

Adam Rollnik



Adam Rollnik practises in commercial litigation and domestic and international arbitration.

QUALIFICATIONS

Master of Laws
Bachelor of Laws (Hons)
Bachelor of Applied Science

CORRESPONDENCE

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CHAMBERS

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COMMERCIAL LAW

Appellate | Building & Construction | Commercial Arbitration | Consumer Law | Contractual Disputes |
Energy & Resources | Residential & Retail Tenancies | Real Property

EMPLOYMENT & INDUSTRIAL

Employment Contracts

TORT LAW

Negligence | Product Liability | Professional Negligence

Adam is a Fellow of the Chartered Institute of Arbitrators and has extensive expertise and experience in large, complex litigation and arbitration disputes (international and domestic). Adam has experience in infrastructure disputes, oil and gas disputes, pipeline and wind farm disputes, building and construction disputes (domestic and commercial), including those brought under security of payment legislation, contract disputes, real property law, general commercial, owners corporations, commercial leasing, franchising, contract of employment, and insurance.

Adam is a former lecturer at Monash University and has taught advocacy at the Leo Cussen Centre for Law. Adam acts as an arbitrator, is a director and principal of Arbitration Victoria Pty Ltd and was a co-author of the VCAS (Victorian Bar) arbitration rules. He has been recognised in the Doyles Guide of Australia's "Best Barristers".

Before coming to the Bar, Adam was a Senior Associate at King & Wood Mallesons in Perth and Melbourne, and he worked for Ashurst in London. Adam accepts briefs direct from in-house counsel.

Liability limited by a scheme approved under Professional Standards legislation

Recent Cases

SUPREME COURT - COURT OF APPEAL

Construction (security of payment) (2020): *1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd [2020] VSCA 253*. An appeal in relation to the operation of the *Building and Construction Industry Security of Payment Act 2002* and whether the adjudicator properly considered the construction contract in making his determination and the adequacy of his reasons. Led by Mark Robins KC and instructed by Arnold Bloch Leibler.

Costs dispute (2020): *1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd [2020] VSCA 263*. Dispute as to whether the costs of an appeal should be awarded on the standard or indemnity basis. Instructed by Arnold Bloch Leibler.

Commercial Building (2015): *Grocon Constructors (Victoria) Pty Ltd v APN DF2 Project 2 Pty Ltd [2015] VSCA 190*. Appeal concerning the interpretation of a commercial building contract. Led by Jeff Gleeson KC and instructed by Arnold Bloch Leibler.

Construction (security of payment) (2015): *Saville v Hallmarc Construction Pty Ltd [2015] VSCA 318*. Appeal concerning whether a payment claim made under the *Building and Construction Industry Security of Payment Act 2002* was made within time. Led by Mark Robins KC and instructed by Kliger Partners.

SUPREME COURT OF TASMANIA - FULL COURT

Commercial Building & Bank Guarantee (2021) *Hansen Yuncken Pty Ltd v Parliament Square Hobart [2021] TASFC11*. Appeal concerning whether a contract permitted the principal developer to access an unconditional bank guarantee without notice to the builder. Led by S B McElwaine SC (as his Honour then was) and instructed by Crawford Legal.

SUPREME COURT OF VICTORIA

Real property – contaminated land [ongoing]: *Amcor Ltd v Peter J Ramsay & Associates Pty Ltd*. Presently acting for Peter J Ramsay & Associates Pty Ltd concerning the adequacy of an environmental site audit of a large parcel of contaminated land in Victoria. Led by Suresh Senathirajah KC and instructed by Wotton + Kearney.

Final judgement for damages in default (2021): *Aqueous Corporation Pty Ltd v MCG Group Pty Ltd* [S CI 2017 03473]. Acted for the plaintiff in an action for judgment in default of appearance and obtained orders for the payment of \$3.5M in damages. Instructed by HWL Ebsworth.

Real property – contaminated land (2019-2022): *Orora Ltd v Peter J Ramsay & Associates Pty Ltd*. Acted for Peter J Ramsay & Associates Pty Ltd defending a \$100M claim made against it concerning contaminated land in Queensland and the adequacy of an environmental site audit. Led by Suresh Senathirajah KC and instructed by Wotton + Kearney. (Settled in 2022).

Injunction application (2021): *Lal Lal Wind Farm Nom Co Pty Ltd v Vestas – Australian Wind Technology Pty Ltd & Anor* [S ECI 2020 03894]. Acted for the defendants in the Commercial Court in opposition to an application for an injunction in relation to the (anticipated) suspension of construction works. Led by Nicholas Pane KC, instructed by Pinsent Masons. (Settled 2021).

Construction (security of payment) (2020): *1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd* [2020] VSC 471 – Acted for a developer in dispute with the builder about a challenge to the validity of an adjudication determination made in 2019 under the *Building and Construction Industry Security of Payment Act 2002*. Led by Mark Robins KC and instructed by Arnold Bloch Leibler.

Nuisance and trespass (2019-2020): *The Baptist Union of Victoria v Lascorp Investment Group Pty Ltd*. Acted for a land developer in dispute with a neighbouring landowner regarding whether the development trespasses on and causes a nuisance to neighbouring land. Instructed by Arnold Bloch Leibler. (Settled in 2020).

Real property (2019): *Wollert Epping Pty Ltd v Batten* [2019] VSC 618 – Acted for property developer (and purchaser of land) in dispute with a vendor in connection with a breach by the vendor of warranties in a contract of sale of land. Application made under s 49 of the *Property Law Act 1958*. Instructed by HWL Ebsworth.

Contract (2017-2019): *Dana Spicer (Thailand) Ltd v GA & L Harrington Pty Ltd* [S ECI 2017 48] – breach of contract – Acted for the plaintiff car parts supplier against a subcontractor concerning a defective motor vehicle parts claim, which led to a national vehicle recall. Instructed by HWL Ebsworth. (Settled in 2019).

Infrastructure project – Arbitration dispute (2018): *Mitchell Water Australia Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd* [2018] VSC 753 – Acted for McConnell Dowell in a long-running dispute with Mitchell Water (arbitral proceeding followed by a subsequent court challenge to the Award) about the construction of a significant liquified natural gas pipeline in Queensland. Led by Jeff Gleeson KC and instructed by Pinsent Masons.

Real Property (2018): *Dai v Liu* [2018] VSC 189 – acted for the vendor of real property in a dispute with purchasers concerning the validity of a nomination clause – equitable interest of undisclosed purchaser and alleged constructive trust. Instructed by HWL Ebsworth.

Statutory Demand (2017): *United Petroleum Pty Ltd v McGrathNicol Advisory* [2017] VSC 239 – application to set aside a statutory demand for non-payment of debt. Instructed by Sewell & Kettle.

Commercial Leasing (2017): *Camperdown Dairy International Pty Ltd v The Camperdown Cheese Company Ltd* [2017] VSC 107 – commercial lease and contractual dispute (tenant's request to demolish a building – whether landlord's refusal to consent to demolish was unreasonable). Led by David Collins KC and instructed by HWL Ebsworth.

Commercial Leasing (2016): *Camperdown Dairy International Pty Ltd v The Camperdown Cheese Company Ltd* [2016] VSC 693 –commercial lease and contractual dispute (whether landlord entitled to impose a condition on granting of consent to demolish building). Led by David Collins KC and instructed by HWL Ebsworth.

Major Projects (2015): *Melbourne Water Corporation v Aurecon Australia Pty Ltd* – alleged defects at the Eastern Treatment Plant. Acted for Aurecon, led by Jeff Gleeson KC and instructed by Gilchrist Connell. The matter settled in 2015 before trial.

Insurance: *Bupa Australia Pty Ltd v Shaw* [S CI 2012 5648] – contract of insurance and insurer's refusal to pay out under the policy. Instructed by Arnold Bloch Leibler.

Legal Professional Privilege: Acted for a property investment company in connection with a dispute about legal professional privilege and waiver of privilege.

SUPREME COURT OF TASMANIA

Injunction application (2021): *Hansen Yuncken Pty Ltd v Parliament Square Hobart Landowner Pty Ltd* [2021] TASSC 20. Acted for applicant/appellant in an application for an injunction to preserve the status quo pending appeal. Led by S B McElwaine SC (as his Honour then was) and instructed by Crawford Legal.

Construction – access to security (2021): *Hansen Yuncken Pty Ltd v Parliament Square Hobart Landowner Pty Ltd* [2021] TASSC 7. Acted for the plaintiff in an application for declaratory relief concerning the defendant's entitlement to access to a security bond. Led by S B McElwaine SC and instructed by Crawford Legal.

Security of payment (2020): *Parliament Square Hobart Landowner Pty Ltd v Tonkin* [2020] TASSC 30. Acted for Hansen Yuncken (second respondent) in connection with the appellant's application to set aside an adjudication determination under the *Building and Construction Industry Security of Payment Act 2009* (Tas). Led by S B McElwaine SC and instructed by Crawford Legal.

INTERNATIONAL AND COMMERCIAL ARBITRATION

International ICC arbitration (>\$1bn) [ongoing]: Presently acting for an Australian company in dispute with its international joint venture partner in connection with the construction of onshore LNG/LPG gas storage facilities in the Northern Territory. Led by R McHugh SC and T Breakspear SC and instructed by Squire Patton Boggs. The arbitration is seated in Singapore.

Arbitrator: sports law dispute (2020). Acted as sole arbitrator in 2019/2020 to determine a sports law dispute between a sporting body and an athlete in a dispute about a breach of a sporting code of conduct.

International ICC arbitration (>\$100M) (2018-2019): Acted in for an overseas claimant contracted to engineer and construct components of a gas processing plant near Darwin. The claimant claimed significant sums outstanding upon completion of the works, and the respondent alleged defects in construction and delay costs. Led by Jeff Gleeson KC and instructed by Corrs Chambers Westgarth.

Domestic ACICA arbitration (>\$100M) (2019): Acted for the claimant builder in dispute with the developer of a large infrastructure project in South Australia. Instructed by King & Wood Mallesons.

International arbitration (>\$70M) (2011): Acted for an oil company in an international arbitration (IAMA Rules)

concerning the alleged repudiation of a charter party contract concerning a floating oil platform (FPSO). Led by John Digby KC (before his Honour's appointment to the Supreme Court of Victoria) and instructed by King & Wood Mallesons.

Domestic arbitration (2011): Acted for a telecommunications and utility provider in a dispute with a supplier of telecommunications goods and services. Led by John Digby KC and instructed by Norton Gledhill.

FEDERAL COURT

Franchising (2016): *Boccabella & Smith Pty Ltd v Swim Loops Pty Ltd* [VID 734 of 2016]. Acted for the respondent in relation to a dispute about the termination of a franchise agreement. Instructed by in-house counsel for Swim Loops Pty Ltd.

Services Contract (2016): *Architecture HQ Pty Ltd v Propertyline Pty Ltd* – contract for services. Led by Ed Heerey KC and Instructed by CLP Lawyers. The matter was settled before trial.

Corporations and Securities (2012): *Holmes v Quinte Holdings Pty Ltd* [VID592 of 2012] – opposition to a winding up application. Instructed by Atanaskovic Hartnell.

COUNTY COURT

Franchising dispute (2020-2021): *Empower Investment Solutions Pty Ltd (Empower) v United Petroleum Franchise Pty Ltd* County Court Proceedings CI-20-01467. Acted for franchisee claimant against franchisor defendant in a claim for breach of contract and wrongful repudiation. Instructed by Starnet Legal. (Settled 2021).

Residential land development (2018-2020): *Gaythorne Pty Ltd v Universal Concrete Contractors Pty Ltd*. Acted for Universal Concrete (defendant) in relation to alleged defects in civil works carried out in connection with a residential development in St Albans. Instructed by HWL Ebsworth. (Settled 2020).

Domestic Building (2019-2020): *Rawlings v J Follett Investments Pty Ltd*. Acted for homeowners in dispute with a real estate agent and various building practitioners regarding defects in a luxury home in Brighton. Instructed by B L Powell Barrister & Solicitors.

Security of Payment (2018): *SJ Higgins Pty Ltd v The Bays Healthcare Group Inc* [2018] VCC 805 – acted for the defendant to a claim made under the *Security of Payment Act 2002* (Vic). Instructed by Macpherson Kelley Lawyers. Matter settled.

Security of Payment: *Hercules Car Parking Systems (Victoria) Pty Ltd v MAV Group Commercial Pty Ltd* – application for judgment under the *Building and Construction Industry Security of Payment Act 2002* (Vic). Instructed by Frenkel Partners.

Security of payment: *Valeo Construction Pty Ltd v 232 Bay Street Pty Ltd* – application for judgement under the *Security of Payment Act 2002* (Vic). Instructed by Arnold Bloch Leibler.

Trademarks and misleading or deceptive conduct: *The Barry Plant Group Pty Ltd v FP and KH Enterprises Pty Ltd* – unauthorised use of trademarks and misleading or deceptive conduct – application for an injunction. Instructed by M&K Lawyers Group Pty Ltd.

Trademarks: *Mercedes-Benz Australia/Pacific Pty Ltd v Automotive Retail Group Pty Ltd* – dispute about the use

of a trademark. Led by Gerard Meehan and Instructed by Rothwell Lawyers.

Franchising: *United Petroleum Franchise Pty Ltd v Gold Fuels Pty Ltd* [2016] VCC 292 – dispute between franchisee and franchisor in relation to the termination of a franchise agreement and claim for damages for breach of contract. Instructed by HWL Ebsworth.

Franchising: *Hungry Jack's Australia Pty Ltd v TLC Company Pty Ltd* – termination of the franchise agreement. Instructed by HWL Ebsworth. The matter settled part-way through the trial.

Franchising: *Wendy's Supa Sundaes Pty Ltd v Lin & Hu Investment Pty Ltd* – franchise dispute. Instructed by Portfolio Law Pty Ltd.

Adverse possession: *Lew v Brough* – Acted for a landowner in a claim for adverse possession of land. Instructed by SBA Law.

Wills and estates: acted for children claiming maintenance under the *Administration and Probate Act* (Vic).

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Domestic Building [ongoing]: *LDS Lifestyle Pty Ltd v Promax Building Developments Pty Ltd* [BP1130/2020]. Presently acting for claimant developer against defendant builder claiming \$1.8M for defective works in connection with a newly built residential apartment building in Bulleen. Instructed by CLP Lawyers.

Domestic Building [ongoing]: *LDS Lifestyle Pty Ltd v Promax Developments Pty Ltd* [BP2134/2020]. Presently acting for claimant developer against defendant builder claiming \$12M for repudiation of a contract, costs to complete and defective works for a residential apartment building in Glen Huntly. Instructed by CLP Lawyers.

Domestic Building [ongoing]: *1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd* [BP718/2020]. Presently acting for claimant developer against defendant builder claiming \$4M for repudiation of the building contract and defective works on an apartment building in Highett. Instructed by CLP Lawyers.

Owners Corporations / Water Act (2017-2022): *Australia DL Corporate Pty Ltd v Owners Corporation 1* . Acted for owners corporations/insurer defending a claim brought by lot owners alleging breach of the *Water Act 1989/- Owners Corporations Act 2006*. Led by Suresh Senathirajah and instructed by Terrill & Holmes Lawyers. Settled in 2022.

Owners Corporations (2019): *Owners Corporation 4 v Bensons Property Group Pty Ltd* [2019] VCAT 652 – Acted for Bensons in dispute with a facilities management company – application for summary dismissal. Instructed by Arnold Bloch Leibler.

Domestic Building (2019): *Zaitsev v Urbanworks Group Pty Ltd* – domestic building dispute involving 10 parties and multiple claims in excess of \$4M. Acted for architect and instructed by Gilchrist Connell. Settled in 2019, just prior to trial.

Domestic Building (2019-2020): *K&C Constructions Pty Ltd v Qiang Feng Hi Sushi Pty Ltd*. Acted for a developer in dispute with a builder in connection with alleged defective building work and counterclaim for *quantum meruit*. Instructed by Frenkel Partners.

Domestic Building (2018-2019): *Reuveni and Swartz v Stemcon Pty Ltd*. Acted for a builder in 2018/2019 in dispute with the property owner in connection with alleged defective building work and contractual indemnity. Instructed by Frenkel Partners.

Owners Corporation / domestic building (2019): *Capco Industries Pty Ltd and Holden Peel Projects Pty Ltd* .

Acted for a project management company in connection with the construction of a residential apartment complex and alleged defective construction works. Instructed by Carter Newell Lawyers.

Owners Corporation (2018): *Owners Corporation 4 PS539033E v Bensons Property Group Pty Ltd [2018] VCAT 1769*. Acted for Bensons in its application to summarily strike out the proceedings brought against it. Led by J Gleeson KC and instructed by ABL.

Commercial Leasing: *The Gallery Bar & Grill Pty Ltd v Freilich Nepean Pty Ltd [2017] VCAT 720* – dispute about the terms of a commercial lease. Instructed by Frenkel Partners.

Owners Corporations: *TM Facilities Management Pty Ltd v Owners Corporation No.1* – termination of building management agreement by an owners corporation and claim for damages for breach of contract. Instructed by Purpose Law.

Owners Corporations: - *Lawandi v Owners Corporation 21842D [2015] VCAT 1810* – Dispute about the power of Owners Corporations to make rules under the *Owners Corporation Act 2006*. Instructed by Norton Gledhill.

Construction: *Owners Corporation 1 PS537642N v Hickory Group Pty Ltd* – building defects at holiday resort (\$7M claim). Led by Craig Harrison KC and instructed by Piper Alderman.

FEDERAL MAGISTRATES COURT

Employment law: *The Director of the Fair Building Industry Inspectorate v Linkhill Pty Ltd (No.3) [2013] FMCA 165*, led by Simone Bingham – dispute as to whether workers were independent contractors or employees.

Bankruptcy: Acted for a bankrupt in the Federal Magistrates' Court regarding the validity of a sequestration order.

MAGISTRATES COURT

Employment law: *Hall v Manark Printing Pty Ltd (10 December 2013)* – claim for unpaid commissions against former employer and claim of misappropriation of intellectual property. Instructed by Rigby Cooke.

Retail Tenancy: *Versus (Aus) Pty Ltd v A.N.H Nominees Pty Ltd [2011] VCAT 2273* – late payment of rent and defects. Instructed by HWL Ebsworth.

Jurisdiction: *Sansome v Urban Renewal Authority of Victoria* – whether VCAT had jurisdiction to hear a dispute about access to telecommunications infrastructure. Instructed by K&L Gates.

Memberships

Society of Construction Law

Building Disputes Practitioner's Society

Commercial Bar Association - Arbitration & ADR

Commercial Bar Association - Building & Construction

Chartered Institute of Arbitrators