongoing deferment of, and ultimate inability to arrange, a presentation by a senior executive of the City to Lake Scheme to Mr Tony Fung.

14. On 3 December 2014, Mr Beagle contacted Mr Chester, and indicated that he could be in a position to assist the Brumbies obtain a new sponsor. Mr Beagle met Mr Chester and Mr Edwards on 4 December 2014, at which time Mr Beagle said that the potential sponsor was an unidentified Hong Kong group. His Honour noted:

> 34. Mr Chester's evidence was that Mr Beagle said "All I ask is that you look after me if I pull this off" and that Mr Edwards replied "We can work something out". In response Mr Beagle said "I'll continue to talk with them. I'll come back to you".

15. Evidence given by Mr Edwards and Mr Chester was consistent with that of Mr Beagle. His Honour continued:

> 37. In relation to this meeting my findings are as follows:
>
> a. Mr Beagle said that he had a possible naming rights sponsor for the Brumbies.
>
> b. That it was an opportunity that could be beneficial to both parties.
>
> c. That the entity was based in Hong Kong.
>
> d. That he would expect a finder's fee of some sort or that the organisation would "look after him" if Mr Beagle "pulled it off".
>
> e. Mr Chester made reference to having paid commission when the Brumbies obtained a Land Rover sponsorship.

16. His Honour accepted evidence from Mr Chester that after meeting Mr Beagle, Mr Chester formed the view that Mr Beagle would not be of assistance to the respondent. Relevant evidence included that:

(a) Mr Edwards had informed Mr Chester that Mr Edwards had spoken with Mr Gary Rake and reported that Mr Rake "knows of Mr Beagle. He suggested that we don't waste too much time on him. So don't".

(b) During December 2014, Mr Beagle rang Mr Chester two to three times per week, however, Mr Chester formed the view that there was little point to these telephone calls.

17. On 4 December 2014, Mr Beagle emailed the Brumbies sponsorship proposal to Mr Ready. In the email, Mr Beagle said that he had met with the Brumbies representatives that morning, and suggested that Aquis could align itself with the Brumbies brand. He also said in the email that he had not mentioned Aquis in his discussions with Brumbies representatives.

18. In oral evidence, Mr Beagle claimed that statement was untrue and that he had mentioned Aquis to Mr Chester. Having regard to Mr Chester's evidence, his Honour did not accept this claim and found that Mr Beagle had not mentioned Aquis to representatives of the Brumbies.

19. On 8 December 2014, Mr Beagle learned from Mr Ready that Ms Mellor was staying at a Canberra hotel. Mr Beagle went to the hotel and delivered the Brumbies proposal to Ms Mellor's assistant, who spoke briefly with Mr Beagle. Ms Mellor gave evidence that she looked briefly at the Brumbies proposal over the next few days, but took the view that any consideration of this proposal by Aquis would be premature because Aquis

had not finalised the Canberra Casino deal and it was her view that Aquis was not interested in a sponsorship of $1.5 million. Ms Mellor gave evidence that her interest in engaging with Mr Beagle at that time related to his apparent involvement with the City to the Lake scheme.

20. On 15 December 2014, a meeting took place between Mr Beagle, Mr Justin Fung, Ms Mellor and Ms Mellor's assistant, Ms Poulter. Ms Mellor gave evidence that Mr Beagle's comments at that meeting were primarily casino-related anecdotes, and did not instil her with confidence that Mr Beagle had any standing in relation to the City to the Lake scheme. Following the meeting, Ms Mellor directed her assistant to block future calls or contact from Mr Beagle. Mr Beagle's evidence was that it was a business meeting during which they ate lunch and discussed topics including his association with Canberra Casino and other gambling related activities in Australia, his view of Canberra Casino, and the potential for Aquis' participation in the City to the Lake scheme.

21. His Honour observed:

> 55. It is clear that as a result of the meeting Ms Mellor formed the view that Mr Beagle had little useful information or connections which would assist her or Aquis as it moved into the Canberra market. I accept her evidence as to some of the unusual topics that Mr Beagle covered because they are matters which, because of the subject matter, she is likely to have recalled and the telling of such stories is consistent with the manner in which Mr Beagle promoted himself to others as well as in the curriculum vitae in evidence in this case.

22. While his Honour was satisfied that it was likely there was some mention of the Brumbies sponsorship proposal at the meeting of 15 December 2014, his Honour rejected Mr Beagle's evidence that it was the most significant point that he sought to discuss at the meeting. His Honour considered it more likely that the majority of the time was spent by Mr Beagle providing information designed to convey to Ms Mellor and Mr Fung his long experience and knowledge of the casino industry generally, and in particular the Canberra Casino.

23. At around the same time, Mr Chester continued his endeavours to secure a major sponsor for the Brumbies. His Honour noted that on 16 December 2014, Mr Chester received a telephone call from Mr Jamie Wilson (like Mr Apps, a director of Coordinate) expressing an interest in obtaining information about the Brumbies sponsorship for Guvera, a music streaming company.

24. Subsequently on 18 December 2014, Guvera instructed Mr Wilson and Mr Apps that it was "not interested in sponsoring the ACT Brumbies". Mr Wilson communicated this information to Mr Chester.

25. Mr Chester undertook basic internet research on Aquis to acquire some understanding of the group, and found Mr Ready's details. Mr Chester contacted Mr Ready on 22 December 2014, and Mr Ready provided him with Ms Mellor's details.

26. Aquis's purchase of the Canberra Casino settled on 23 December 2014.

27. On 24 December 2014, Mr Chester returned a missed call from Mr Beagle, and learned of Mr Beagle's interest in Aquis and the Fung family.

28. On 5 January 2015, Ms Mellor and Mr Apps discussed ways to improve Aquis' community engagement and brand recognition. Mr Apps informed her that sponsorship of the Brumbies was available.

29. On the same day Mr Chester contacted Ms Mellor again, and a meeting was arranged between Mr Chester, Mr Jones and Ms Mellor.

30. During January 2015, Mr Beagle spoke briefly with Ms Mellor on a number of occasions, notwithstanding her direction to Ms Poulter to block Mr Beagle's calls.

31. In early January 2015, Mr Beagle contacted Mr Chester, and Mr Chester informed him that the respondent had lined up a meeting with Aquis on 12 January 2015. Mr Beagle suggested that the respondent meet with him prior to the Aquis meeting, describing himself as an "Aquis third-party consultant". A meeting took place on 7 January 2015 at Brumbies headquarters, attended by Mr Beagle, Mr Jones and Mr Chester. At the meeting, Mr Jones asked Mr Beagle about Aquis and Mr Beagle's relationship with Aquis. Mr Chester gave evidence that Mr Beagle was able to give only general information about the Fung family.

32. On 8 January 2015, there was an exchange of emails between Mr Beagle, Mr Jones and Mr Chester in which Mr Beagle suggested that "if Aquis can be involved and somehow linked to the Brumbies this could provide massive positive publicity for both organisations".

33. On 12 January 2015, there was a meeting between Mr Mellor, Mr Jones and Mr Chester at the Brumbies' office. At the meeting the parties discussed the prospect of Aquis sponsoring the Brumbies, but did not resolve the issue. Ms Mellor contacted Mr Apps, seeking his written advice as to the viability of Aquis sponsoring the Brumbies. Mr Apps subsequently produced a report on the sponsorship proposal for Ms Mellor to take to the Aquis board.

34. On 17 January 2015, Mr Beagle contacted Mr Chester to find out what had happened at the meeting with Aquis. Mr Chester told Mr Beagle that Coordinate was involved in assessing the merits of any sponsorship deal, and further asked Mr Beagle about the figures on the last page of the sponsorship proposal which he had provided to Aquis.

35. Between 23 January and 28 January 2015, Mr Jones and Ms Mellor exchanged emails concerning the prospect of sponsorship. This involved Mr Jones sending a document entitled "Aquis Sponsorship Proposal" to Ms Mellor, and a discussion about the likely sponsorship amount. Ms Mellor indicated that the asking price was too high. At the same time, Mr Chester was engaged with discussions with internet company iiNet concerning the possibility of sponsorship of the Brumbies, however, no sponsorship deal eventuated.

36. On 27 January 2015 Mr Beagle met with Mr Apps, and provided Mr Apps with a *curriculum vitae*. Contrary to Mr Beagle's evidence of the meeting, his Honour found that it was unlikely that Mr Apps would have discussed the negotiating position of Aquis or his views on the value of the sponsorship with Mr Beagle, a stranger. His Honour preferred the evidence of Mr Apps that there was no discussion of the Brumbies at this meeting. As a consequence, his Honour did not accept that Mr Beagle rang Mr Chester on 28 January 2015 and told Mr Chester that Aquis was moving away from a sponsorship deal because the Brumbies were asking too much.

37. Mr Beagle emailed Mr Apps on 29 January 2015, attaching a press release from Canberra casino in 1993. He called Mr Apps on 2 February 2015 and arranged a meeting on 6 February 2015 with the owner of a Canberra water park who wanted to be involved in the City to the Lake project.

38. His Honour observed at [88]:

> Following the meeting [of 6 February 2015] Mr Apps phoned Ms Mellor enquiring about who Mr Beagle was. Ms Mellor said words to the effect "Oh my God. He is driving us crazy. All he does is call and waste our time. You have to ignore him, or else he just won't stop calling".

39. Mr Beagle left telephone messages for Mr Apps on 9 February 2015 and 11 February 2015, which Mr Apps did not return. On 11 February 2015 Mr Apps emailed Mr Beagle, indicating that he was going overseas in the near future and his diary was fully booked.

40. In early February 2015, a sponsorship agreement was reached between the respondent and Aquis. Relevant events were described by his Honour as follows:

> **Agreement is reached with Aquis**
>
> 90. Notwithstanding that the negotiations had, by 28 January 2015, stalled, Ms Mellor and Mr Justin Fung were invited to the Brumbies' season launch at the Regatta Point function centre. Ms Mellor was impressed with the season launch and as a consequence, reconsidered whether Aquis should sponsor the Brumbies. On 9 February 2015 she emailed Mr Jones to enquire as to whether a sponsorship was still available. Because of her reignited interest, a dinner was arranged at a restaurant in the New Acton precinct for the evening of 9 February 2015. Ms Mellor and Mr Fung attended for Aquis and Mr Chester and Mr Jones attended for the Brumbies. Mr Jones indicated a minimum price of $1 million. Ms Mellor spoke about the issue with Mr Tony Fung in Hong Kong who indicated that he would like to think about things overnight. On 10 February 2015 Mr Jones emailed her the basic points of the proposed sponsorship. She spoke again to Mr Tony Fung and he directed her to accept the proposal made by Mr Jones. In concluding the deal it appeared to be significant that the Brumbies first game was to be played against the Queensland Reds, that Aquis had struggled to progress substantial development plans which it had hoped to pursue in Queensland and that the Aquis logo could appear on the Brumbies' jerseys for that game.

41. The sponsorship agreement was formally announced at a media conference on 11 February 2015.

42. In the primary proceedings, Ms Mellor gave evidence that in reaching the agreement with the Brumbies she did not take into account any advice of Mr Beagle, or mention Mr Beagle to Mr Tony Fung.

43. Mr Chester emailed Mr Beagle on 11 February 2015 asking him to call, and then told Mr Beagle of the sponsorship agreement the Brumbies had reached with Aquis. On being told of this news Mr Beagle said: "This is great but what happened? I thought Aquis had gone cold on the deal"..

44. The following day Mr Beagle left a message for Mr Chester who called him back. Mr Beagle requested a finder's fee, and Mr Chester offered him tickets for the upcoming Brumbies game. Mr Beagle indicated that he was unable to attend that game. On 17 February 2015, Mr Beagle again spoke with Mr Chester and said he wanted 10% of the sponsorship amount. Mr Chester said "that is ridiculous" and organised a meeting for Mr Beagle with Mr Jones.

45. A meeting was arranged for 18 February 2015. His Honour summarised the evidence as to that meeting as follows:

> 96. Mr Chester's evidence was that Mr Jones told Mr Beagle at the meeting that "you've got to be kidding". He said that they had met with Mr Beagle out of courtesy and Mr Beagle was not a sports agent. Mr Jones said that as a result of his previous experience he knew what was involved with obtaining sponsorships. Mr Chester

referred to the Land Rover sponsorship, but that was a payment to a recognised agent who did all the negotiating and work. Mr Jones said that as a gesture he could probably offer $5000 for Mr Beagle's time.

97. Mr Beagle's "report" included greater elaboration of what occurred at the meeting, but was generally consistent with Mr Chester's evidence. It provided:

> Jones stated that the Brumbies had been made aware of Aquis through the ACT Government and other sources and they would have been in touch with them had I not initiated my contact with the Brumbies.
>
> I told Jones, after some discussion, that the reason the ACT Government was probably aware of Aquis coming to Canberra was because of my confidential concept proposal I provided to Dave Dawes and Gary Rake of the Chief Minister's Department in June last year. I then showed Jones a copy of that document and he read it. I stated very plainly that I was of the opinion that the ACT Government, i.e. through the Chief Minister's Department, was not aware of the Aquis possibility until I alerted them to it.
>
> I explained how this proposal was forwarded to Mssrs Rake and Dawes on the insistence of Jeremy Lasek, who had been the Chief Minister's Chief of Staff, who I had contacted on Saturday 9th June to ask his opinion of my proposal. Jeremy, who had only recently left the Chief Minister's Department, thought it was outstanding and, without any urging from myself, insisted that it should be sent immediately, i.e. today Saturday 9th, to Rake and Dawes.

46. A formal agreement to give effect to the sponsorship was executed by Aquis and the respondent on 19 June 2015, being an agreement for an initial one year period with two option periods. His Honour noted that the first option was not exercised – rather a new agreement was subsequently executed by Aquis and the respondent, requiring a payment of $1 million plus GST in the initial term with two option periods.

Expert evidence at the trial

47. At the trial, Mr Beagle called expert evidence from Ms Kim Skildum-Reid, who described herself as "a sponsorship consultant, trainer, speaker and author with 29 years of experience working for blue-chip clients on six continents". His Honour accepted that Ms Skildum-Reid had specialised knowledge in the area of corporate sponsorship.

48. Ms Skildum-Reid prepared reports dated 20 May 2015 and 26 May 2016, stating in each that the reports were prepared in compliance with the Expert Witness Code of Conduct of the *Court Procedures Rules 2006* (ACT).

49. In her first report, Ms Skildum-Reid opined, in summary:

    (a) An individual or agency who contributed materially to the sale of a sponsorship was a sponsorship broker.

    (b) The primary value of the sponsorship broker is to provide access to and credibility with company decision-makers.

    (c) It was standard practice to remunerate a sponsorship broker with an amount referable to a percentage of the value of that sale.

    (d) The percentage of remuneration generally ranged from 10– 35% depending on the circumstances.

    (e) Broker commissions were calculated for multi-year sponsorships either on a reducing percentage or on a fixed level for the life of the sponsorship.

50. Her recommendation was based on the following facts and assumptions in this specific situation:

- 2014 marked the end of a three-year naming rights sponsorship by the University of Canberra. This was not a financial (cash) sponsorship, but an acknowledgement of the shared cost of building new training facilities on the University of Canberra campus.
- Due to the nature of the University of Canberra sponsorship, the Brumbies should have been aware that it would not be continuing past 2014. Given that, the naming rights sponsorship of the Brumbies would have been in the market for a considerable time, without success.
- In mid-December 2014, the Brumbies reported a loss of over $1 million and cash reserves diminished to $2 million to the AGM.
- Mr Beagle first offered to assist the Fung family, owners of Aquis, in their "integration into the Canberra community" via their communications agency, RG Communications, in June 2014. In an email follow-up to their initial conversation, he offered some introductory insights into opportunities for Aquis around the Casino, establishing his expertise and credibility.
- Mr Beagle was first contacted by Jessica Mellor, Vice President of Australian Operations for Aquis, on 1 December 2014. Noting Mr Beagle's "long history in the gaming industry and in the ACT", she requested that Mr Beagle meet with her and Justin Fung, CEO, the following week. That meeting was primarily to discuss issues and opportunities relating to Aquis' recent acquisition of Casino Canberra, establishing Mr Beagle as a trusted advisor at the highest level in Aquis' Australian operations.
- Mr Beagle identified that the Brumbies may provide a strong opportunity for Aquis, and requested a proposal from the Brumbies on 3 December 2014. He subsequently met with Simon Chester, GM of Commercial Operations and Dough Edwards, then CEO, on 4 December 2014. Mr Beagle did not disclose the potential sponsor's identity.
- In that meeting, Edwards confirmed that Mr Beagle would be remunerated if the sponsorship was secured.
- Mr Beagle delivered the proposal to Aquis at the QT Hotel in Canberra on 8 December 2014.
- A follow-up meeting for 15 December 2014 was called by Ms Mellor for Mr Beagle and the key decision-makers, Fung, Mellor and Anerike Poulter, Executive Assistant to Ms Mellor.
- On 6 January 2015, Mr Beagle received a phone call from Chester and subsequently arranged for a meeting with Brumbies' new CEO, Michael Jones, for the following day.
- On 7 January, Mr Beagle met with the CEO and GM of Commercial Operation of the Brumbies and provided a full brief and background on Aquis, the Fung family, Justin Fung, and Jessica Mellor. This intelligence would have been critical to the Brumbies' ability to close the sale, and do it in an expedited manner.
- During this meeting with Jones, Mr Beagle reiterated his request for a finder's fee for bringing a very hot prospect for naming rights sponsor to them. Jones acknowledged that Mr Beagle was entitled to remuneration.
- The first meeting between Aquis and the Brumbies was on Monday, 12 January 2015, a month and a day before the start of the season.
- From 17 January to 28 January 2015, Mr Beagle had numerous telephone conversations with Chester and provided insight and assistance at Chester's request.

- The generic proposal provided by the Brumbies to Mr Beagle set the financial investment at $1.2 million for the first year, rising to $1.3 million in the third and final year of the offer.
- The covering email that Chester sent with the sponsorship proposal stated, “Ignore the price on the last page, we have to get a deal wrapped up in a short amount of time so this is a very negotiable and we can even differ payment until 2016 if required [sic]”.
- The deal was closed at $1.4 million per annum for six years, for a total value of $8.4 million. This is $4.65 million more in total value than the initial offer, which the Brumbies had been willing to discount.
- The Aquis sponsorship was announced on Wednesday, 11 February 2015 – two days before the Brumbies’ first Super Rugby match of the season.
- The Aquis sponsorship is reportedly the largest in Club history.
- The Super Rugby season started on Friday, 13 February 2015.

51. Ms Skildum-Reid calculated the appropriate remuneration level for the Aquis sponsorship of the Brumbies to be $700,000 plus GST, based on the following:
    - 20% of $1.4 million for the first year;
    - 15% of $1.4 million for the second year;
    - 10% of $1.4 million for the third year;
    - and 5% of $1.4 million for the fourth year.
52. In her second report Ms Skildum-Reid updated her expert statement on the basis of new documentation she had reviewed, namely:
    - Principal Partner and Naming Rights Sponsor Agreement dated 19 March 2015
    - Principal Partner and Naming Rights Sponsor Agreement dated 14 January 2016
    - Sponsor Introduction Agreement with IMG dated 26 July 2012
53. In particular, Ms Skildum-Reid noted that she had previously made incorrect assumptions about the size and scope of the Aquis agreement, because information released to the media by the respondent relating to the nature of the agreement and relevant figures were incorrect. She recalculated the appropriate remuneration level for the Aquis sponsorship of the Brumbies to be a minimum of $587,000 plus GST, based on the following:
    - 12.5% of $1 million for the first year;
    - 6% of $1 million for the subsequent agreement;
    - 6% of $1.2 million for the second year of the second agreement;
    - 6% of $1.3 million for the third year of the second agreement;
    - 6% of an estimated $1.4 million per year average for years 4-6 of the second agreement.
54. The method of calculation in the second report was referable to a sponsorship agreement between IMG, an agency company, and the respondent dated 26 July 2012, which Ms Skildum-Reid treated as a relevant precedent.

Decision of the primary Judge

55. His Honour commenced his consideration of the relevant law in this case by referring to *Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd* [2014] VSC 455; 108 IPR 52 (*Vasco*) at [337]–[348], [359]–[364]. His Honour considered that the facts in *Vasco* and in *Andrew Shelton & Co Pty Ltd v Alpha Healthcare Ltd* [2002] VSC 248; 5 VR 577 (*Andrew Shelton*) were analogous to those before him. In particular, his Honour applied the following comments of Vickery J in *Vasco*:

> 339 The law may impose an obligation to make restitution on a *quantum meruit* basis, under what I will call the first class of case, where the plaintiff proves:
>
> a. Actual or constructive acceptance of the benefit of the provider's goods or services by the recipient;
>
> b. The recipient of the goods or services should have realised that the provider expected to be paid; and
>
> c. It would be unjust for the recipient to take the benefit of the goods or services provided without paying a reasonable sum for them.
>
> 340 A second class of case falling under the umbrella of a claim in *quantum meruit* is the long-established and well-recognised category of cases constituted by claims for work and labour done or money paid at the request of another.
>
> 341 In both classes of case, the law imposes an obligation independent of contract to pay a fair and reasonable sum for the goods or services, founded on the principles of restitution for unjust enrichment.
>
> 342 A third class of case giving rise to a claim described as *quantum meruit* is where goods or services are provided under an existing and enforceable contract which contains an express or implied term to pay a fair and reasonable sum for them, but such sum is not quantified. The action is directed to determining the fair and reasonable sum payable.

56. His Honour accepted that in considering a *quantum meruit* claim, the Court's task is not to assess damages for breach of contract, but to ascertain what is fair and reasonable compensation for the benefit of the services performed, requested and accepted actually or constructively by the recipient.

57. In the proceedings before his Honour, Mr Beagle claimed satisfaction of principles identified by Vickery J in *Vasco*, on the basis that he had satisfied the following elements of a true *quantum meruit* claim:

    (a) A request for the services;

    (b) Services performed;

    (c) Knowledge on the part of the defendant that the plaintiff expected to be remunerated for his services;

    (d) Benefits to the defendant as a consequence;

    (e) It being unjust in the circumstances for the defendant to retain those benefits without making appropriate remuneration commission based on the relevant industry norm.

58. His Honour examined Mr Beagle's claim by addressing of each of these elements, and found, in summary, as follows:

(a) In relation to elements (a) and (b): the meeting of 4 December 2014 was sufficient to constitute a request for services, namely that Mr Beagle pass on the Brumbies' sponsorship proposal to his unidentified potential sponsor and promote it to the extent he saw fit. This was the limit of the services requested by the respondent. Mr Beagle did pass on and promote the Brumbies proposal, but as an adjunct to his broader goals of promoting his own agenda to Aquis. The limited nature of the request for services was a factor to take into account in determining whether it was unjust that Mr Beagle remained unremunerated for his work.

(b) In relation to element (c): the nature of the discussions between Mr Beagle and the respondent were not such that the respondent should have realised that Mr Beagle expected to be paid even if he made no causal contribution to the obtainment of a sponsorship agreement. Although Mr Chester told Mr Beagle about the payment of finder's fee in respect of a Land Rover sponsorship, that was a reference to a completely commercial sponsorship arrangement. The respondent was open to the possibility of a fee payable to a commercial sponsorship broker, or a nominal fee, depending on the circumstances. As far as the respondent was concerned, Mr Beagle was a Canberra resident with a connection to a potential sponsor, the details of which he did not reveal in their early discussions. There was no evidence that Mr Beagle was in the business of procuring sponsorships (or in business of any kind).

(c) In relation to element (d): it is not essential for the purposes of a *quantum meruit* claim that a benefit be demonstrated to have arisen because of the provision of particular services. The fact of the request itself gives rise to an inference that the services are of benefit, because otherwise the request would not have been made. The value and benefit may be provided by "oiling the wheels" even where a direct causal link to a particular benefit cannot be identified (*Brenner v First Artists' Management Pty Ltd* [1993] 2 VR 221 (*Brenner*)). In the present case however the services provided by Mr Beagle were minimal and the alleged benefit very large. The nature of the benefit, if any, caused or contributed to by the provision of the services will be relevant to the assessment of whether an injustice would arise if the claimant was not remunerated, because there is a significant difference between causally potent services and causally irrelevant services. The services provided and the benefit associated with those services can be characterised as either:

    (i) The provision of the Brumbies' sponsorship proposal to the unidentified potential sponsor and promoting it in an unspecified way; or

    (ii) A material contribution to the ultimate sponsorship arrangement in a multitude of ways, for example making the connection between two otherwise unconnected parties and "planting the seed" in the mind of the potential sponsor.

59. Although his Honour accepted, on the evidence, that Mr Beagle appeared to be the first person to directly make the connection between Aquis and sponsorship of the Brumbies, this alone was not sufficient to demonstrate that the services he provided materially contributed to the ultimately obtained sponsorship.

In relation to the perception of Mr Beagle's contribution to the sponsorship agreement between the respondent and Aquis, his Honour observed:

> 151. As pointed out earlier in these reasons, it is not possible to determine any precise chronology of Mr Beagle's professional activities within the gambling industry. Nor is it possible to determine with precision when he retired. As I pointed out above, the activities which he described are consistent with him being an active retiree. However, he clearly maintains an interest in gambling, entrepreneurial activities and the development of Canberra. He clearly is enthusiastic and persistent. He did not appear to be motivated by money, but instead by the potential for having his ideas taken up and being "a player". However, at least so far as the transactions described in the evidence in this case are concerned, the manner in which he pursued those interests was such that he was not perceived by those with whom he dealt as having a valuable contribution to make. He appears to be perceived as someone who was attempting to insert himself into an area of discourse in circumstances where his motivations were not clear and the value of his contribution perceived to be limited by those with whom he dealt.

60. His Honour assessed the causal impact of Mr Beagle's activities by reference to his dealings with Ms Mellor, Mr Apps and Mr Chester, and found:

    (a) Mr Beagle had no existing relationship with Aquis.

    (b) Mr Beagle's credibility with Ms Mellor declined when she perceived that he was wasting her time talking to her on the telephone, when she perceived that he had delivered the Brumbies' sponsorship proposal to her hotel uninvited, and when his conversation at the lunch meeting of 15 December 2015 lacked substance. Ms Mellor sought advice about sponsorship arrangements from Mr Apps, not Mr Beagle.

    (c) Mr Beagle made no relevant impression on Mr Apps and had no relevant influence on events leading to sponsorship of the Brumbies. Mr Beagle's principal concern at his first meeting with Mr Apps on 27 January 2015 was to obtain a meeting with Mr Fung.

    (d) Mr Chester had numerous telephone conversations with Mr Beagle throughout December 2014. At that time Mr Chester could not afford to alienate anyone with potential to assist in procuring a sponsor for the Brumbies. However by the meeting of 7 January 2015 Mr Chester (and Mr Jones) formed the view that Mr Beagle had no helpful connections and no information beyond that which was already available. Other than email exchanges on 8 January 2015 and a conversation with Mr Chester on 17 January 2015, Mr Beagle had no contact with the Brumbies until 28 January 2015.

    (e) While Mr Beagle argued that he had "planted a seed" in the mind of Ms Mellor concerning the prospect of a sponsorship agreement between Aquis and the respondent, his Honour rejected that proposition in the following terms:

> 158. … That is because by the time Mr Beagle met with Mr Chester and Mr Edwards on 4 December 2014, the sponsorship plight of the Brumbies was well and truly public knowledge. The headline that had caught Mr Beagle's attention and led to his initiative of talking to the Brumbies was "The search for major sponsor getting desperate". The article reported that "the ACT Brumbies say their search for a new major sponsor is getting desperate and they need something locked down within the next 10 days." For the potential sponsors or agents the likelihood was that, as a result of Mr Chester's efforts and the 300 copies of his sponsorship proposal that had been circulated, there would have been a significant level of awareness of the availability of that sponsorship even without the Canberra Times publicity. Thus, if anything had previously been obscure about the search for a sponsor, following the Canberra Times article that obscurity was gone.

(f) Aquis and Ms Mellor operated in a businesslike fashion when moving in the Canberra market, and sought assistance from Mr Apps. Mr Apps was familiar with the potential for Aquis sponsorship of the Brumbies because of Guvera's engagement of Coordinate and Guvera's initial interest in possible Brumbies' sponsorship.

(g) Mr Chester made contact with Aquis by contacting Mr Ready and obtaining a mobile number for Ms Mellor, not through any contact that Mr Beagle might have provided to him.

61. His Honour concluded:

> 162. As a consequence, whether causation is considered from the point of view of:
>
> (a) "planting the seed": cf [147] above;
>
> (b) "oiling the wheels": cf [142] above;
>
> (c) making a "material contribution' to the ultimate deal in the sense that the expression is used in causation in tort; or
>
> (d) being the "effective cause" of the ultimate deal in the sense that that expression is used in real estate agency contracts: cf *Moneywood v Salamon Nominees* [2001] HCA 2; (2001) 202 CLR 351 at [27]- [30],
>
> I do not consider that any of the activities of Mr Beagle had any positive causal effect on the ultimate transaction.

62. In relation to element (e): the acceptance by the respondent of Mr Beagle's services without payment was not unjust. The contribution of Mr Beagle had no causal effect upon the obtaining of sponsorship either by planting the seed of an idea or positively assisting with the process leading to the ultimate deal. The benefit obtained by the respondent from Mr Beagle's services did not constitute a material contribution to obtaining the sponsorship.

63. Finally, the primary Judge noted at [170] that the ultimate submission of Mr Beagle was that an appropriate level of remuneration was $250,000. His Honour found that even if he were wrong in concluding that there was no injustice in denying Mr Beagle remuneration for his services, he would not have found Ms Skildum-Reid's reports to provide a reliable basis for the assessment of reasonable remuneration in this case. This was because, in summary:

(a) His Honour was not satisfied that the claim for reasonable remuneration arising out of the circumstances of the 4 December 2014 meeting should be assessed by reference to commercial rates of commission provided to sponsorship brokers, in circumstances where Mr Beagle was not performing services as part of a business.

(b) His Honour was not satisfied that the opinion of Ms Skildum-Reid was based upon assumptions which had been established. For example, Ms Skildum-Reid assumed (incorrectly) that Mr Beagle was a trusted advisor of Aquis with credibility and expertise recognised at the highest level of Aquis' Australian operations. A willingness on Ms Mellor's part to meet someone in a new market to see if they might be useful did not warrant Ms Skildum-Reid's characterisation of Mr Beagle's status with Aquis. Further, his Honour was satisfied that Mr Beagle provided no intelligence to the respondent which it could not have obtained from an internet search, that Mr Beagle did not build a

strong business case for Aquis' sponsorship, and that Mr Beagle did not provide advice and insight in the period after 12 January 2015 (as Ms Skildum-Reid assumed).

Grounds of appeal

64. Mr Beagle relied on 36 grounds of appeal, some of which were embellished by sub-grounds and particulars. At the hearing we observed to Counsel for Mr Beagle that the Notice of Appeal contained more material than the combined length of his submissions in chief and in reply. Indeed, there is extensive duplication between the grounds of appeal and Mr Beagle's written submissions. Nit-picking through a primary Judge's reasons in a Notice of Appeal is a practice which is unhelpful, repetitive and indeed counter-productive, and should be avoided: see, for example, similar observations in *Kendirjian v Ayoub* [2008] NSWCA 194 at [160]; *Mazzitelli v The Queen* [2002] NSWCCA 436; 135 A Crim R 132 at [60]. A "scatter gun" approach in drafting a Notice of Appeal is similarly to be deplored. As Refshauge ACJ observed in *Legal Practitioner "M" v Council of the Law Society of the Australian Capital Territory* [2015] ACTSC 312; 302 FLR 254:

> 46. There seems to be a disturbing practice of multiplying grounds of appeal in civil litigation where the successive grounds are either re-statements of grounds already pleaded or attempts to give a slightly different gloss on a ground already pleaded, which gloss or glosses can often be perfectly validly argued under the one ground already carefully pleaded. This practice is to be deplored. This infected the 11 grounds of the legal practitioner's appeal. Practitioners should be encouraged to think carefully about the issues the subject of an appeal and draft a pleading that carefully articulates the real issue to be challenged.
>
> 47. Similarly, a "scatter gun" approach (see M J Beazley, PT Vout and SE Fitzgerald, *Appeals and Appellate Courts in Australia and New Zealand* (LexisNexis Butterworths: Sydney 2014) at 98; [5.17]) of loading the grounds of appeal with challenges to every finding with which the appellant disagrees, whether or not the alleged error could change the outcome, is to be deprecated.
>
> 48. As McHugh J said, extra-curially, in, "Preparing and Arguing an Appeal", *Bar News: The Journal of the NSW Bar Association*: Winter, 2010, 85-92:
>
> > The cardinal rule for drafting a notice of appeal is to be selective. If the appeal notice contains too many grounds, the best points are likely to be hidden in a thicket of weak points. The notice of appeal should identify only those errors of ultimate fact or law which affected the result, and the fewer the better.
>
> 49. His Honour cited also the comments of Branson J in *Sydneywide Distributions Pty Ltd v Red Bull Australia Pty Ltd* (2002) 55 IPR 354 at 355-6, where her Honour made the point as follows:
>
> > Not every grievance entertained by a party, or its legal advisors, in respect of the factual findings or legal reasoning of the primary judge will constitute a ground of appeal. Even were the Full Court to be persuaded that different factual findings of this kind should have been made, this would not of itself lead to the judgment, or part of the judgment, being set aside or varied. This result would be achieved, if at all, only if the Full Court were persuaded that an ultimate fact in issue has been wrongly determined. The same applies with respect to steps in the primary judge's process of legal reasoning. Although alleged errors with respect to findings as to subordinate or basic facts, and as to steps in the process of legal reasoning leading to an ultimate conclusion of law, may be relied upon to support a ground of appeal, they do not themselves constitute a ground of appeal.

See also *Brealey v Board of Management Royal Perth Hospital* [1999] WASCA 158; 21 WAR 79 at [36].

65. In our view, the multitude of grounds before the Court reflects an ill-disciplined approach to appealing against the primary decision. Helpfully, however, at the hearing before us Counsel for Mr Beagle submitted an *aide memoire* for the assistance of the Court. In that *aide memoire* he contended – in our view, more realistically – that the 36 grounds of appeal could be reduced to five broad issues for decision. Following an exchange between Counsel and the Bench those five broad issues expanded to six, namely as follows:

    (i) The primary Judge applied the wrong test, namely that the appellant was required to show that his contribution was the effective cause of the ultimate deal, when the correct test was whether the appellant had made a material contribution to the outcome (grounds 2, 3, 4, 8, 9, 15, 17, 18, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32).

    (ii) As a result of the application of the wrong test, the primary Judge incorrectly found that the appellant made no material contribution to the outcome (namely, the closure of the sponsorship agreement between the respondent and Aquis).

    (iii) The primary Judge wrongly rejected evidence of Ms Skildum-Reid, namely her expert evidence and her factual evidence that there was an industry standard of remuneration of 10–35 % (grounds 10, 11, 12, 13).

    (iv) The primary Judge erred in making various findings relevant to a determination of causality (grounds 1, 3, 5, 6, 7, 9, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34).

    (v) The primary Judge erred in finding that the appellant could not recover on a *quantum meruit* because he was not in business as a commercial agent and because his services were provided as an adjunct to his collateral aims (grounds 21, 23, 24, 26, 28, 29).

    (vi) The errors of fact and law amounted to a miscarriage of justice (all grounds).

66. Issue 2 is adjunct to Issue 1 and was dealt with in that manner by Counsel for Mr Beagle. It is therefore appropriate that we consider them together. Issue 3 appears to be relevant primarily to the quantum of relief to which Mr Beagle would be entitled if he is successful in the appeal. Issue 6 is referable to Issues 1–5. It follows that it would be appropriate to consider Issues 1, 2, 4 and 5 in this appeal before returning to Issues 3 and 6.

67. Before doing so, however, we consider it appropriate to make a number of introductory remarks concerning the principles the appellant seeks to invoke in aid of his claims.

Restitutionary claims in this case

68. In his Originating Claim dated 9 June 2015, Mr Beagle sought:

    1. Reasonable compensation as assessed by the court upon a true Quantum Meruit.
    2. Costs

3. Interest

4. Such further or other order as the Court thinks fit

69. The essence of his claim, as set out in his Further Amended Statement of Claim dated 23 February 2016, was as follows:

> The plaintiff claims reasonable remuneration, upon the *Quantum Meruit* basis, for work and labour done and services provided and rendered by the Plaintiff for and at the request of the Defendant and accepted by the Defendant and the Defendant knew or ought to have known that the Plaintiff expected to be paid for his work and labour and services so done, provided and rendered.
>
> (Tracking omitted.)

70. At [4] of the Further Amended Statement of Claim, Mr Beagle pleaded:

> Beagle sues the Brumbies, for that he is entitled, on the *Quantum Meruit* basis, to be paid by the Brumbies a reasonable remuneration for work and labour done and services provided and rendered by Beagle in or about December 2014 to January 2015, being the Services referred to in paragraph 9A herein) for and at the request of the Brumbies and accepted by the Brumbies, by virtue of which work and labour done and services provided and rendered, Beagle assisted and enabled (in whole or in part) the Brumbies to obtain the Benefits referred to in paragraph 10 herein, which Benefits included the benefit to the Brumbies of a naming rights sponsorship from Aquis or the Aquis Group (or both) to the value of $8,400,000.00 and that it would be unjust for the Brumbies to retain the said Benefits without paying reasonable remuneration to Beagle in restitution.
>
> (Tracking omitted.)

71. As a general proposition, a request for services and performance of those services, attended by an intention to be legally bound and consideration, will create contractual relations: see Peter Watts, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 20th ed, 2014) 7-010. In this case, however, it is common ground that at no time was there any contract between Mr Beagle and the respondent. Certainly Mr Beagle's claim is not framed in contractual terms. Nor does the evidence indicate that, at any time, any contract was anticipated between Mr Beagle and the respondent, such that acts of Mr Beagle could be said to be in anticipation of contractual relations. Mr Beagle's conduct was not pursuant to any form of mistake by him as to his entitlements. Nor did Mr Beagle claim breach of trust by the respondent, for example in respect of any misuse of confidential information supplied by him to it.

72. Rather, Mr Beagle's claim is framed in terms of unjust enrichment of the respondent, in the form of remuneration for services performed in the absence of any contract. We note the helpful articulation of the basic, but important distinction between these different categories of claims for recovery on *quantum meruit* by Byrne J in *Brenner* at 256, and more recently in Rohan Havelock, 'A Taxonomic Approach to Quantum Meruit' (2016) 132 *Law Quarterly Review* 470. Accordingly, to the extent that the parties in their submissions refer to *quantum meruit* claims, we understand that, in fact, Mr Beagle's claim is in the nature of a claim of unjust enrichment of the respondent. That this is so is reinforced by Mr Beagle's reliance on such cases as *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221 (*Pavey & Matthews*) and a number of single judge decisions namely *Vasco*, *Brenner* and *Andrew Shelton* – all authorities decided on restitutionary principles of unjust enrichment.

73. A second important point to note is that the decision of the High Court in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22; 230 CLR 89 (*Farah Constructions*) stands as a reminder of the dangers of over-extension of restitutionary

principles without reference to established legal foundations. In his submissions, Mr Beagle refers to only one High Court authority, namely *Pavey & Matthews*, as well as to single judge decisions in *Vasco*, *Brenner* and *Andrew Shelton*. Since *Pavey & Matthews*, however, the High Court has considered issues arising in the context of restitutionary claims on numerous occasions. It is helpful to briefly examine *Pavey & Matthews* as well as subsequent High Court authorities to clearly identify the principles relevant to this Court's consideration of this appeal.

High Court decisions examining restitutionary principles of unjust enrichment

74. In *Pavey & Matthews*, the High Court considered whether a builder could succeed in an action in *indebitatus assumpsit* for the value of work done and materials supplied by it under an oral building contract, notwithstanding applicable legislation which required such contracts to be in writing. Mason and Wilson JJ agreed with Deane J in allowing the appeal. Brennan J concurred with the principles expressed by those Judges while nonetheless dissenting in his application of those principles to the facts of the case.

75. Actions in *indebitatus assumpsit* were old common-law actions, abolished by the *Common Law Procedure Act 1852* (UK): see Lawbook, *The Laws of Australia* (at 12 July 2017) [29.1.170]. They developed from trespass on the case and allowed a person to sue for a liquidated sum due for non-performance of an express or implied promise to pay: see Lawbook, *The Laws of Australia* (at 12 July 2017) [7.9.1890]). As Dawson J explained in *Pavey & Matthews* at 265:

> Assumpsit, from which *indebitatus assumpsit* grew, was delictual in its beginnings, being an offshoot of case. It was based upon the idea of loss or detriment suffered by reliance upon the promise or undertaking of the defendant. When assumpsit was used, as it was, as an alternative action to debt, the basic notion was a promise to pay, but the promise was not that contained in the agreement out of which the debt arose, assuming there to have been an agreement. It was a separate and subsequent promise to pay the debt which was the foundation of the action and not the underlying agreement. Indeed, in the sixteenth century the agreement was regarded as spent in creating the debt so that a new promise was required for a creditor to charge his debtor in assumpsit.

76. There was clearly a contract between the parties in *Pavey & Matthews*, however, it was unenforceable and the appellant could not seek remedies in accordance with its terms. Mason and Wilson JJ agreed (at 227) with Deane J that the appellant's action on a *quantum meruit* rested on a claim to restitution or one based on unjust enrichment arising from the respondent's acceptance of the benefits from the appellant's performance of the unenforceable oral contract. Deane J explored this issue in greater depth, citing (at 250) from *Horton v Jones (No. 1)* (1934) 34 SR (NSW) 359, 367–368 where Jordan CJ found that:

> If… a person does acts for the benefit of another in the performance of a contract (upon which an action cannot be brought by reason of the *Statute of Frauds*), and the other so accepts the benefit of those acts, or otherwise behaves in relation to them, that, in the absence of the ... contract, the former could maintain an action ... upon the common money counts, he may sue in *indebitatus* to obtain reasonable remuneration for the executed consideration.

77. At 252 Deane J observed:

> … once liability to pay reasonable remuneration is recognized as arising not from the "unenforceable contract" (which "may be referred to as evidence, but as evidence only, on the question of amount") but from the operation of law upon the circumstances, there is plainly no need to resort to the fictional promise of assumpsit to explain why the *Statute of Frauds* does not preclude the bringing of an action upon a common *indebitatus* count to

recover the amount of that liability as a liquidated sum. The reason for that is that such an action is plainly not brought upon the unenforceable contract regardless of whether it is seen as an action in debt to recover the amount of that reasonable remuneration or as an action in assumpsit to recover damages for breach of the fictional assumpsit to pay that liquidated amount.

78. His Honour continued at 255–256:

> It suffices to say that, even accepting that traditional approach, it is clear that the old common *indebitatus* count could be utilized to accommodate what should be seen as two distinct categories of claim: one to recover a debt arising under a genuine contract, whether express or implied; the other to recover a debt owing in circumstances where the law itself imposed or imputed an obligation or promise to make compensation for a benefit accepted. In the first category of case, the action was brought upon the genuine agreement regardless of whether it took the form of a special or a common count. It follows from what has been said above that the cases in which a claimant has been held entitled to recover in respect of an executed consideration under an agreement upon which the *Statute of Frauds* precluded the bringing of an action should be seen as falling within the second and not the first category. In that second category of case, the tendency of common lawyers to speak in terms of implied contract rather than in terms of an obligation imposed by law (see, e.g., per Salter J., *Scott v. Pattison* (1923) 2 KB 723, at pp 727-728) should be recognized as but a reflection of the influence of discarded fictions, buried forms of action and the conventional conviction that, if a common law claim could not properly be framed in tort, it must necessarily be dressed in the language of contract. That tendency should not be allowed to conceal the fact that, in that category of case, the action was not based upon a genuine agreement at all. Indeed, if there was a valid and enforceable agreement governing the claimant's right to compensation, there would be neither occasion nor legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration. *The quasi-contractual obligation to pay fair and just compensation for a benefit which has been accepted will only arise in a case where there is no applicable genuine agreement or where such an agreement is frustrated, avoided or unenforceable. In such a case, it is the very fact that there is no genuine agreement or that the genuine agreement is frustrated, avoided or unenforceable that provides the occasion for (and part of the circumstances giving rise to) the imposition by the law of the obligation to make restitution*.
>
> (Emphasis added.)

79. The majority recognised the survival of the ordinary common law right of the builder to recover reasonable remuneration for work done and accepted under a contract which was unenforceable by him, in an action founded on restitution rather than contract.

80. While Brennan J dissented in the result, finding that the policy of the legislation (which negated the enforceability of oral building contracts) excluded the possibility of restitutionary claims in the circumstances, his Honour nonetheless agreed in substance with the reasoning of Deane J. Dawson J decided the claim on grounds not relevant to this appeal.

81. Accordingly, in summary, the High Court in *Pavey & Matthews* found:

    (a) The old common *indebitatus* count could be utilised to accommodate what should be seen as two distinct categories of claim, that is:

        (i) to recover a debt arising under a genuine contract, whether express or implied; and

        (ii) to recover a debt owing in circumstances where the law itself imposed or imputed an obligation or promise to make compensation for a benefit accepted (Deane J at 255–256, Brennan J at 234, 235–236).

(b) In the first category of case, the action was brought upon the genuine agreement regardless of whether it took the form of a special or a common count. In the second category of case the action was not based on a genuine agreement – rather the obligation to make restitution was imposed by law.

(c) The obligation or debt imposed by operation of law arose from the defendant having accepted the benefit of work done, goods supplied, or services rendered (Mason and Wilson JJ at 227–228, Deane J at 255).

(d) In such cases the plaintiff is generally entitled to recover payment of an amount which constitutes, in all the relevant circumstances, fair and just compensation for the benefit or "enrichment" actually or constructively accepted.

82. It is uncontroversial to observe that *Pavey & Matthews* marked the emergence of unjust enrichment as a recognised branch of the law of obligations in Australia: see James Edelman and Elise Bant, *Unjust Enrichment* (Hart Publishing, 2nd ed, 2016) 4.

83. Principles discussed in *Pavey & Matthews* were further examined and subsequently applied in cases including *David Securities Pty Ltd v Commonwealth Bank of Australia* (1992) 175 CLR 353 (*David Securities*) (where moneys had been paid allegedly by mistake, and a claim was made for recovery of those moneys); and *Baltic Shipping Company v Dillon* (1993) 176 CLR 344 (where a passenger sought refund of moneys paid on a cruise pursuant to a claim that payment had been made in circumstances of total failure of consideration).

84. In *Lumbers v W Cook Builders Pty Ltd (in liquidation)* [2008] HCA 27; 232 CLR 635 (*Lumbers)* the High Court considered circumstances where a company ("Builders"), which was related to a builder who had agreed to undertake construction work for a customer ("the Lumbers"), sought payment on a *quantum meruit* basis for work it had done in that construction project, where it was not in dispute that the work of Builders was not referable to any contract between it and the Lumbers. The Court below had found that the Lumbers had received a "benefit" at Builder's "expense" which the Lumbers "accepted" and which it was unconscionable for the Lumbers to retain without payment: at [78]. Gummow, Hayne, Crennan and Kiefel JJ rejected this analysis in the circumstances of the case. As their Honours explained at 663–664 :

> 79. The doing of work, or payment of money, for and at the request of another, are archetypal cases in which it may be said that a person receives a "benefit" at the "expense" of another which the recipient "accepts" and which it would be unconscionable for the recipient to retain without payment. And as is well apparent from this Court's decision in *Steele v Tardiani*, an essential step in considering a claim in *quantum meruit* (or money paid) is to ask whether and how that claim fits with any particular contract the parties have made …
>
> 80. Likewise, it is essential to consider whether the facts of the present case yield to analysis as a claim for work and labour done, or money paid, because where one party (in this case, Builders) seeks recompense from another (here the Lumbers) for some service done or benefit conferred by the first party for or on the other, the bare fact of conferral of the benefit or provision of the service does not suffice to establish an entitlement to recovery. As Bowen LJ said in *Falcke v Scottish Imperial Insurance Company*:
>
> > The general principle is, beyond all question, that work and labour done or money expended by one man to preserve or benefit the property of another do not according to English law create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the

expenditure. *Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will*.

(Emphasis added.)

The principle is not unqualified. Bowen LJ identified salvage in maritime law as one qualification. Other cases, including other cases of necessitous intervention, may now be seen as further qualifications to the principle but it is not necessary to examine in this case how extensive are those further qualifications or what is their content. For the purposes of this case the critical observations to make are first that Builders' restitutionary claim does not yield to analysis as a claim for work and labour done or money paid and secondly, that Builders' restitutionary claim, if allowed, would redistribute not only the risks but also the rights and obligations for which provision was made by the contract the Lumbers made with Sons.

(Footnotes omitted.)

85. Their Honours then turned to *Pavey & Matthews* and observed at 664–665:

84. It is important to recognise two points about *Pavey & Matthews*. First, there was no issue in that case about whether the plaintiff, a builder, had a claim for work and labour done and materials supplied. The issue in the case was whether that claim was defeated by a statutory provision analogous to s 4 of the *Statute of Frauds* 1677 (UK) ("no action shall be brought upon any agreement ... unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized"). In particular, the issue was whether the builder's action on a *quantum meruit* was a direct or indirect enforcement of the oral contract the parties had made. The majority in *Pavey & Matthews* held that because "the true foundation of the right to recover on a *quantum meruit* does not depend on the existence of an implied contract" the action was not "one by which the plaintiff seeks to enforce the oral contract".

85. The second point to be noted is that unjust enrichment was identified as a legal concept unifying "a variety of distinct categories of case". It was not identified as a principle which can be taken as a sufficient premise for direct application in particular cases. Rather, as Deane J emphasised in *Pavey & Matthews*, it is necessary to proceed by "the ordinary processes of legal reasoning" and by reference to existing categories of cases in which an obligation to pay compensation has been imposed. "To identify the basis of such actions as restitution and not genuine agreement is not to assert a judicial discretion to do whatever idiosyncratic notions of what is fair and just might dictate." On the contrary, what the recognition of the unifying concept does is to assist "in the determination, by the ordinary processes of legal reasoning, of the question whether the law should, in justice, recognise such an obligation in a ***new or developing category of case***".

(Emphasis added.)

86. On the facts in *Lumbers*, the majority concluded that the plaintiff could point to no request that it do the relevant building work. They further found that whether the Lumbers accepted any work or accepted the benefit of any money paid was irrelevant, because it distracted attention from the legal relationships between the relevant parties (including the Lumbers and the builder with which they actually had a contract).

87. In *Equuscorp Pty Ltd v Haxton* [2012] HCA 7; 246 CLR 498 (*Equuscorp*) the appellant sought the assistance of the Court to recover money advanced under loan agreements made in furtherance of an illegal purpose. There was extensive discussion by the Judges of the High Court about the prospect of entertaining a restitutionary action for recovery of money had and received in circumstances where the payment of the money was pursuant to a contract void for illegality. At [103] Gummow and Bell JJ

noted comments of Professor Palmer in his treatise *The Law of Restitution* (Little, Brown, 1978) vol 2, 171:

> The illegality of the transaction will preclude recovery of damages for breach, or any other judgment aimed at enforcement of the contract, and the problem is whether the plaintiff can nonetheless obtain restitution of values transferred pursuant to the contract. The fact that public policy prohibits enforcement of the contract is not a sufficient reason for allowing one of the parties to retain an unjust enrichment at the expense of the other. Such a retention is warranted only when restitution is in conflict with overriding policies pursuant to which the transaction is made illegal.

88. French CJ and Crennan and Kiefel JJ noted that the concept of unjust enrichment was not a definitive legal principle according to its own terms – rather it was an *ex post facto* explanation of decisions that had already been reached: at [29]. Their Honours referred to *Pavey & Matthews* and *David Securities*, and continued at [30]:

> … That explanation may be expressed, at a fairly high level of abstraction, as an approach to determining such claims. In summary:
>
> - recovery depends upon enrichment of the defendant by reason of one or more recognised classes of "qualifying or vitiating" factors;
> - the category of case must involve a qualifying or vitiating factor such as mistake, duress, illegality or failure of consideration, by reason of which the enrichment of the defendant is treated by the law as unjust;
> - unjust enrichment so identified gives rise to a *prima facie* obligation to make restitution;
> - the *prima facie* liability can be displaced by circumstances which the law recognises would make an order for restitution unjust.
>
> Unjust enrichment therefore has a taxonomical function referring to categories of cases in which the law allows recovery by one person of a benefit retained by another. In that aspect, it does not found or reflect any "all-embracing theory of restitutionary rights and remedies". It does not, however, exclude the emergence of novel occasions of unjust enrichment supporting claims for restitutionary relief.

89. In that case, an issue in question was alleged failure of consideration. Their Honours, however, noted the importance of the interaction between the foundation for the claims for money had and received, and the policy of the common law which renders unenforceable an agreement made for the furtherance of an illegal purpose (at [33]). They considered that the making of an agreement which was unenforceable for illegality threw up a distinct suite of issues affecting the availability of restitutionary relief in respect of benefits received under the agreement compared with an agreement which was otherwise unenforceable.

Relevant principles

90. Where does this exposition of principles take the Court in this case?

91. First, Mr Beagle claims "reasonable compensation as assessed by the court upon a true Quantum Meruit". The Court should, however, treat with caution claims of all-embracing restitutionary rights and remedies: see Gummow J in *Roxborough v Rothmans of Pall Mall Australia Ltd* [2001] HCA 68; 208 CLR 516 at [72]; *Farah Constructions* at [150]–[151].

92. Second, however, Australian law clearly recognises necessary conditions to support claims of relief for unjust enrichment. French CJ, Crennan and Kiefel JJ in *Equuscorp*

at [30] summarised conditions where a *prima facie* obligation to make restitution because of unjust enrichment arises. Paraphrased, those conditions are:

(a) There has been enrichment of the defendant.

(b) The enrichment of the defendant involves one or more recognised classes of "qualifying or vitiating" factors recognised by law. Those factors include mistake, duress, illegality or failure of consideration. A further factor identified in *Lumbers v W Cook Builders* at 663-664 was the doing of work, or payment of money, for and at the request of the defendant.

(c) In those circumstances, the enrichment of the defendant is *prima facie* unjust.

(d) However, the *prima facie* liability of the defendant to provide restitution for its unjust enrichment can be displaced by circumstances where restitution of the plaintiff by the defendant should be refused.

See also authorities discussed in Edelman and Bant, p 8, n 8, including Kirby J in *Roxborough v Rothmans of Pall Mall Australia Ltd* [2001] HCA 68; 208 CLR 516 at [139] and *Lumbers* at 663–664).

93. In light of these principles we do not consider that the analysis set out in *Vasco* at [339]–[342], to which his Honour referred at [114] of the primary judgment, is of assistance in considering the issues in this appeal. In our view, the classification in *Vasco*:

(a) unnecessarily confuses relevant principles (including conflating restitutionary remedies of unjust enrichment with *quantum meruit* claims under enforceable contracts);

(b) invokes concepts of “constructive” acceptance of benefit without explanation;

(c) improperly identified at [339b], as a prerequisite to a restitutionary claim, an example of circumstances more properly recognised as referable to the justice or otherwise of an enrichment of a defendant; and

(d) unnecessarily creates “classes” of case of unjust enrichment for which there is no rationale (and, indeed, no rationale provided).

94. However, and notwithstanding our disinclination to accept the taxonomy articulated in *Vasco* at [339]–[342], we do not consider that the overall approach of the primary Judge in this case to consideration of the claims before him was incorrect. We take this view because, as is clear from the primary judgment at [127] and [132] *et seq*:

(a) Generally, Mr Beagle framed his claim and his submissions on the basis that there had been a request for his services, which services had been performed and the respondent enriched, in circumstances where the respondent knew that Mr Beagle expected to be paid and it was therefore unjust that Mr Beagle not be remunerated for those services;

(b) Clearly, the issues raised in Mr Beagle’s claim at first instance were referable to the principles of unjust enrichment explained in successive High Court decisions, which we have set out in this judgment; and

(c) His Honour addressed those issues in his judgment.

95. Further, and in particular, in this Court Mr Beagle takes no issue with the jurisprudential approach adopted by his Honour, at least so far as concerns his Honour's articulation of restitutionary principles. It is his Honour's treatment of the detail of the claims, including Mr Beagle's conduct and status vis-à-vis the respondent, that is the common thread in the grounds of appeal before us.

96. In that light it is now appropriate to turn to the issues in the appeal.

Issues 1 and 2: The primary Judge applied the wrong test, namely that the appellant was required to show that his contribution was the effective cause of the ultimate sponsorship agreement, when the correct test was whether the appellant had made a material contribution to the outcome. The primary Judge then erred in failing to find that the appellant had made a material contribution to the closure of the sponsorship agreement

97. In respect of these issues, Mr Beagle's arguments were, in summary, as follows:

(a) His Honour applied a "higher" test at [140]–[162] of the primary judgment (in particular [162c]), namely that to recover on a *quantum meruit* the actions of the sponsorship broker must be the effective cause of the ultimate deal. The correct approach was to recognise that the plaintiff need only prove the five elements described in such cases as *Vasco* and that he made a material contribution to the closure of the sponsorship agreement.

(b) His Honour described Mr Beagle's services as being of a minor nature, however his Honour did not look at evidence including Mr Chester's email to Mr Beagle of 3 December 2014 (referred to at p 373 of the Appeal Book).

(c) There was evidence before his Honour that the agreements between Aquis and the respondent embodied ideas, concepts and verbiage of Mr Beagle which Mr Beagle put to Ms Mellor and Mr Fung at the meeting where he promoted his proposal, but his Honour did not advert to this evidence in the primary judgment. The relevant aspects of the agreements were recitals referring to the establishment of world-class entertainment and gaming facilities in Canberra, the importance of Aquis being a good corporate citizen engaged with the local population, and the leveraging of the ACT Government.

(d) There was material before his Honour indicating that Ms Mellor was interested in hearing from Mr Beagle and "keeping the door open" to him.

(e) Mr Beagle's involvement in the respondent's search for a sponsor "came at a point at which the Brumbies had nothing else".

(f) His Honour erred in finding that Mr Beagle would only have been entitled to relief if he had been in the business of sponsorship broking and had an exclusive agency.

(g) His Honour erred in taking undue account of the subjective views of the respondent and Aquis of the value of Mr Beagle's services.

(h) In cases where an industry norm for remuneration exists, the Court should apply that norm to assess the award of restitution.

(i) The fact that the respondent valued the services at $5,000 at a minimum supported a finding that Mr Beagle made material contributions assisting or enabling the obtaining of the sponsorship deal.

Consideration

98. The first and second issues raise the question of the appropriateness of the approach of the primary Judge in assessing the claims of Mr Beagle, in addition to various legal and factual findings of his Honour. In relying on grounds of appeal relating to Issues 1 and 2, we consider that Mr Beagle's arguments are misconceived for a number of reasons.

Test actually applied by the primary Judge

99. Contrary to Mr Beagle's claim, the primary Judge did not decide the case on the basis that Mr Beagle was required to show that his contribution was the effective cause of the ultimate sponsorship agreement between the respondent and Aquis.

100. His Honour's identification that a "material contribution" by Mr Beagle to the successful negotiation of the sponsorship deal potentially warranted reward, appeared to derive from evidence of Ms Skildum-Reid. In particular we note the following:

> 100. In her first report she recorded her "recommendation" as to the appropriate level of remuneration for the plaintiff in the circumstances associated with the obtaining of sponsorship by Aquis for the Brumbies. The report identified that it is standard practice to remunerate an individual or agency ***who contributes materially to the sale of a sponsorship*** as a percentage of the value of that sale. A person who does so is a sponsorship broker. The primary value of the sponsorship broker is to provide access to and credibility with company decision-makers. The percentage of remuneration generally ranges from 10-35% depending on the circumstances …
>
> (Emphasis added.)

101. At [142]–[148], his Honour made general observations concerning identification of benefits for which restitution could properly be sought in appropriate circumstances. In particular his Honour observed:

> 145. The services provided and the benefit associated with those services can be characterised in two different ways.
>
> 146. First, the services might be characterised as simply the provision of the Brumbies' sponsorship proposal to the unidentified potential sponsor and promoting that sponsorship to the potential sponsor in an unspecified way. This is the most limited and mechanical characterisation of the services and benefits. It does not necessarily require the activities to have any causal consequence. To the extent that they did, then the appropriate characterisation would be the second category outlined below.
>
> 147. Second, the services could be characterised as ***a material contribution*** to the ultimate sponsorship arrangement in a multitude of ways. It may be limited to an initial contribution in making the connection between two otherwise unconnected parties. The benefit provided would be the intangible value provided by "planting the seed" in the mind of the potential sponsor. It may have a value even if the provider of the initial connection is not later involved in the working out of a particular sponsorship arrangement. Alternatively it may extend to situations where the effective cause of the obtaining of sponsorship is the activities of the agent.
>
> 148. In my view, although, so far as the evidence discloses, Mr Beagle was the first person to directly make the connection between Aquis and sponsorship of the Brumbies, ***that alone is not sufficient to demonstrate that the services that he provided materially contributed*** to the ultimately obtained sponsorship. Similarly, by placing

reliance upon Ms Skildum-Reid's second report, the plaintiff was seeking to be put in a *quantum meruit* case in a position equivalent to that achieved by IMG under what was in effect an exclusive agency agreement. In my view, if the position is that Mr Beagle objectively made no causal contribution to the obtaining of the sponsorship then the mere fact that a sponsorship arose is not sufficient to give an entitlement to remuneration. In the absence of some statement or undertaking by the benefitting party that would alter the position (not present here), it is not possible to achieve an outcome equivalent to an exclusive agency agreement.

(Emphasis added.)

102. After discussing (at [149]– [153]) Mr Beagle's interest in gambling and his interactions with Ms Mellor and Mr Apps, his Honour found, in summary:

(a) Mr Beagle's ideas were of no interest to Ms Mellor or Aquis: at [155], [160].

(b) Mr Beagle had no relevant impact on Mr Apps in relation to a potential Brumbies sponsorship: at [156].

(c) From a conversation with Mr Beagle, Mr Edwards deduced that the potential sponsor Mr Beagle was referring to was Aquis. However, Mr Beagle had no relevant connection with Aquis and no information for the Brumbies beyond that which was already known to Mr Jones and Mr Chester: at [157].

(d) Mr Beagle did not "plant a seed" in the mind of Ms Mellor concerning possible sponsorship of the Brumbies by Aquis because by early December 2014, the sponsorship plight of the Brumbies was public knowledge: at [158].

(e) Aquis and Ms Mellor operated in a business-like fashion when entering the Canberra market, seeking the assistance of Mr Apps of Coordinate (who was aware of the potential for sponsorship of the Brumbies from his other business activities): at [159].

(f) Mr Chester tracked Ms Mellor down prior to Christmas 2014. This contact was not motivated or facilitated by Mr Beagle: at [161].

103. His Honour concluded:

> 162. As a consequence, whether causation is considered from the point of view of:
>
> a. "planting the seed": cf [147] above;
>
> b. "oiling the wheels": cf [142] above;
>
> c. making a "material contribution' to the ultimate deal in the sense that the expression is used in causation in tort; or
>
> d. being the "effective cause" of the ultimate deal in the sense that that expression is used in real estate agency contracts: cf *Moneywood v Salamon Nominees* [2001] HCA 2; (2001) 202 CLR 351 at [27]-[30],
>
> I do not consider that any of the activities of Mr Beagle had any positive causal effect on the ultimate transaction.

104. Subsequently, in analysing whether refusing Mr Beagle remuneration would result in injustice, his Honour concluded:

> 164. In my view, whichever approach is adopted it could not be said to be unjust. That is because the contribution of Mr Beagle had no causal effect upon the obtaining of sponsorship either by planting the seed of an idea or positively assisting with the process leading to the ultimate deal. ***Thus, it cannot be said that the benefit***

> ***obtained by the Brumbies was a material contribution to obtaining a very valuable sponsorship*** …
>
> (Emphasis added.)

105. Accordingly, in his analysis the primary Judge unambiguously considered whether the actions of Mr Beagle constituted a "material contribution" to the attainment of the sponsorship agreement. His Honour concluded that they did not.

106. His Honour adverted briefly to the question of whether Mr Beagle's actions could be considered the "effective cause" of the sponsorship deal. However these references were brief and peripheral. To the extent that Mr Beagle in Issues 1 and 2 claimed that the primary Judge had applied an "effective cause" test, this is simply incorrect. Grounds of appeal where Mr Beagle so claimed, namely grounds 2, 4, 9, 15, 16 and 19 are not substantiated.

107. Our view in this respect is supported by specific findings of his Honour at, for example:

    (a) [147]: where his Honour stated that the overarching question was whether the conduct of a claimant constituted a "material contribution" to the conclusion of the final deal, and that circumstances where those actions were the "effective cause" of the deal were at the higher end of that category of conduct.

    (b) [162]: where his Honour concluded, essentially, that by any standard of causation (including the test of material contribution) the actions of Mr Beagle did not facilitate the sponsorship deal.

    (c) [164]: where his Honour observed that any benefit obtained by the Brumbies could not be described as a "material contribution" to the obtaining of the Aquis sponsorship.

108. While we consider this aspect of Mr Beagle's claim to be misconceived, we consider it appropriate to make a number of additional comments.

Did Mr Beagle provide services "enriching" the respondent?

109. As we have already observed, notwithstanding that Mr Beagle sought "reasonable compensation as assessed by the court upon a true Quantum Meruit", the claim before his Honour was framed in terms of unjust enrichment of the respondent following services provided by Mr Beagle at the respondent's request. In the context of determining whether services of Mr Beagle had benefitted the respondent, his Honour explored in detail concepts of "effective cause" and "material contribution", in addition to the metaphors "planting the seed" and "oiling the wheels". Mr Beagle, in his Notice of Appeal, argued variously that he, in fact, "planted the seed" with Aquis in relation to the Brumbies' sponsorship, at the respondent's request (grounds 1, 4 and 5) and/or that his services materially contributed to Aquis forming the sponsorship relationship with the respondent (grounds 2 and 4).

110. In our view, these tests unnecessarily muddy the waters in relation to the issues the Court is required to consider in this matter. A requirement of "effective cause" is routinely implied into contracts appointing real estate agents, in circumstances where a particular outcome contemplated by the contract is achieved (for example, sale of a property) but there is a dispute as to the causal connection between the outcome and the actions of the agent: see, for example, *LJ Hooker Ltd v WJ Adams Estates Pty Ltd* (1977) 138 CLR 52; *Moneywood Pty Ltd v Salamon Nominees Pty Ltd* [2001] HCA 2;

202 CLR 351; G E Dal Pont, *Law of Agency* (LexisNexis Butterworths, 3rd ed, 2014) [16.2]; Peter Watts, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 20th ed, 2014) article 57, 320. The authorities also support the implication of such a term into contracts governing other forms of commission agency, for example *White v Munro* [1876] 13 SLR 651 (ship broker); *David Leahy (Aust) Pty Ltd v Macpherson's Ltd* [1991] 2 VR 367 (business broker engaged to acquire companies or businesses); *Castlepines (IBM) Pty Ltd v Residential Housing Corporation Ltd* [2002] NSWSC 232 (agent appointed to market loans on behalf of a finance company) and *Williams v Nicoski* [2003] WASC 131 (cosmetic company consultant); cf *Challenger Group Holdings Ltd v Concept Equity Pty Ltd* [2008] NSWSC 801 (agent appointed to effect business introductions) and *Superyacht Technologies Pty Ltd v Mackeddie Marine Pty Ltd* [2012] QSC 401 (yacht broker). Similarly, the concept of "material contribution" is familiar to negligence claims: see, for example, *Amaca Pty Ltd v Booth* [2011] HCA 53; 246 CLR 36; *Chappel v Hart* [1998] HCA 55; 195 CLR 232. His Honour recognised the link in the application of the test to Mr Beagle's contribution to principles in tort: at [162].

111. Application of concepts in the nature of implied contractual terms, or accretion of causal factors implied by tort, are inapt in considering whether a claimant is entitled to compensation for unjust enrichment. In our view, tests in the form of "planting the seed", "oiling the wheels", "material contribution" and "effective cause" are simply sub-sets of the actual question required in this case – namely whether services provided by a person in Mr Beagle's position benefitted or "enriched" the respondent. The question in this respect is one of causation. "Enrichment" contemplates receipt of a benefit by a defendant from the claimant. The benefit need not have monetary value; indeed pure services may be enriching to a defendant in appropriate circumstances: see Edelman and Bant, 56. Examples of services for which restitution has been ordered include:

    (a) public acknowledgment by a well-known music manager that he had assumed the position as the manager of a former music pop star, thus "oiling the wheels" for the pop star's "comeback": *Brenner*

    (b) drawing and guiding of parties to the point that they were ready to agree in principle to a transaction: *Andrew Shelton*

    (c) services rendered in obtaining planning permission for a property: *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55; 1 WLR 1752.

112. In this case, his Honour found, unequivocally, that the respondent had made a limited request for Mr Beagle's services (namely that Mr Beagle take the sponsorship proposal and use it as he thought fit to promote it). More importantly, the services provided by Mr Beagle did not enrich the respondent in any way. This was because:

    (a) As Mr Beagle had not identified to the respondent the possible sponsor, the services involved were in the nature of a speculative effort to test whether an opportunity could be realised: at [165].

    (b) The actual services provided by Mr Beagle, that is delivering a copy of the proposal to Ms Mellor, were no more than mechanical tasks: at [167].

    (c) The evidence supported findings that: after an initial introductory meeting, Ms Mellor's view of Mr Beagle was that his ideas were of no interest to Ms Mellor or Aquis; it was clear to the respondent that he was unable to and did not facilitate any sponsorship agreement for them with Aquis or anyone

else; and the final deal concluded between the respondent and Aquis was achieved with no involvement at any stage by Mr Beagle. While there may have been an initial request by Mr Chester of Mr Beagle, in the context of Mr Chester giving Mr Beagle one of approximately 300 copies of a sponsorship proposal, as his Honour found, it quickly became clear to Mr Chester and the respondent that Mr Beagle was unable to assist them.

113. It is in the broader context of the necessary requirements for establishing circumstances of unjust enrichment, namely that the defendant has been enriched, that his Honour in this case found that Mr Beagle had not "planted the seed", "oiled the wheels", materially contributed or effectively caused the sponsorship agreement between the respondent and Aquis, which was the only basis on which Mr Beagle could claim remuneration of any kind.

114. In his notice of appeal, Mr Beagle contended, repeatedly, that he had undertaken the task requested of him by the respondent, and should be rewarded for that task in the terms he sought (for example grounds 2, 27, 30). To that extent, Mr Beagle appeared to claim compensation for the unjust enrichment of the respondent, on the basis that his undertaking of the task requested by the respondent was the service deserving compensation, as distinct from his contribution to the end-product. However, to the extent that Mr Beagle claimed remuneration as a percentage of the alleged enrichment of the respondent in the form of the closure of the lucrative sponsorship deal because he performed the mechanical task of forwarding the Brumbies' sponsorship proposal, there is a serious disconnect in his claim. This disconnect is apparent in the varying levels of service Mr Beagle argued in this case – beginning at the mechanical task requested of him by the respondent, and ranging through to a claim that his conduct materially contributed to the obtainment of the sponsorship agreement. Ultimately, after examining relevant evidence, his Honour formed the view that ***no conduct*** of Mr Beagle was related in any way to the closure of the sponsorship agreement between the respondent and Aquis. The fundamental issue is that, as his Honour found, the actions of Mr Beagle simply did not enrich the respondent in the manner he claimed, within the principles articulated in such cases as *Pavey & Matthews*, *Lumber* and *Equuscorp*. In our view, these findings of his Honour were supported by the material before the Court, and we reject Mr Beagle's submission that his Honour erred in these findings.

Assessment by his Honour of aspects of Mr Beagle's claim

115. In the context of Issues 1 and 2, Mr Beagle takes issue with a number of factual findings of his Honour, complaining in effect that his Honour ignored evidence supporting Mr Beagle's claim. We reject this proposition. In particular:

    (a) Contrary to the submission of Mr Beagle, his Honour did consider the email from Mr Chester received by Mr Beagle on 3 December 2014, found at page 373 of the Appeal Book. This is evident from [31] of the judgment where his Honour observed:

        31. Some of Mr Chester's comments were aired on ABC radio on the morning of 3 December 2014. After that Mr Beagle rang Mr Chester. Mr Beagle indicated that he may be able to assist with obtaining a sponsor, but did not disclose who the potential sponsor was. Mr Chester offered to send him his general sponsorship presentation and obtained his email address so that he could do so. Mr Chester then sent the presentation to Mr Beagle.

(b) Mr Beagle claimed in grounds 1 and 5 that the sponsorship agreements between Aquis and the respondent embodied ideas, concepts and verbiage of Mr Beagle, such that the primary Judge should have inferred that those agreements were clearly referable to facilitation by Mr Beagle. However, Mr Beagle's argument in this respect is not persuasive. First, it is not clear to us that a submission in these terms was put to the primary Judge. Second, the evidence of Mr Beagle in support of this proposition was oral evidence, given by Mr Beagle at the primary hearing during examination in chief after all documentary evidence (including copies of relevant agreements) had been filed (transcript of primary proceedings page 22, lines 25–38), and notwithstanding that Mr Beagle had earlier sworn affidavits himself in the proceedings in which he made no reference to this issue. If his Honour chose to disregard such oral evidence as self-serving in the circumstances, it was open to his Honour to do so. Third, for the reasons given by his Honour, he preferred the evidence of Ms Mellor to that of Mr Beagle in relation to the matters discussed between them, in particular at the meeting of 15 December 2014, and it was open to his Honour to do so. We can identify no error in his Honour's judgment in this respect.

(c) In relation to Ms Mellor allegedly being interested in hearing from Mr Beagle and "keeping the door open" to him, the evidence in this respect is thin. We have already noted his Honour's examination of the evidence before the Court, and his Honour's conclusions that:

(i) Ms Mellor considered that Mr Beagle had little useful information or connections which would assist her or Aquis as it moved into the Canberra market; at [55];

(ii) there was little, if any, discussion between Ms Mellor and Mr Beagle concerning possible Brumbies sponsorship at their meeting of 15 December 2014, notwithstanding that Mr Beagle had earlier sent to Ms Mellor a copy of the Brumbies sponsorship proposal: at [56]; and

(iii) the central features of the meeting of 15 December 2014 were Mr Beagle's desire to communicate his expertise in the casino industry, and Ms Mellor's interest in ascertaining whether Mr Beagle had any useful information or role in relation to the City to Lake scheme: at [56].

As his Honour correctly found – at its most favourable to Mr Beagle, the evidence disclosed that Ms Mellor had initially believed that Mr Beagle might be of assistance to her and Aquis, but very quickly thereafter came to the conclusion that he would not be. This was reinforced by Ms Mellor's direction to her personal assistant immediately after the meeting of 15 December 2015 to block all calls or contact from Mr Beagle.

(d) Mr Beagle submitted that his Honour improperly discounted the fact that Mr Beagle's involvement in the respondent's search for a sponsor "came at a point at which the Brumbies had nothing else". However, his Honour's reasoning is more properly characterised as recognition that there was nothing done by Mr Beagle to ameliorate the Brumbies' woes at the relevant time. His Honour recognised that, at least on the evidence before the Court, Mr Beagle was the first person to form the idea that Aquis could be a suitable sponsor of the Brumbies. As his Honour correctly found – having this idea, by itself, on

the facts of this case, did not constitute the provision of services enriching the Brumbies within the meaning of principles of unjust enrichment: at [148].

(e) Contrary to the claim of Mr Beagle at ground 17, his Honour at no time found that Mr Beagle was required to establish an "exclusive agency" with the respondent in order to receive relief. Rather, at [148] his Honour simply compared the rate of remuneration payable to exclusive agents with the compensation sought by Mr Beagle who was not in an exclusive agency arrangement.

(f) We do not consider that his Honour erred in taking account of the subjective views of the respondent and Aquis of Mr Beagle's services (ground 18). To the extent that the respondent requested that Mr Beagle promote their sponsorship proposal, it must surely follow that a negative view taken by a potential sponsor of the person promoting the proposal is a relevant consideration by the Court in determining whether there is any connection at all between the actions of that person and the conclusion of a subsequent sponsorship agreement. Generally, it is unlikely that a person, considered by both potential contracting parties to be of little to no interest or assistance, could in any manner facilitate a sponsorship – or indeed, any – agreement between them. Contrary to the submission made by Counsel for Mr Beagle at the hearing before us, Mr Beagle was not an eminent financier who could influence events with a simple telephone call (transcript page 60, lines 20–22). Indeed as his Honour observed at [91], because of her opinion of Mr Beagle, Ms Mellor considered that any suggestion by Mr Beagle that Aquis could sponsor the Brumbies was a consideration ***against*** such a course of action.The fact that Mr Jones offered Mr Beagle $5,000 for his time is suggestive that the respondent did place some value on Mr Beagle's services (ground 32). However, as his Honour pointed out, this offer was made at a time when the extent of Mr Beagle's efforts and the absence of any positive contribution by him to the sponsorship deal was not as clear as it subsequently became: at [166]. On our view of the facts, it may also be that the respondent was motivated by a recognition that Mr Beagle had had the idea of Aquis sponsorship, notwithstanding his inability to give that idea any effect, and further by a desire to minimise further disruption from Mr Beagle. We certainly do not accept that the respondent's offer to Mr Beagle of $5,000 constituted an acceptance by the respondent of Mr Beagle's claim in this case.

Issue 4: The primary Judge erred in making various findings relevant to a determination of causality

116. In respect of this issue, Mr Beagle identifies 25 alleged errors of the primary Judge which were errors of law, or errors of fact (including findings made against the weight of the evidence). We will examine each of these in turn.

Ground 1: Failure to take into account recitals in the sponsorship agreements, which pointed to Mr Beagle making a material contribution and "planting a seed"

117. We have already examined this aspect of Mr Beagle's claim. In our view, this ground of appeal is not substantiated.

Ground 3: "Adjunct" issue

118. This ground of appeal is as follows:

> His Honour erred in fact (and in law) by limiting his findings and his rulings that:
>
> (a) Brumbies requested Beagle to perform the services; and
>
> (b) Beagle duly performed the requested services;
>
> by a further finding and ruling that Beagle only performed the requested services as "an adjunct to Mr Beagle's broader goals": (Reasons 133); when any such fact would not preclude an award;
>
> and His Honour erred in fact by failing to find that:
>
> (c) Brumbies' request for the performance of services was made in circumstances where it was clear Beagle expected to be rewarded or remunerated for performing the services;
>
> (d) the services Beagle performed assisted or enabled (in whole or in part) obtaining of very substantial benefit by Brumbies in the form of the very valuable Aquis sponsorship and the services were freely accepted by the Brumbies;
>
> (e) it is unjust for Brumbies to retain said benefit for itself without making due restitution to Beagle by reasonable reward or remuneration;
>
> and his Honour's failure to find fully for Beagle on all of the five matters (a) to (e) above, was against the evidence and against the weight of the evidence.

119. In this ground of appeal, Mr Beagle combines a complaint concerning the "adjunct" issue (paragraphs (a) and (b)), and a complaint concerning his Honour's findings of fact directly referable to Mr Beagle's claim of unjust enrichment and the elements Mr Beagle was required to establish to substantiate that claim.

120. In relation to ground of appeal 3(a) and (b), his Honour did not find that the performance by Mr Beagle of services for his own reasons (that is "adjunct reasons") precluded an award of compensation to him. Relevantly, [132]–[134] and [166] of the primary judgment read:

> **Request for services and performance**
>
> 132. The meeting on 4 December 2014 is sufficient to constitute a request for services. The extent of that request was that Mr Beagle would pass on the sponsorship proposal to his unidentified potential sponsor and would promote it to the extent which he saw fit. There are no subsequent requests for services.
>
> 133. Mr Beagle did, in fact, pass on the sponsorship proposal and promote it to some extent. In that sense it can be said that the services were provided. However, they appear to have been provided as an adjunct to Mr Beagle's broader goals of seeking to persuade Aquis of his own capacities, to obtain a meeting with Mr Tony Fung and to persuade Aquis of the merits of his "transformational proposal" relating to the Canberra casino.
>
> 134. As Vickery J's first category of case makes clear, the fact that there was only a limited request for services may not be a limitation on the plaintiff's claim. However, in my view, the limited nature of the request is a factor of significance in determining whether, ultimately, it is unjust that the plaintiff remain unremunerated for his work.
>
> …
>
> **Is it unjust for the defendant to accept Mr Beagle's services without payment?**
>
> …

166. If, contrary to my view, the appropriate characterisation is a request for non-speculative services, that is, services not contingent upon there being a positive result causally contributed by Mr Beagle, then the only value that can be attributed to them is the value of the time spent by Mr Beagle in identifying the opportunity to Aquis. The actual devotion of resources by Mr Beagle appears to have been minimal and motivated, in part, by his pursuit of his other, broader goals. There was no evidence that demonstrated the value of the services might be remunerated if Ms Skildum-Reid's percentage fee basis was not accepted. In my view, if they were not undertaken on a speculative basis, they could clearly not be valued at more than the amount of $5000 which Mr Beagle was offered by Mr Jones on 18 February 2015. I note that this offer was made at a time when the extent of Mr Beagle's efforts and the absence of any positive contribution to the sponsorship was not as clear as it is now.

121. This aspect of his Honour's discussion was clearly referable to his Honour's view of the ***justice*** of awarding Mr Beagle compensation in circumstances where Mr Beagle was motivated by other considerations in passing on the Brumbies' sponsorship proposal. Mr Beagle offers no reason why his Honour could not take such matters into account in this context.

122. Paragraphs (c)–(e) are broad statements offering alternative factual findings which could have been made by his Honour, in terms of restitutionary principles applicable in this case. His Honour found as follows.

123. In relation to (c) and the question of whether Mr Beagle expected to be rewarded or remunerated for performing "the services", his Honour found that Mr Beagle had informed the respondent at the meeting of 4 December 2014 that he would expect a finder's fee of some sort, or that the respondent would "look after him" if Mr Beagle "pulled it off": at [37]. His Honour acknowledged that the expectation of a provider of services that it would be paid in such circumstances was relevant: at [114], [124], [127]. His Honour found, however, that there was no basis on which the respondent should have realised that Mr Beagle expected to be paid for his services. Relevantly, his Honour said:

Whether the defendant should have realised that the plaintiff expected to be paid for his services

135. So far as Mr Edwards and Mr Chester were concerned Mr Beagle was a Canberra resident with some connection with a potential sponsor. The identity of the potential sponsor was not revealed nor was the extent of any connection with Mr Beagle. There was no evidence that Mr Beagle was in the business of procuring sponsorships or indeed in business of any form.

136. The discussion of any fee or reward at the meeting was non-specific. There are two potentially inconsistent elements in the evidence of what was discussed.

137. On the one hand, the reference to a "finder's fee", there being "something in it" and "you will look after me" are all consistent with any reward being some nominal payment or gratuity to be worked out subsequently.

138. On the other hand, the reference by Mr Chester to the Land Rover deal – which the evidence discloses involved a 12.5% fee even where the agent was not the cause of the sponsorship – is consistent with a completely commercial sponsorship arrangement.

139. It is clear that the Brumbies were open to the possibility of payment of a fee either of the kind that would be payable to a commercial sponsorship broker or a nominal fee depending on the circumstances. As at the 4 December meeting they were unclear as to the value or prospects of what was being proposed, but also desperately in need of a sponsor.

140. The references in the meeting to "pulling it off" or getting "over the hump" are consistent with any fee or reward being:

    (a) dependent upon sponsorship being secured; and

    (b) Mr Beagle making (at least) some positive causal contribution to that outcome.

141. I do not accept that the nature of the discussion was such that the Brumbies should have realised that the plaintiff expected to be paid even if he made no causal contribution to obtaining a sponsorship. In this regard, I consider that Mr Chester's reference to the Land Rover sponsorship involved a recognition of the possibility of payment of a fee to a third party who assisted in securing sponsorship and did not involve any recognition that the defendant expected to make payments to Mr Beagle in any of the circumstances in which payment would have been required under the IMG agreement. Had the position been that either party considered the arrangement to be of such breadth, there would have been no reason for Mr Beagle to have kept the identity of his potential sponsor to himself.

124. We can identify no error in this reasoning of his Honour. In substance, so far as the respondent was aware, Mr Beagle may have had ideas but had no apparent contacts with any potential sponsor. He did not identify any such sponsor to the respondent, or his ability to facilitate a sponsorship contract with such entity. The respondent's representatives were prepared to speak with Mr Beagle, as they were prepared to speak with anyone at all who offered the slightest chance of any contact with a possible sponsor. The suggestion that they might pay the person who facilitated that contact was not more than (as his Honour explained) the recognition of the possibility of payment of a fee to such third party rather than any recognition that it would make payments to Mr Beagle on the same basis as a retainer to a commercial broker. Certainly it could not be said that Mr Beagle expected to be paid, or the respondent expected to pay Mr Beagle, simply because Mr Beagle was prepared to promote the Brumbies' sponsorship proposal to unidentified parties. This was not a case like *Vasco*, where the very limited services of the music manager constituted services which enriched the defendant and for which the defendant was liable for compensation.

125. In relation to (d), his Honour found that no services provided by Mr Beagle had either assisted or enabled the Brumbies to close the deal with Aquis. This was a finding open to his Honour on the evidence before the Court. No submission of any substance was advanced by Mr Beagle contrary to this finding.

126. In relation to (e), his Honour's judgment explains in detail why there was no injustice in the respondent not paying Mr Beagle compensation. No submission of any substance was advanced by Mr Beagle contrary to this finding.

127. This ground of appeal is not substantiated.

Ground 5: Finding that Mr Beagle did not "plant the seed"

128. Ground 5 is a somewhat lengthy ground of appeal in which Mr Beagle claims, in summary, that Ms Mellor's evidence, the contents of the recitals to the sponsorship agreements, and the finding of his Honour that Mr Beagle appeared to be the first to make the connection between Aquis and the Brumbies for sponsorship, supported a finding that Mr Beagle did "plant the seed" bearing the fruit of the Aquis sponsorship of the Brumbies.

129. We have already expressed our view on the strength of Mr Beagle's claim, in this appeal, concerning the embodiment of his ideas into the sponsorship agreements between Aquis and the respondent. We have also noted that the primary Judge

preferred the evidence of Ms Mellor to that of Mr Beagle, and that Ms Mellor was not interested in Mr Beagle's suggestions or ideas. Finally, like his Honour, we consider that Mr Beagle's idea concerning Aquis and the Brumbies did not equate to any services for which compensation was payable.

130. This ground of appeal is not substantiated.

Grounds 6 and 7: Failure to prefer/accept Mr Beagle's evidence about the Aquis meeting

131. Recently in *Ryan v Vizovitis* [2017] ACTCA 3 (*Ryan v Vizovitis*), this Court considered the circumstances in which an appellate court is entitled to set aside factual findings at trial. The Court referred to the summary of Perry J in *RailPro Services Pty Ltd v Flavel* [2015] FCA 504; 242 FCR 424 at [78] (*RailPro Services*), where her Honour explained principles governing the circumstances in which an appellate Court is entitled to set aside a primary judge's findings in the following terms:

    a. A fundamental distinction is drawn between the approach of an appellate court in two different classes of cases - the drawing of inferences from admitted facts or facts found by the trial judge, on the one hand, and findings which depend upon the view taken of conflicting oral testimony, on the other hand (*Fox v Percy* [2003] HCA 22; (2003) 214 CLR 118 (*Fox v Percy*) at 146 [88] (McHugh J); *Brunskill v Sovereign Marine & General Insurance Co Ltd* [1985] HCA 61; (1985) 59 ALJR 842 at 844 (the Court); *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq)* [1999] HCA 3; 73 ALJR 306; (1999) 73 ALJR 306 (*SRA v Earthline*) at [93] (Kirby J)). This is so, notwithstanding that the distinction between a finding of a specific fact and an inference from such a fact may, at times, be elusive: *Benmax v Austin Motor Co Ltd* [1955] AC 370 at 373 (Viscount Simonds). The assessment of a witness' state of mind has also been said to fall within the second category of cases: *Bendigo* at 544 [141] (Heydon J) (citing with approval *Nocton v Lord Asburton* [1914] AC 932 at 957 (Viscount Haldane LC)).

    b. With respect to cases falling within the first class, the principle is that expressed by Gibbs ACJ, Jacobs and Murphy JJ in *Warren v Coombes* [1979] HCA 9; (1979) 142 CLR 531 (Warren v Coombes) at 551, namely:

        > ... the established principles are, we think, that in general an appellate court is in as good a position as the trial judge to decide on the proper inference to be drawn from facts which are undisputed or which, having been disputed, are established by the findings of the trial judge. In deciding what is the proper inference to be drawn, the appellate court will give respect and weight to the conclusion of the trial judge, but, once having reached its own conclusion, will not shrink from giving effect to it.

    In so holding, the High Court rejected the approach of judicial restraint adopted in some of the authorities which required that error be demonstrated in the decision of the primary judge before the appellate court would reverse findings of fact or inferences from fact provided that both inferences were open: see further the detailed and helpful analysis of the authorities by Dodds-Streeton JA in *Kelso v Tatiara Meat Co Pty Ltd* [2007] VSCA 267; (2007) 17 VR 592 (*Kelso*) at [65]-[95] (with whose reasons the remainder of the Court agreed).

    c. This trend away from strict judicial restraint was continued by the decision in *Fox v Percy* which concerned the second class of cases. In *Fox v Percy*, the majority held that, while account must be taken of the advantages enjoyed by the primary judge in resolving conflicting oral evidence, the mere fact that she or he resolved the conflict by findings as to credit does not immunise the conclusion from challenge. The approach to be applied where such findings are challenged on an appeal by way of rehearing is explained by Gleeson CJ, Gummow and Kirby JJ in *Fox v Percy* at 128 [28]-[29] as follows:

> In particular cases **incontrovertible facts or uncontested testimony** will demonstrate that the trial judge's conclusions are erroneous, even when they appear to be, or are stated to be, based on credibility findings.
>
> ... In some, **quite rare**, cases, although the facts fall short of being 'incontrovertible', an appellate conclusion may be reached that the decision at trial is **'glaringly improbable'** or **'contrary to compelling inferences'** in the case. In such circumstances, the appellate court is not relieved of its statutory functions by the fact that the trial judge has, expressly or implicitly, reached a conclusion influenced by an opinion concerning the credibility of witnesses. In such a case, making all due allowances for the advantages available to the trial judge, the appellate court must 'not shrink from giving effect to' its own conclusion. Finality in litigation is highly desirable. Litigation beyond a trial is costly and usually upsetting. But in every appeal by way of rehearing, a judgment of the appellate court is required both on the facts and the law. It is not forbidden (nor in the face of the statutory requirement could it be) by ritual incantation about witness credibility, nor by judicial reference to the desirability of finality in litigation or reminders of the general advantages of the trial over the appellate process.
>
> (Emphasis added.)

See also: *Devries v Australian National Railways Commission* [1993] HCA 78; (1993) 177 CLR 472 at 479 (Brennan, Gaudron and McHugh JJ); and *CSR Ltd v Della Maddalena* [2006] HCA 1; (2006) 80 ALJR 458 (*Della Maddalena*) which reaffirmed the principles stated by the majority in Fox v Percy.

d. It may also be the case that appealable error exists by reason of a failure at first instance to determine the case upon a proper consideration of the real strength of the body of evidence presented by the losing party and the basis upon which the evidence of a witness was found unreliable is too fragile or slight: *SRA v Earthline* at [63]-[64] (Gaudron, Gummow and Hayne JJ), [93]-[94] (Kirby J) and [148]-[155] (Callinan J); cf e.g. *Hasler v Singtel Optus Pty Ltd* [2014] NSWCA 266; (2014) 311 ALR 494 (*Hasler*) at 525 [157] (Leeming J (with whose reasons the remainder of the Court agreed)).

e. Underpinning the authorities as to the second class of cases is a continuing appreciation of the advantage which the primary judge may enjoy despite the availability today of complete transcripts of evidence and argument, the trend to giving evidence in chief by affidavit, and a growing understanding of the fallibility of the judicial evaluation of credibility from the appearance and demeanour of witnesses, particularly in the stressful environment of the courtroom and in an increasingly culturally diverse society: *SRA v Earthline* at [87]-[88] (Kirby J). As Gleeson CJ, Gummow and Kirby JJ held in *Fox v Percy* at 125-126 [23], there are nonetheless "natural limitations" in the appellate court proceeding wholly or substantially on the court record even though it is obliged to give the judgment which it considers ought to have been given at first instance. As their Honours continued:

> These limitations include the disadvantage that the appellate court has when compared with the trial judge in respect of the evaluation of witnesses' credibility and of the 'feeling' of a case which an appellate court, reading the transcript, cannot always fully share. Furthermore, the appellate court does not typically get taken to, or read, all of the evidence taken at trial. Commonly, the trial judge therefore has advantages that derive from the obligation at trial to receive and consider the entirety of the evidence and the opportunity, normally over a longer interval, to reflect upon that evidence and to draw conclusions from it, viewed as a whole.

See also *SRA v Earthline* at [90] (Kirby J).

f. A finding that oral testimony is disbelieved will almost invariably be express. However, it cannot be assumed that every consideration influencing the primary judge's assessment of credibility, including her or his impressions of the witness, will find expression in the reasons. In discharging the appellate function, account should also be taken for unexpressed considerations and impressions: *Fox v Percy* at 132 [41]

(Gleeson CJ, Gummow and Kirby JJ). As Lord Hoffmann explained in *Biogen Inc v Medeva PLC* [1996] UKHL 18; [1997] RPC 1 at 45 [54] (Lord Goff of Chieveley, Lord Browne-Wilkinson, Lord Mustill and Lord Slynn of Hadley agreeing):

> The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, la vérité est dans une nuance), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.

g. Finally, the weight to be given to the advantage enjoyed by the primary judge must, of necessity, be affected to some degree by the circumstances of the individual case. For example, in *Hasler* the NSW Court of Appeal considered that considerable deference should be given to the primary judge's findings as to the reaction of witnesses to cross-examination and his reasons disclosed "a careful evaluative weighing of the competing testimonial and documentary evidence", including awareness of the fact that the weight of the documentary evidence supported the case of the party who was ultimately unsuccessful (at [161] and [164]-[165]). Other considerations such as whether the decision is given within a time when the impression made by the witnesses would have been fresh or clear in the primary judge's mind may also affect the weight to be given to the primary judge's findings on matters of credit (e.g. *Fox v Percy* at 132 [41]).

132. We also respectfully adopt this articulation of principle by her Honour in *RailPro Services*.

133. In these grounds of appeal, Mr Beagle complains, in substance, that his Honour preferred Ms Mellor's evidence to that of Mr Beagle, and that in doing so his Honour's findings were against the evidence and against the weight of the evidence. Mr Beagle takes particular issue with [55]–[57] of the primary judgment, which reads as follows:

> 55. It is clear that as a result of the meeting Ms Mellor formed the view that Mr Beagle had little useful information or connections which would assist her or Aquis as it moved into the Canberra market. I accept her evidence as to some of the unusual topics that Mr Beagle covered because they are matters which, because of the subject matter, she is likely to have recalled and the telling of such stories is consistent with the manner in which Mr Beagle promoted himself to others as well as in the curriculum vitae in evidence in this case.
>
> 56. Although in her affidavit she stated positively that Mr Beagle did not discuss sponsorship proposals for the ACT Brumbies, her oral evidence was that she did not recall that as being part of the meeting. I consider that, having regard to the provision of the proposal by Mr Beagle on 8 December 2014 and the invitation to discuss it further in Ms Mellor's email of 13 December 2014, it is likely that there was some mention of the Brumbies sponsorship proposal at the meeting. However, I do not accept Mr Beagle's evidence that it was the most significant point that he sought to discuss at the meeting. I consider it more likely that the majority of the time was spent by Mr Beagle providing information designed to convey to Ms Mellor and Mr Fung his long experience and knowledge of the casino industry generally and, in particular, the Canberra casino. It would be consistent with Ms Mellor's state of recollection that she did not recall the reference to the Brumbies sponsorship because it was not the central feature of what Mr Beagle sought to communicate, she had a greater interest in finding out if he had any useful information or role in relation to the City to Lake scheme, there were more unusual things to recall about the meeting and her desire, having lost any confidence in the usefulness of Mr Beagle, to terminate the meeting as soon as it was not rude to do so.

> 57. So far as the length of the meeting is concerned I consider it likely that it was between 45 minutes and one hour, because Ms Mellor said that she had another meeting scheduled in her diary which she had to attend in the following hour and such a meeting length would be consistent with her loss of confidence in the usefulness of Mr Beagle and desire to leave as soon as possible.

134. Mr Beagle submitted his Honour erred in these findings because:

    (a) the proper inference his Honour should have drawn in respect of Ms Mellor's evidence of the meeting of 15 December 2014 was that she was doubtful or selective in her recollections about the meeting;

    (b) his Honour placed too much credence on Ms Mellor's version of the meeting due to the colourful aspects she alleged recalling of Mr Beagle's stories which;

    (c) the recitals to the Aquis sponsorship agreements include points made by Mr Beagle at the meeting.

135. Considering these submissions in light of the principles explained by Perry J in *RailPro Services* and approved by this Court in *Ryan v Vizovitis*, we are unable to identify how the findings of his Honour were either contrary to the evidence or against the weight of the evidence. In [55]–[57] his Honour explained in detail his reasons for preferring the evidence of Ms Mellor. We consider these reasons to be sound. The reasons advanced by Mr Beagle for disturbing his Honour's findings are not persuasive. They certainly do not address the principles we set out above, or support findings by this Court that his Honour did not properly consider the strengths of Mr Beagle's case, or that his Honour disregarded incontrovertible facts or uncontested testimony such that the decision at trial was glaringly improbable or contrary to compelling inferences. The level of detail of Ms Mellor's evidence concerning the meeting of 15 December 2014 was such that the primary Judge was entitled to accept it, and in doing so reject Mr Beagle's version of events. This case is not akin to cases such as *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq)* (1999) 160 ALR 588, where the High Court considered that no allowance had been made by the primary and intermediate courts for the weight of much of the documentary evidence.

136. These grounds of appeal are not substantiated.

Ground 9: Error in requiring Mr Beagle's services to be the effective cause of the ultimate deal

137. We have dealt with this issue in detail earlier in this judgment. His Honour did not find that Mr Beagle would be unable to claim compensation unless his services were the effective cause of the attainment of the sponsorship agreement.

138. Further, as we have already observed, we reject Mr Beagle's submission that his words of 4 December 2014 meant that he expected to be rewarded by the respondent if he simply undertook the task of presenting and promoting the Brumbies' sponsorship proposal to a potential sponsor, irrespective of the outcome or any benefit to the respondent. This submission is inconsistent with Mr Beagle's claim for sizeable remuneration in the nature of that payable to a sponsorship broker, referable to the entry into the sponsorship agreement between the respondent and Aquis.

139. This ground of appeal is not substantiated.

Ground 14: Error distinguishing the IMG contract and Mr Beagle's circumstances

140. Mr Beagle claimed, in summary, that he was requested to perform services not relevantly dissimilar to those required of the broker in relation to the IMG contract, and his Honour's findings to the contrary were against the evidence and the weight of the evidence. In his grounds of appeal, Mr Beagle referred specifically to [99]–[113] of the primary judgment.

141. At [99]–[113] of the primary judgment, his Honour summarised the expert evidence of Ms Skildum-Reid, noting that she considered the IMG agreement to be a "precedent" setting out an appropriate remuneration level for a sponsorship broker who had successfully facilitated a sponsorship deal. We understand that IMG is an agency company operating on a commercial basis.

142. If Mr Beagle is not entitled to compensation in respect of unjust enrichment of the respondent, the question of the level of his compensation is irrelevant.

143. In any event, however, we note that the circumstances of Mr Beagle and IMG were distinguishable, in the sense that IMG was apparently paid commission on a commercial basis in respect of a retainer.

144. This ground of appeal is not substantiated.

Ground 16: Misapplication of principles

145. This ground of appeal incorporates a variety of disparate claims.

146. In ground 16(a), Mr Beagle repeated a ground of appeal already pleaded earlier, namely that his Honour found that Mr Beagle was required "to be the effective cause of the ultimate deal of the sponsorship, when no such condition applied and that all Beagle had to do was duly to perform the services the Brumbies requested".

147. We have already dealt with this issue. Ground 16(a) is not substantiated.

148. In ground 16(b) Mr Beagle claimed that his Honour failed to give proper consideration to the evidence that the Brumbies valued Mr Beagle's services as $5,000.

149. We have already dealt with this issue. Ground 16 (b) is not substantiated.

150. In ground 16(c) Mr Beagle complained, *inter alia*, that his Honour failed to find that there was an industry norm for reasonable remuneration applicable to people who facilitate sponsorship agreements. As we have already observed, the quantum of compensation is only relevant if Mr Beagle is able to substantiate a claim of unjust enrichment. As we concluded that Mr Beagle is not able to substantiate this claim, it is unnecessary for us to consider this aspect of his appeal.

151. Ground 16(d) is a reworking of grounds 16(b) and 16(c), and we reiterate the views we have expressed in relation to those grounds.

Ground 18: Error as to subjective views

152. In this ground of appeal, Mr Beagle complains that his Honour improperly took into consideration the manner in which Mr Beagle was perceived by some individuals. In particular, Mr Beagle refers to his Honour's judgment at [151] where his Honour stated:

> 151. As pointed out earlier in these reasons, it is not possible to determine any precise chronology of Mr Beagle's professional activities within the gambling industry. Nor is it

> possible to determine with precision when he retired. As I pointed out above, the activities which he described are consistent with him being an active retiree. However, he clearly maintains an interest in gambling, entrepreneurial activities and the development of Canberra. He clearly is enthusiastic and persistent. He did not appear to be motivated by money, but instead by the potential for having his ideas taken up and being "a player". However, at least so far as the transactions described in the evidence in this case are concerned, the manner in which he pursued those interests was such that he was not perceived by those with whom he dealt as having a valuable contribution to make. He appears to be perceived as someone who was attempting to insert himself into an area of discourse in circumstances where his motivations were not clear and the value of his contribution perceived to be limited by those with whom he dealt.

153. Mr Beagle claimed that the perception of him should not be determinative of the outcome of his case, and in fact his Honour's findings were against the evidence and the weight of the evidence.

154. We disagree with all of these propositions. In short – as his Honour found, after meeting Mr Beagle neither the respondent's staff nor Ms Mellor considered that Mr Beagle could make any contribution of value to their respective businesses. This was a finding perfectly open to his Honour on the evidence before him. Further, such a finding was not irrelevant in the circumstances of the case. As we observed earlier in this judgment, the subjective perception held by potential parties to a sponsorship contract of a person seeking to facilitate the closure of that sponsorship contract is relevant.

155. This ground of appeal is not substantiated.

Ground 19: Comparability of Mr Beagle to IMG and other matters

156. In ground 19, Mr Beagle repeats his complaint that his Honour found that he was required to demonstrate "effective causality". We have already dealt with this issue in this judgment, finding against Mr Beagle.

157. Mr Beagle also reiterates his claim that the sponsorship agreement reached between Aquis and the respondent was "the very same sponsorship which Beagle had presented to Aquis as requested by Brumbies".

158. As his Honour found, Mr Beagle did not disclose to the respondent the identity of the sponsor he had in mind, and although he apparently delivered to Ms Mellor the Brumbies' sponsorship proposal, Ms Mellor was not interested in Mr Beagle's ideas or, at that stage, any sponsorship arrangement with the Brumbies. Again, we agree with his Honour that the mere fact that Mr Beagle had an idea that Aquis and the respondent could be suited to a sponsorship arrangement did not, without more, entitle Mr Beagle to compensation from the respondent.

159. This ground of appeal is not substantiated.

Ground 20: Error finding "uninvited" delivery of sponsorship proposal

160. Mr Beagle claimed that his Honour erred in finding that the delivery of the Brumbies' sponsorship proposal to the QT Hotel addressed to Ms Mellor was "uninvited" when the evidence was that Ms Ready told Mr Beagle to deliver the proposal to the hotel for Ms Mellor's attention.

161. We disagree that his Honour erred in so finding. At [155] of the primary judgment, his Honour was referring to ***Ms Mellor's*** perceptions of Mr Beagle, including "that he was

wasting her time on the phone, the uninvited delivery of the Brumbies' sponsorship proposal to her hotel and the absence of substance in what he said at the lunch meeting on 15 December 2015 (sic)". In so finding, his Honour relied on Ms Mellor's evidence that she considered Mr Beagle had invaded her privacy by tracking her to her hotel without her invitation. To the extent that his Honour found that Mr Beagle was being "too pushy" in his conduct, this appears to be a reasonable inference for his Honour to draw, at least from the perspective of Ms Mellor.

162. This ground of appeal is not substantiated.

Ground 21: Requirement that there be a business as a factor for grant of relief

163. In this ground of appeal, Mr Beagle claimed that:

> His Honour erred in law in treating the fact that "Beagle did not perform any services as part of a business" as a factor in determining whether Beagle should recover an award on a *Quantum Meruit* basis for the services he performed at Brumbies' request (Reasons *passim*, and especially at 167 (f), when, in law, a Plaintiff may succeed whether or not services are performed as part of a business or not, provided the said five elements for a *Quantum Meruit* as indicated at Grounds 2 and 3 above are made out, and the evidence adduced by Beagle before his Honour showed that they were duly made out.

164. Paragraph [167f] of the primary judgment to which Mr Beagle refers is under the heading "Is it unjust for the defendant to accept Mr Beagle's services without payment?". Paragraph [167] provides as follows:

> 167. Even if the market value for the services provided was not zero, I do not consider that it would be unjust to deny him remuneration for the time that he spent performing the mechanical tasks involved in communicating the Brumbies' sponsorship proposal to Aquis. That is because of the following factors:
>
> (a) the non specific nature of a "finder's fee" or being "looked after";
>
> (b) the fact that any discussion of fees was in the context of Mr Beagle's actions being causally significant in securing a major sponsor;
>
> (c) the lack, upon an objective assessment, of any causally related benefit arising from Mr Beagle's activities;
>
> (d) the absence of evidence as to an alternative basis for calculating reasonable remuneration, such as upon an hourly rate;
>
> (e) the absence of information as to the time spent by Mr Beagle beyond the limited times disclosed in the evidence;
>
> (f) the fact that Mr Beagle did not perform any services as part of a business;
>
> (g) the broader goals of Mr Beagle in making contacts and promoting his views in his Transformational Proposal; and
>
> (h) the making and refusal of an offer more generous than any likely assessment of reasonable remuneration.

165. As we noted earlier in this judgment, the *prima facie* liability of a defendant to provide restitution can be displaced by circumstances which the law recognises would make an order for restitution unjust. It is apparent from the text that his Honour considered Mr Beagle's private status as relevant to the question whether refusing Mr Beagle compensation was unjust. It was not decisive – indeed his Honour merely nominated the fact that Mr Beagle did not perform any services as part of a business as one of eight factors justifying denial of remuneration. Certainly his Honour at no point found

that Mr Beagle was precluded from claiming remuneration, merely because he was not acting in the course of a business.

166. This ground of appeal is not substantiated.

Ground 22: Distinguishing case from Vasco and Andrew Shelton

167. In this ground of appeal, Mr Beagle claimed his Honour erred in:

    (a) distinguishing the facts of the case from those in *Vasco* and *Andrew Shelton* at [168] of the reasons;

    (b) treating *Vasco* and *Andrew Shelton* as though they were a "code" stating and delimiting the metes and bounds for recovery by a plaintiff such as Mr Beagle;

    (c) finding there was nothing unjust in denying Mr Beagle an award of *quantum meruit*.

168. So far as we can understand this ground of appeal, Mr Beagle's primary concern appears to be his Honour's finding that it was not unjust that Mr Beagle be denied compensation. Paragraph [168] is under the heading "Is it unjust for the defendant to accept Mr Beagle's services without payment?", and it is in this context that his Honour distinguished the facts of this case from those in *Vasco* and *Andrew Shelton*. Without particularisation, however, we are unable to identify the basis on which Mr Beagle claimed his Honour erred in his statement in [168].

169. We also disagree that his Honour treated *Vasco* and *Andrew Shelton* as if they set out a strict code to which the Court was required to adhere in considering the current claim. In any event, we find this particular ground of appeal curious in light of Mr Beagle's submission that his Honour erred in distinguishing this case from *Vasco* and *Andrew Shelton* – presumably on the basis that, in Mr Beagle's submission, these cases correctly set out principles in this area of law and were correctly decided.

Ground 23: "Unknown retiree"

170. In this ground of appeal, Mr Beagle claimed as follows:

> His Honour erred in law (and in fact) by ruling and finding (Reasons 173) that Beagle could not have recovery at commercial rates of commission because he was "an unknown retiree" and that there is a "significant difference" between his position and that of a "significant agency such as IMG"; His Honour thus erred fundamentally in that any factual difference between the situations of Beagle and IMG merely begs the question of whether there is any legal consequence flowing from any such difference; and there was, with respect to Beagle's services as requested, no legal consequence arising from any such difference precluding an award being made to Beagle by the Court below upon a *Quantum Meruit* basis; and His Honour thus erred by drawing an impermissible distinction (and in respect of services essentially the same or similar in nature) which wrongly discriminated between the category of Plaintiffs (like Beagle) who are retired, small or occasional operators in a relevant field and those others whose activities and undertakings are larger and more manifold; and also His Honour's findings of fact in these respects were against the evidence and were against the weight of the evidence.

171. Mr Beagle's written submissions in support of this ground essentially replicate the ground of appeal itself, with the additional arguments that:

    (a) Mr Beagle is entitled to equality before the law "without discrimination": *Human Rights Act 2004 (ACT) ss 8, 21, s*ch 1

(b) "Beagle's evidence shows he is very far from an 'unknown' retiree".

172. With respect to Mr Beagle, this ground of appeal appears somewhat in the nature of a tirade, possibly reflecting Mr Beagle's offence at being described as an "unknown retiree" by his Honour. The invocation of the *Human Rights Act* is, in our view, incongruous.

173. Paragraph 173 of the primary judgment, to which Mr Beagle refers in submissions, was as follows:

> 173. First, I am not satisfied that the claim for reasonable remuneration arising out of the circumstances of the 4 December 2014 meeting should be assessed by reference to commercial rates of commission provided to sponsorship brokers. That is because there is a significant difference between the position of the plaintiff, being an unknown retiree who seeks a "finder's fee", and a significant agency such as IMG which is asked to target opportunities for sponsorship with identified major companies. The situation is different from cases where the services are clearly provided on a commercial basis and hence the remuneration for those services is appropriately assessed by reference to the fees that would generally be payable to persons acting on a commercial basis in the relevant area. Each of *Andrew Shelton*, *Vasco* and *Brenner* involved a party providing services as part of a business. It was therefore possible to demonstrate a customary commercial basis for remuneration of such persons. That is not the case here because Mr Beagle was not performing services as part of a business.

174. These comments were made in the context of his Honour's evaluation of the expert evidence of Ms Skildum-Reid and consideration of the level of remuneration claimed by Mr Beagle. We do not consider that his Honour's approach was incorrect, or that his Honour discriminated against Mr Beagle as he has submitted. On the evidence before the Court, Mr Beagle demonstrated no reputation or skill as a sponsorship broker, akin to a professional entity. While not decisive as to the proper level of compensation (assuming that Mr Beagle was entitled to compensation at all), the distinction between a commercial business like IMG and Mr Beagle was relevant.

175. This ground of appeal is not substantiated.

Ground 24: Industry norms

176. This ground of appeal substantially replicates ground 23. For the same reasons, it is not substantiated.

Ground 25: "Meeting following upon the delivery of the proposal"

177. This ground of appeal was as follows:

> His Honour erred in law (and in fact) by holding that the meeting by Beagle with the Aquis Executives Mellor and Justin Fung on 15 December 2014 "was not a meeting following upon the delivery of proposal" (Reasons 174 (c)). His Honour thus erred in fact and his finding on this point was against the evidence and against the weight of the evidence. His Honour also erred in law in that it is not required, in order for a Plaintiff such as Beagle to succeed with a *Quantum Meruit* claim, that all of the steps or events must each be causally traceable or continuously linked (that is to say, "following upon") each other; particularly, His Honour erred in treating as important or decisive the question of when said meeting had first been arranged, given that the unchallenged fact is that Beagle arranged to attend and did attend, said meeting; and further, he did so as a central part of the services requested of him by Brumbies; and that he (on his evidence) there presented the sponsorship proposal and "pitched" it to Aquis' Executives; and His Honour's findings, to the extent that they reject parts of Beagle's evidence on that, were against the evidence and were against the weight of the evidence.

178. This ground of appeal takes issue with the findings of fact of the primary Judge. In particular his Honour referred to evidence of Ms Skildum-Reid at [174] and observed:

> … The manner in which she described the arrangement of the meeting of 15 December 2014 suggested that it was Ms Mellor who sought the meeting as a result of Mr Beagle's delivery of the proposal to her at the QT Hotel. She said:
>
> > Mr Beagle delivered the proposal to Aquis at the QT Hotel in Canberra on 8 December 2014.
> >
> > A follow-up meeting for 15 December 2014 was called by Ms Mellor for Mr Beagle and the key decision makers, Fung, Mellor, and Anerike Poulter, Executive Assistant to Ms Mellor.
>
> However, the meeting was not a meeting following upon the delivery of the proposal but rather a meeting that had already been organised prior to the delivery of the proposal and prior to Mr Beagle having any knowledge of the proposal.

179. It is difficult to identify Mr Beagle's concern with these observations. Earlier in the judgment his Honour found:

> 23. On 1 December 2014 Ms Mellor emailed Mr Beagle saying that Mr Ready had passed on his correspondence to her in relation to Mr Beagle's interest in discussing Casino Canberra. She indicated that she and Justin Fung would be in Canberra and sought to arrange a meeting.
>
> 24. Mr Beagle rang Ms Mellor on 2 December and had a conversation with her during which a lunchtime meeting between the plaintiff, Ms Mellor and Mr Justin Fung was arranged for 15 December 2014 …

180. These facts do not appear to be controversial. Nor is it controversial that Mr Beagle first came into possession of the Brumbies' sponsorship proposal on 4 December 2014 after he met with Mr Edwards and Mr Chester. Demonstrably, Mr Beagle's initial contact with Aquis was for his own purposes of making the contact with Aquis and furthering his own connections. At the time the meeting was organised, he had not met with the respondent's representatives. It is simply not correct to describe Mr Beagle's motive in attending the meeting of 15 December 2014 with Aquis as "a central part of the services requested of him by Brumbies". It may have been in Mr Beagle's mind at some point during this period that he could orchestrate a relationship between the respondent and Aquis, however, there is no evidence to show that either of those parties considered that he had that role, or that this was in his mind at the time the 15 December 2014 meeting with Aquis was organised.

181. This ground is not substantiated.

Ground 26: Errors relating to the service done

182. In this ground of appeal, Mr Beagle claimed his Honour erred in failing to make any award to Mr Beagle, notwithstanding that Mr Beagle "did in fact pass on the sponsorship proposal and promote it to some extent [and] in that sense it can be said that the services were provided." He also took issue with his Honour's finding that Mr Beagle provided services as an adjunct to Mr Beagle's broader goals of seeking to persuade Aquis of his own capacities, to obtain a meeting with Mr Tony Fung, and to persuade Aquis of the merits of his "transformational proposal" relating to the Canberra Casino, on the basis that such findings do not preclude recovery of an award of compensation by Mr Beagle.

183. Relevantly, his Honour found as follows:

(a) At the meeting of 4 December 2014 between Mr Beagle and representatives of the respondent, the respondent requested Mr Beagle pass on the Brumbies' sponsorship proposal to his unidentified potential sponsor and promote it to the extent which he saw fit. There was no subsequent request for services by the respondent: at [132].

(b) Mr Beagle did pass on the sponsorship proposal and promoted it to Aquis to some extent, and in that sense it can be said that services were provided: at [133].

(c) The limited nature of the respondent's request was a factor of significance in determining whether, ultimately, it was unjust that Mr Beagle remain unremunerated for his work: at [134].

(d) The nature of the discussion between the respondent and Mr Beagle was not such that the Brumbies should have realised that he expected to be paid even if he made no causal contribution to obtaining a sponsorship: at [141].

(e) While it is not essential for the purposes of the cause of action that a benefit or a particular benefit be demonstrated to have arisen because of the provision of particular services (for example, "oiling the wheels" can provide value and benefit), in the present case the services provided were minimal and the alleged benefit very large: at [142]–[143].

(f) Mr Beagle may have been the first person to directly make the connection between Aquis and sponsorship of the Brumbies, however that alone was not sufficient to demonstrate that the services that he provided materially contributed to the ultimately obtained sponsorship: at [148].

184. As we observed earlier in this judgment:

(a) The respondent requested Mr Beagle to provide the service of promoting its sponsorship proposal;

(a) Mr Beagle did promote the sponsorship proposal to Aquis;

(b) There is no evidence to support a finding that Mr Beagle could have expected to be remunerated by the respondent simply for performing these tasks if there was no favourable result to the respondent;

(c) In any event the services he provided in promoting the sponsorship proposal to Aquis had no outcome, because of the manner in which Aquis viewed Mr Beagle. The respondent was not enriched in any manner from his actions;

(d) The respondent and Aquis formed a relationship completely independently of any actions of Mr Beagle, and there is no injustice in denying him remuneration he claims referable to the forming of that relationship.

185. We have already made comments concerning the "adjunct" issue raised by Mr Beagle in other grounds of appeal.

186. This ground of appeal is not substantiated.

Ground 27: "Limited nature" of the request

187. Ground 27 is essentially a repetition of ground 26, and constitutes a complaint that his Honour ignored the practical and commercial reality that relatively small services may well assist or enable large benefits, which Mr Beagle alleged was the case here.

188. We repeat our comments in relation to ground 26, and similarly find that this ground of appeal is not substantiated.

Grounds 28 and 29: Business requirement

189. Grounds 28 and 29 raise the same issues, namely that the primary Judge erred in finding that Mr Beagle was not entitled to recover remuneration because he had performed the requested services as part of a business.

190. We have already dealt with this issue in the judgment. These grounds of appeal are not substantiated.

Ground 30: Causality

191. Ground 30 is as follows:

> His Honour erred in law (and in fact) by applying (Reasons 144) a test (or approach) based on the concepts of "causally potent and causally irrelevant" services and in so doing His Honour has wrongly closed off the course of accepting that the case was one of requested services duly performed and in a context where there was an expectation of reward or remuneration and where there was evidence before the Court below of the existence of an industry norm or standard for the remuneration of persons who arrange, assist or enable obtaining of sponsorships such as the Aquis sponsorship, that being the payment of a commission of between 10% and 35% of the value of the sponsorship concerned (or particularly, a commission of 12.5% of such value as set out in Ground 35 (b) below) and also evidence that Brumbies itself had evaluated Beagle's services as worth not lower than $5,000; and thus His Honour has wrongly failed to make any award at all to Beagle upon a *Quantum Meruit* basis in restitution; and His Honour's findings of fact in this regard were against the evidence and were against the weight of the evidence.

192. So far as we can understand this ground of appeal, it appears that Mr Beagle repeats his claim that he had performed requested services in expectation of reward or remuneration, and that there was an industry norm (applicable in this case) for the remuneration of persons who assisted in the arrangement of sponsorship contracts. This ground adds nothing to those we considered earlier in this judgment, and for the same reasons we find it unsubstantiated.

Ground 31: "Mechanical tasks"

193. In ground 31 Mr Beagle claimed that his Honour erred in finding that Mr Beagle's actions constituted the merely mechanical task involved in communicating the Brumbies' sponsorship proposal. Rather, Mr Beagle claimed that:

> … on the evidence and on a proper view of the evidence, Beagle's services went well beyond the mere communication of the Brumbies' sponsorship proposal to Aquis and they included not only completing the initial meeting with Brumbies Executives and so making arrangements about his presentation of the sponsorship, but also meeting with Chester to receive the hard copy of the Brumbies' proposal, attending the Meeting with Aquis' Executives and presenting and "pitching" the proposal to them and attending the meeting with Brumbies Executives (as requested) to brief them about Aquis and about the Fung Family …

194. As we have already noted, the evidence before his Honour supported findings that:

(a) Mr Beagle had lined up a meeting with Aquis in relation to the group's prospective presence in Canberra;

(b) He had the idea that Aquis could sponsor the Brumbies, that he met with Mr Chester and Mr Edwards to discuss the general need of the Brumbies for sponsorship but did not at that stage suggest Aquis;

(c) He met with Ms Mellor and later delivered a copy of the general Brumbies sponsorship proposal which had been widely distributed to Ms Mellor;

(d) Ms Mellor quickly formed the view that Mr Beagle could not be of assistance to Aquis; and

(e) As a result Ms Mellor remained polite but uninterested in his ideas.

195. His Honour found that events relating to the formation of a relationship between Aquis and the respondent, including the closure of the sponsorship deal between them, were completely unrelated to any activities of Mr Beagle, and for that reason it was not unjust to refuse Mr Beagle remuneration.

196. In our view, his Honour's findings and conclusions are supported by the evidence before the Court.

197. We consider this ground of appeal unsubstantiated.

Ground 32: Unjust issue

198. In this ground of appeal, Mr Beagle criticises his Honour's findings in [167] of the primary judgment, where his Honour explained why it was not unjust to deny Mr Beagle remuneration in the circumstances of the case:

> Even if the market value for the services provided was not zero, I do not consider that it would be unjust to deny him remuneration for the time that he spent performing the mechanical tasks involved in communicating the Brumbies' sponsorship proposal to Aquis. That is because of the following factors:
>
> (a) the non specific nature of a "finder's fee" or being "looked after";
>
> (b) the fact that any discussion of fees was in the context of Mr Beagle's actions being causally significant in securing a major sponsor;
>
> (c) the lack, upon an objective assessment, of any causally related benefit arising from Mr Beagle's activities;
>
> (d) the absence of evidence as to an alternative basis for calculating reasonable remuneration, such as upon an hourly rate;
>
> (e) the absence of information as to the time spent by Mr Beagle beyond the limited times disclosed in the evidence;
>
> (f) the fact that Mr Beagle did not perform any services as part of a business;
>
> (g) the broader goals of Mr Beagle in making contacts and promoting his views in his Transformational Proposal; and
>
> (h) the making and refusal of an offer more generous than any likely assessment of reasonable remuneration.

199. Mr Beagle finds fault with each factor set out in [167], for the following reasons.

200. In relation to factor (a), Mr Beagle submitted that a *quantum meruit* claim classically arises from non-specific or informal arrangements or discussions between the parties, and a "finder's fee" is, in effect, a commission.

201. We do not understand the nature of Mr Beagle's complaint in this regard. His Honour's comment concerning the finder's fee was relevant to his Honour's consideration of the justice of recovery of remuneration in the circumstances. We can identify no error.

202. In relation to factor (b), Mr Beagle submitted that on the evidence no such requirement as to being "causally significant in securing a major sponsor" was stipulated or made.

203. We reject this submission. The critical discussion between Mr Beagle, Mr Chester and Mr Edwards can only be viewed in the context of the then desperate need of the Brumbies for a sponsor. The only purpose of the meeting between Mr Beagle and the representatives of the respondent was to discuss this need, and – from the perspective of the respondent – to ascertain whether Mr Beagle could assist them in any way to gain a new sponsor. As we have already observed, to the extent that Mr Beagle suggests that he would be entitled to compensation from the respondent merely by providing third parties with a copy of the sponsorship proposal, such a suggestion is surely fanciful. His Honour's reasons in this respect were focussed on the benefit to the respondent from activities of Mr Beagle. His Honour found there was no benefit, and therefore it was not unjust to refuse Mr Beagle compensation.

204. In relation to factor (c), we repeat our observations concerning factor (b).

205. In relation to factor (d), Mr Beagle challenges his Honour's finding that there was no alternative basis for calculating reasonable remuneration when on the evidence the respondent offered Mr Beagle $5,000, as well as evidence of the industry norm. We have already discussed this evidence in the course of the judgment, and repeat our earlier observations.

206. In relation to factor (e), while in submissions Mr Beagle refers to numerous issues including the offer of $5,000, the industry norm, and general principles of *quantum meruit*, he does not actually direct the Court to evidence contradicting his Honour's observations. To that extent we do not identify error in those observations.

207. In relation to factor (f), we have already made clear our views concerning the relevance of Mr Beagle's activities being in a non-business environment to the question of whether it was just that he be denied compensation.

208. In relation to factor (g), we have already made clear our views concerning the relevance of Mr Beagle's broader goals to the question whether it was just that he be denied compensation.

209. In relation to factor (h), the fact that Mr Beagle refused the respondent's offer of $5,000 – which his Honour opined was generous – was merely a factor in his Honour's conclusion that it would not be unjust to Mr Beagle to decline to order payment by the respondent for mechanical tasks performed by Mr Beagle. In our view this was a relevant consideration on the facts of this case.

210. This ground of appeal is not substantiated.

Ground 33: No "positive causal contribution to the outcome" by Mr Beagle

211. We have already expressed our view concerning this matter, including our opinion that it would be fanciful to suggest that the respondent should have realised Mr Beagle expected to be paid even if he made no contribution to the respondent obtaining a sponsorship agreement.

212. This ground of appeal is not substantiated.

Ground 34: Preferring Mr Chester's evidence to that of Mr Beagle

213. In this ground of appeal, Mr Beagle claimed that his Honour wrongly preferred Mr Chester's evidence to that of Mr Beagle in circumstances where Mr Chester told Mr Beagle over the telephone that the Brumbies had attracted sponsorship from Aquis, and in particular where Mr Chester told Mr Beagle that Mr Chester wanted him "to be the first to know".

214. His Honour at [92] found that Mr Chester had emailed Mr Beagle as a matter of courtesy, and indeed had not telephoned him previously because Mr Chester had not retained Mr Beagle's telephone number. It was open to his Honour to so find. We consider this finding consistent with his Honour's preference for Mr Chester's evidence over that of Mr Beagle's. Indeed on the evidence, it appears that Mr Chester's words to Mr Beagle in that telephone conversation were intended to be a friendly gesture to a person with whom Mr Chester had discussed the sponsorship issue and who clearly wished the respondent well, rather than an acknowledgment of any obligation of the respondent to Mr Beagle in relation to the closure of the sponsorship deal with Aquis.

215. This ground of appeal is not substantiated.

Issue 5: The primary Judge erred in finding that the appellant could not recover on a *quantum meruit* because he was not in business as a commercial agent and because his services were provided as an adjunct to his collateral aims (grounds 21, 23, 24, 26, 28, 29)

216. We have already dealt with the grounds of appeal referable to this issue. These grounds of appeal are not substantiated.

Issues 3 and 6: The primary Judge wrongly rejected evidence of Ms Skildum-Reid, namely her expert evidence and her factual evidence that there was an industry standard of remuneration of 10–35 %. The errors of fact and law amounted to a miscarriage of justice.

217. As we noted earlier in this judgment, Issue 3 concerned Mr Beagle's complaint that his Honour rejected Ms Skildum-Reid's evidence, specifically:

    (a) opinion evidence of the appropriate level of remuneration for a person performing such services as Mr Beagle performed; and

    (b) non-opinion evidence of an industry norm or standard in the field of sponsorship that persons who broker or assist or enable obtaining of valuable sponsorships are typically remunerated by a commission between 10% and 35% of the sponsorship's value.

218. His Honour found that Mr Beagle was not entitled to compensation in the circumstances of this case. We agree. It follows that it is unnecessary for us to make any findings in relation to appropriate levels of compensation. Grounds of appeal referable to this Issue, namely grounds 10, 11, 12 and 13, are not substantiated.

219. Issue 6 entails a sweeping allegation that errors of fact and law listed in the grounds of appeal, both individually and collectively, worked a miscarriage of justice to Mr Beagle. We do not consider that the decision of his Honour constituted a miscarriage of justice to Mr Beagle. His Honour carefully and thoroughly examined the case before him, and made findings open on the evidence. We agree with his Honour's conclusions in this case.

Conclusion

220. The appeal should be dismissed. We will seek further submissions in respect of costs.

Orders

221. The Court orders that the appeal be dismissed.

I certify that the preceding two hundred and twenty one [221] numbered paragraphs are a true copy of the Reasons for Judgment of the Court.

Associate:

Date: 21 July 2017