



MARK CLEARY
Barrister

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PRACTICE AREAS: -

Mark has over 23 years' experience in commercial litigation. He appears in superior courts and tribunals around the country. Mark is regularly briefed to advise and appear in trials, hearings and appeals for publicly listed and private companies, directors, shareholders, financial institutions, liquidators, administrators, trustees, executors, beneficiaries, regulators, government departments and instrumentalities, and individuals in a wide range of complex commercial, civil, and regulatory disputes.

Mark's core practice areas are equity and commercial law, corporations law, shareholder oppression, insolvency, contract law, public and administrative law, freezing orders and injunctions, professional negligence, property, trusts, succession, employment law, restraint of trade, and regulatory compliance litigation.

QUALIFICATIONS

AND EXPERIENCE: -

2001	Barrister, NSW Bar, joined the 8 th Floor Selborne Chambers
1996-2000	Solicitor, and Senior Associate at Corrs Chambers Westgarth
2000	LL.M (University of NSW) (Major: Corporations and Commercial law)
1996	Admitted as a Legal Practitioner, NSW Supreme Court
1995	B. Comm/LL.B (1 st Class Honours) (Macquarie University) (1995 ASIC Prize for Corporations and Commercial Law)

SELECTED APPEARANCES

IN NSW JURISDICTIONS: - *El-Cheikh & Anor v Miraki* [2020] NSWSC 1781 – Contract Law/Equity/Trust Law/Unit Trust/ Dispute over ownership of Commercial Property/Enforcement of Loan Agreement and Security over property.

In the matter of Oneoz Pty Ltd (subject to DOCA) [2019] NSWSC 1406 – Corporations Act/application to set aside orders for examination/production/construction of a Deed of Company Arrangement/duties of administrator.

Midcoast Petroleum Pty Ltd v Keldros Pty Ltd [2019] NSWSC 970 – Breach of contract/breach of lease/damages for breach of contract and lease.

Aligned Investment Management Pty Ltd v Aligned FM Pty Ltd [2019] NSWSC 1051 & [2018] NSWSC 1852 – Corporations Act/shareholder Oppression/breach of directors duties/breach of confidentiality/diversion of business opportunity claim/buy out order claim.

Luo v Windy Hills Australia Game Meats Pty Ltd [2018] NSWSC 1139 – security for costs against foreign plaintiffs/large international contract dispute/consumer law/misleading and deceptive conduct.

Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor [2018] NSWCA 118 – appellate litigation/Corporations Act/Barnes v Addy claim/breach of fiduciary duties/fraud/remedial constructive trusts/equitable compensation.

Kearney v Williams, Optimisation Australia Pty Ltd & Ors [2018] NSWSC 31 & [2018] NSWSC 280 – Corporations Act/Shareholder Oppression/internet company/derivative claims against directors/breach of director's duties/ accessory liability for directors.

Dawngrange Pty Ltd & Ors v Arnautovic & Ors [2017] NSWSC 1201 – Corporations Act/insolvency/multiple appeals from liquidator's decisions heard together/contract law.

SAMM Property Holdings Pty Ltd v Shaye Properties Pty Ltd [2017] NSWCA 132 & [2016] NSWSC 362 –Property law/large commercial property contract/ rectification/ injunctions/specific performance.

Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor [2017] NSWSC 412 – Corporations Act/Barnes v Addy claim/breach of fiduciary duties/fraud/remedial constructive trusts/equitable compensation.

Kearney v Williams, Optimisation Australia Pty Ltd & Ors [2016] NSWSC 1518 – Corporations Act/Client Legal Privilege in employee emails/Waiver of Privilege under s122 of the Evidence Act.

In the matter of Urban Purveyor Group Pty Ltd [2015] NSWSC 1705 – Corporations Act/varying a statutory demand/contract law.

Landa v Perpetual Trustees Victoria [2013] NSWSC 1685; [2014] NSWCA 245 & [2014] NSWCA 393 – trial and appellate litigation/banking and mortgage law/fraud by mortgage broker/Contracts Review Act /agency law.

Hills Industries Ltd v Australian Financial Services Pty Ltd [2012] NSWSC 1004 & [2012] NSWCA 380 – trial and appellate litigation/restitution/recovery of money paid by mistake/change of position/equity/finance law/fraud.

In the matter of Amazon Pest Control Pty Ltd [2012] NSWSC 1568 – winding-up on the just and equitable ground/shareholder oppression claim/Corporations Act.

Beck v NSW [2012] NSWSC 1483 and *NSW v Beck* [2013] NSWCA 846 – trial and appellate litigation/ intentional torts/ malicious prosecution/ exemplary damages/administrative law/ judicial review/jurisdictional error.

Pritchard (Law Cover) v DJZ Constructions Pty Ltd & Ors [2010] NSWSC 1024 & [2012] NSWCA – trial and appellate commercial litigation/appellate litigation/professional negligence/tort liability/Civil Liability Act.

Calwell-Smith v D.G. Dept. of Finance [2012] NSWSC 43 – Associations Incorporation Act /review of an external administrator by Department of Fair Trading/breach of directors' duties.

Aalders Finance v ANZAX Finance Australia Pty Ltd [2011] NSWSC 756 – construction of contractual provisions/options contracts/declarations/damages for breach of Contract.

Sekers v Sekers [2010] NSWSC 59 – Succession Act/family trusts/Corporations Act/family provision order claim over large estate/complex estate litigation.

Perpetual Trustees Victoria v Longobardi [2009] NSWSC 654 – banking and mortgage law/securities/no-doc, low-doc loans/Contracts Review Act/consumer law.

Re Rubicon Asset Management Ltd (2009) 77 NSWLR 96/(2009) 74 ACSR 346 – Corporations Act/leading case on winding-up managed investment scheme on the just and equitable ground.

Bodikian v Sproule (2009) 72 ACSR 578 – Corporations Act/directors meetings / equity/estoppel.

SELECTED APPEARANCES

IN FEDERAL

JURISDICTIONS: -

Nguyen & Ors v Migration Agents Registration Authority [2020] AATA (4 May 2020) – Complex Federal public law regulatory compliance litigation/review of decision to cancel registration of migration agents in Sydney/fitness and integrity review hearing for solicitors who acted as migration agents.

FUD18 v Minister for Home Affairs [2020] FCA 48 & [2020] FCAFC – Judicial Review and Full Court Appeal/Visa cancellation for visa holder based on INTERPOL Red Notice for serious white collar criminal charges alleged by foreign country.

Ali v Minister for Home Affairs [2019] FCAFC 93 – Full Court appeal/visas cancellation for serious criminal convictions in Australia.

Ryan v Vizovitis [2017] ACTCA 3 – Full Court appeal from ACT Supreme Court/large and complex commercial appellate litigation in the ACT.

Marmax Investments Pty Ltd v Spanline Weatherstrong Building Systems Pty Ltd & RPR Maintenance Pty Ltd [2015] FCAFC 127 & [2014] FCA 514 & [2014] FCA 409 & [2012] FCA 681 – Trial and Full Court Appeal/franchise law/injunctions/obligations of good faith/competition and consumer Law/ restraint of trade.

Australian Financial Services Pty Ltd v Hills Industries Ltd & Bosch Security Systems Ltd [2014] HCA 14 – leading High Court case on restitution law in Australia/recovery of money paid by mistake/fraud.

Wilkie v Woolworths Ltd [2013] FCCA – large sexual discrimination and sexual harassment trial/claim against senior executive under the Sex Discrimination Act/employment law/human rights law.

Spanline Weatherstrong Building Systems Pty Ltd v Tabelz Pty Ltd [2013] FCA 1019 – passing-off/competition and consumer law /secondary meaning/misleading and deceptive conduct.

Uniting Care NSW v Hancock [2014] FCA 391 – appellate litigation against trade union/Fair Work Act/multiple claims for breach of employment contract.

Moody Kiddell & Partners v Arkell, Brooke and Broolend Pty Ltd [2013] FCA 1066 – complex commercial litigation/injunctions/restraint of trade/Corporations Act/breach of confidentiality.

Manildra Flour Mills (manufacturing) Pty Ltd v National Union of Workers [2012] FCA 1010 – appellate litigation/employment law/multiple claims for damages brought by trade union.

Wecker v Secretary, Department of Education [2008] FCAFC 108 – Full Court appeal/judicial review of an AAT decision/employment law.

Collins Debden Pty Ltd v Cumberland Stationery Co Pty Ltd [2005] FCA 1398 – intellectual property/misleading and deceptive conduct/passing-off/injunctions/declarations.

Anscor Pty Ltd v Clout (Trustee) [2004] FCAFC 71 – Full Court appeal/Bankruptcy Act/voidable property transactions/trust law/appeal from Federal Court.

ACCC v IMB Group Pty Ltd [2003] FCAFC 17 – Full Court appeal/ACCC prosecution/ Trade Practices Act/exclusive dealing/competition and consumer law/accessorial liability for directors.

OTHER LITIGATION

EXPERIENCE: -

Numerous liquidator’s examinations in the NSW Supreme Court and Federal Court, including more recently an 18-month examination of directors, officers and auditors of a large collapsed investment bank which led to recovery proceedings in the NSW Supreme Court, NSW Court of Appeal and High Court against various parties.

A significant number of complex commercial disputes, including shareholder oppression claims, contract claims, commercial property development disputes, professional negligence claims, family provision claims, restraint of trade, sexual discrimination, and harassment claims, that have all resolved through ADR.

Hundreds of administrative and regulatory reviews and appeals in the Federal Circuit Court and Federal Court and in the Federal AAT for, and against, Federal regulators such as the ATO, ASIC, ASQA, Dept of Agriculture, and the Dept of Home Affairs, including more recently appearing for the Commonwealth in AAT proceedings regarding a complex regulatory review of a number of live animal international export licences in WA.