

## Adam Segal



A banking and insolvency specialist with a commercial practice, Adam is an experienced trial and appellate advocate

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### QUALIFICATIONS

Bachelor of Economics  
Bachelor of Laws (Hons)

### CORRESPONDENCE

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### CHAMBERS

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### COMMERCIAL LAW

Appellate | Banking & Finance | Bankruptcy | Contractual Disputes | Corporate Insolvency | Corporations & Securities | Equity & Trusts | Real Property | Residential & Retail Tenancies

### TORT LAW

Professional Negligence

Adam joined the Bar in 2006. During that time, Adam has developed an extensive practice in general commercial litigation. He also has specialist expertise in corporations, insolvency, banking and property law.

Adam is a nationally accredited mediator under the National Mediator Accreditation System (NMAS).

Prior to coming to the Bar, Adam worked as a solicitor in Melbourne and in London. Adam was a Senior Associate at Mallesons Stephen Jaques (now King & Wood Mallesons) and Legal Counsel for Barclays Bank PLC.

Adam is recognised in *The Legal 500 (Legalease)* for his expertise in Commercial Disputes and in Best *Lawyers in Australia* for Litigation.

*Liability limited by a scheme approved under the Professional Standards Legislation*

## Recent Cases

### NOTABLE CASES

Notable cases which Adam has appeared in recently include:

[\*Wight, in the matter of Verve Portraits Pty Ltd \(administrators appointed\) \[2023\] FCA 1014\*](#) – appeared on behalf of the administrators in the Federal Court of Australia. The Administrators had been appointed over a corporate trustee and sought to be appointed as receivers of trust assets – administrators sought to effect sale of business as a going concern. The administrators also sought direction that they be justified in treating the property in the name of the company as property of the trust.

[\*Sino Group International Limited, in the matter of Toddler Kindy Gymbaroo Pty Ltd \(in liq\) v Toddler Kindy Gymbaroo Pty Ltd \(in liq\) \[2023\] FCA 904\*](#) – appeared in the Federal Court of Australia on behalf of the plaintiff creditors to seek the appointment of replacement liquidators where deed of company arrangement terminated by the Court. The former deed administrators (who had become the liquidators) had informed the Court that they intended to resign and were acting in a caretaker capacity. The director opposed the application of the plaintiff creditors and put forward alternate liquidators. The Court held that it was appropriate for the Court, rather than creditors to appoint a new liquidator and determined that the plaintiff creditors' nomination was appropriate.

*Sino Group International Limited v Toddler Kindy Gymbaroo Pty Ltd* [2023] (Final Orders) FCAFC 119 - appeared in the Full Court of the Federal Court of Australia following the handing down of the appeal. On behalf of the appellant, sought and obtained orders under s 43 of the *Federal Court of Australia Act* 1976 (Cth) and/or s 90-15 of the *Insolvency Practice Schedule (Corporations)* that the deed administrators should be deprived of indemnity out of assets of the company for costs they are ordered to pay and their own costs of conducting the proceedings on the basis that the costs were a consequence of their own conduct.

[\*Sino Group International Limited v Toddler Kindy Gymbaroo Pty Ltd \[2023\] FCAFC 110\*](#) - appeared with Philip Crutchfield KC in the Full Court of the Federal Court of Australia at the hearing of the appeal. At first instance, the trial judge dismissed the application to terminate the deed of company arrangement (DOCA) pursuant to s 445D(1) of the *Corporations Act* 2001 (Cth). The Full Court overturned the decision and terminated the DOCA on the basis that the statement in the Administrators' Report to the effect that it was estimated that unrelated creditor would receive a dividend of 100 cents in the dollar under the proposed DOCA was misleading. Further, at trial, the 'aide memoire' handed up by the Deed Administrators' counsel seeking to explain the effect of deeds of subordination executed by related creditors after the first day of trial was found to have led the trial judge into error as it obscured

the significance of the subordination deeds from the trial judge in terms of the impact these deeds had on the unrelated creditors' likely recovery if the DOCA was terminated.

[Wang v HMG Capital Pty Ltd \(No 2\) \[2023\] VSC 399](#) – appeared with Jonathon Moore KC on behalf of the defendants in the Supreme Court of Victoria. The claim arose after the plaintiff had sold his share in a company, which itself had shares in an indoor leisure entertainment business (Latitude Australia). The case principally concerned allegations of breach of contract arising from the share sale agreement and related contracts. In particular, it was alleged that there was an implied terms to maintain and preserve the value of security granted and obligations of good faith. Allegations of misleading or deceptive conduct in the pre-contractual negotiations were also made. The claim was dismissed.

*Cull v Davies* [2023] FCA 763 – appeared on behalf of the bankruptcy trustee in the Federal Court of Australia to obtain ex parte interlocutory freezing orders where the proceeds of the sale of the former matrimonial property had been transferred by the bankrupt (ex-wife) to the first respondent after she had been served with a bankruptcy notice.

*Meletsis v Yeo (in his capacity as trustee of the bankrupt estate of Karas)* [2023] FCAFC 93 – appeared with Stewart Maiden KC in the Full Court of the Federal Court of Australia at the hearing of the appeal. The plaintiffs, as the trustees of the bankrupt estate had also taken an assignment of the “right, title and interest” of 70 Nicholson Street Pty Ltd (in liq) in all causes of action against the defendants, arising out of, or relating to, dealings in a property at 70-74 Nicholson Street, Fitzroy. On the assigned claims, the trustees successfully demonstrated that the defendants had carried out a concerted plan to transfer the Nicholson St property in order to avoid potential claims of creditors to the benefit of themselves. The trustees also successfully demonstrated as against Mr Karas that his personal mortgage was discharged for nil consideration and that the discharge is void as against the trustees pursuant to ss 120 and 121(1) of the *Bankruptcy Act 1966* (Cth), alternatively an alienation of property with intent to defraud creditors of the bankrupt and void as against the trustees under s 172 of the *Property Law Act 1958* (Vic).

*Roberts v Carrafa (Trustee), in the matter of Roberts (Bankrupt)* [2023] FedCFamC2G 463 – appeared on behalf of the bankruptcy trustee in the Federal Circuit and Family Court of Australia to successfully resist an application that the bankruptcy trustee had a conflict of interest or perceived conflict of interest from acting as the bankruptcy trustee. The applicant had contended where the bankruptcy trustee were also the trustee in bankruptcy of the estranged spouse of the bankrupt.

*Cull (Trustee), in the matter of Cuthbertson (Bankrupt) v Cuthbertson* [2023] FedCFamC2G 442 – appeared on behalf of the bankruptcy trustee in the Federal Circuit and Family Court of Australia to obtain declaratory relief and orders for possession or delivery up of property which had vested in the bankruptcy trustee pursuant to sections 58 and 132 of the *Bankruptcy Act 1966* (Cth).

*In the matter of All in One Contracting Pty Ltd (in liq)* [2023] VSC 330 – appeared in the Supreme Court of Victoria on behalf of the plaintiff liquidator at the hearing of an application to enable the liquidator to realise trust assets. The corporate trustee, which had only acted as a trustee, was now a bare trustee in circumstances where the trust deed contained an automatic removal clause upon the company going into liquidation.

*National Australia Bank v Trani & Anor* [2023] VSC 142 – appeared in the Supreme Court of Victoria on behalf of the plaintiff bank at the hearing of an appeal against the refusal to set aside default judgment where the defendant borrower sought to raise issues concerning the *Human Rights and Responsibilities Act 2006 (the Charter)* and allegations that the lender had ‘securitised the mortgage’.

*Dixon (Liquidator), in the matter of Victoria Project Pty Ltd v Austhome Group Pty Ltd* [2023] FCA 42 – appeared in the Federal Court of Australia on behalf of the majority shareholders of the company. The proceeding concerned, in part, an application by the liquidator as to the enforceability and the proper construction of an indemnity clause in a deed of settlement which provided that one shareholder would indemnify the company if the “Costs of the Liquidation” (as defined) exceeded the Costs Cap. There was also a cross-claim by the indemnifying shareholder for misleading or deceptive conduct against representations made by the liquidator that he would cap his fees in the liquidation. The Court rejected the liquidator’s claim that the indemnifying clause was void for uncertainty and in giving the clause its proper construction also determined that the scope of the indemnity clause did not include expenses that the company would have incurred in any event in the conduct of its business as a property developer and landlord if a liquidator had not been appointed.

*Rambaldi (Trustee) v Meletsis, in the matter of the bankrupt estate of Karas (No 4)* [2022] FCA 1516 – appeared with Stewart Maiden KC in the Federal Court of Australia. On behalf of the Trustees, and in circumstances where judgment had been given in favour of the Trustees and where freezing orders had also been made against the defendants, the Trustees were successful in obtaining orders pursuant to s57 of the *Federal Court of Australia Act* 1976 (Cth) for the appointment of interim receivers and managers of properties controlled by the defendants pending the determination of an appeal by the Full Court. In the circumstances, including the concerns about the compliance with the freezing orders and the limited impact of the appointment of interim receivers, the Court determined that it was justified in making orders for the appointment of interim receivers.

*Re W.W. Property Development Pty Ltd (in liq)* [2022] VSC 607 – appeared in the Supreme Court of Victoria on behalf of the liquidators who sought and obtained an order for the release of funds previously paid into Court by the company (Funds). Previously, the company had been ordered to pay the Funds into Court out of total net proceeds of the sale of property lots. After their appointment, the liquidators sought the release of the Funds on the basis that the respondents (plaintiffs) were unsecured creditors who had no interest in the Funds and that the Funds were not subject of any pre-existing security of property in favour of respondents being made in respect of Company’s assets. In the circumstances, the proper characterisation of the payment of the Funds was that they were paid into Court as an alternative to a freezing order and so did not create an interest (proprietary or otherwise) in those funds in favour of the respondents.

*Sino Group International Ltd & Anor v Toddler Kindy Gymparoo Pty Ltd (admins apptd) and others* (2022) 160 ACSR 568 – appeared with Michael Gronow KC in the Federal Court of Australia. On behalf of the substantial creditors of the company, an application was made to have a deed of company arrangement (DOCA) terminated pursuant to s 75-41 of the *Insolvency Practice Rules (Corporations)* 2016 (Cth) and alternatively, s445D and/or s445G of the *Corporations Act* 2001.

Consideration as to whether to set aside or terminate the DOCA focused on two main issues; Firstly, whether the administrators report to creditors provided materially misleading information to creditors and/or there was such an omission from the Report, in that the estimated return to participating creditors under the DOCA would not be 100 cents in the dollar. Secondly, whether there would likely be a return to the company’s creditors on a winding up that was better than under the DOCA. The application was unsuccessful, and the appeal against the dismissal of the application was heard in November 2022. The appeal was successful.

*Rambaldi v Meletsis, in the matter of Karas (Bankrupt)* (2022) 157 ACSR 652 – appeared with Stewart Maiden KC in the Federal Court of Australia. An appeal was heard against the judgment in November 2022 and was subsequently dismissed. .

*Rambaldi (Trustee) v Sumpton, in the matter of the Bankrupt Estate of Sumpton* [2021] FCA 1119 – appeared in

*the Federal Court of Australia* for the applicants, who were the trustees of the bankrupt estate of the Respondent. The Trustees sought and obtained ex parte freezing orders and ancillary orders to preserve the Trustees' interest in foreign company shares for the benefit of the creditors.

*Ganesh v National Australia Bank Ltd* [2021] VSCA 45 - appeared in the Court of Appeal at the hearing of the appeal to set aside an order discontinuing the proceeding after the plaintiff elected not to proceed with its claim. There was a complex procedural history relating to a counterclaim pursued by the self-represented litigant defendants. Consideration was also given to the entitlement of self-represented litigants to costs orders following the decision of the High Court of Australia in *Bell Lawyers v Pentelow*.

*Joint v Program IT Pty Ltd & Ors* [2020] VSC 867 and [2020] VSC 486 - Appeared on behalf of the Defendants in oppression proceedings which concerned claim by applicant for purchase of shares in respondent company by third respondent at price to be determined by Court. The claim involved allegations of oppressive conduct in that second respondent director paid excessive remuneration to himself and family which had effect of reducing profit of company. An issue in the proceeding concerned the decision to appoint an administrator and whether this should be set aside under s447A of the *Corporations Act 2001* (Cth).

*Queenfield Pty Ltd v Gordon Finance Pty Ltd & Ors* [2020] VSCA 282 – appeared with Hamish Austin KC in the Court of Appeal to successfully resist an appeal from a decision permitting the rectification of a Sale of Units Deed. The trial judge had found that the parties had a common intention that deed included term that intercompany loans be assigned to second respondent as trustee for family trust. The Court of Appeal held that the trial judge did not err in finding that there was a sufficiently clear common intention to exclude loans from sale. Further, there was no error in granting relief in the form of an assignment of a debt to a debtor in circumstances where the effect would cause the intercompany loans to be released.

*Fernandez v EJ Industries Ltd* [2020] VSCA 139 - appeared in the Court of Appeal of the Supreme Court of Victoria at the hearing of an application for leave to set aside summary judgment. The application was successfully resisted on the basis that, inter alia, the alternative claim for money had and received was not inconsistent with the contractual loan arrangements applying the principles in *Mann v Paterson Constructions Pty Ltd* and *Lumbers v W Cook Builders Pty Ltd (in liq)*.

*Ganesh v National Australia Bank Ltd* [2020] VSCA 39 - appeared in the Court of Appeal of the Supreme Court of Victoria at the hearing of an application for leave to set aside an order dismissing the proceeding on the grounds that a counterclaim was still on foot at the time that the plaintiff sought to discontinue its claim against the defendants.

*Queenfield Pty Ltd v Gordon Finance Pty Ltd & Ors* (2019) 60 VR 118 and [2020] VSC 292 – appeared with Hamish Austin KC in the Supreme Court of Victoria to successfully defend a debt claim on the basis that the parties shared a common intention which required the Sale of Units Deed to be rectified accordingly. At the time the Sale of Units Deed was executed, the Trustee's books recorded various intercompany loans. The claim was brought by the Trustee of a Unit Trust against a unitholder and a related party. The Court was also required to consider a defence based on conventional estoppel and whether, based on pre-contractual negotiations, the plaintiff should be estopped from demanding repayment of the debts.

*Gordon Nominees Pty Ltd v JPA Finance Pty Ltd* [2019] HCATrans 248 - appeared with Jonathan Evans KC in the High Court of Australia at the hearing of an application for special leave on the basis that the loss of the option under a Call Option Deed constituted circumstances where equity would grant relief against forfeiture and/or relief on the basis that the termination was penal in nature.

*JPA Finance Pty Ltd v Gordon Nominees Pty Ltd* [2019] VSC 171 and [2019] VSCA 159 – appeared with Jonathan Evans KC in the Court of Appeal of the Supreme Court of Victoria (and in the Supreme Court of Victoria) in relation to whether a Call Option Deed to purchase units in a Unit Trust have been terminated where there was an issue as to whether the notice of termination had been given in accordance with the notice requirements in the Deed and if it had been terminated, whether the loss of the option constituted circumstances where equity would grant relief against forfeiture and/or relief on the basis that the termination was penal in nature.

For further information on Adam's recent cases, [please click here](#).

#### GENERAL COMMERCIAL/CORPORATIONS

[\*Wang v HMG Capital Pty Ltd \(No 2\)\* \[2023\] VSC 399](#)

*Wang v HMG Capital Pty Ltd* [2022] VSC 748

*Rambaldi (Trustee) v Meletsis, in the matter of the bankrupt estate of Karas (No 3)* [2022] FCA 807

*Asparq Consolidated Pty Ltd v Chameron Pty Ltd & Ors* [2021] VSC 697

*Queenfield Pty Ltd v Gordon Finance Pty Ltd & Ors* [2020] VSCA 282

*Joint v Program IT Pty Ltd & Ors* [2020] VSC 867 and [2020] VSC 486

*Fernandez v EJ Industries Ltd* [2020] VSCA 139

*Queenfield Pty Ltd v Gordon Finance Pty Ltd & Ors* (2019) 60 VR 118 and [2020] VSC 292 *Gordon Nominees Pty Ltd v JPA Finance Pty Ltd* [2019] HCATrans 248

*Pages Property Investments Pty Ltd v Boros* [2019] NSWSC 1778

*JPA Finance Pty Ltd v Gordon Nominees Pty Ltd* [2019] VSC 171 and [2019] VSCA 159

*Grace Christian Chapel v Canaan Holdings Pty Ltd* [2019] VSC 5

*Pages Property Investments Pty Ltd v Boros* [2018] NSWCA 269 and [2018] NSWSC 986

*Vasudevan & Ors v Becon Constructions (Aust) Pty Ltd & Anor* (2014) 41 VR 445

*Stamford Aus-Trade & Press Pty Ltd v Aloysius David Pty Ltd & Anor (No 2)* [2014] VSC 436

*Stamford Aus-Trade & Press Pty Ltd v Aloysius David Pty Ltd & Anor* [2014] VSC 324

*Black v Rafa Pastoral Pty Ltd & Ors* [2013] VSC 317

*Casama Group Pty Ltd v Four Sisters Pty Ltd & Ors* [2012] VSC 376

*City of Canning v Avon Capital Estates (Australia) Ltd* [2012] WASC 410

*Vigliaroni v CPS Investment Holdings Pty Ltd* (2009) 74 ACSR 282

*Australian Securities and Investments Commission v HLP Financial Planning (Aust) Pty Ltd* (2007) 164 FCR 487

#### BANKRUPTCY AND INSOLVENCY CASES

[\*Wight, in the matter of Verve Portraits Pty Ltd \(administrators appointed\)\* \[2023\] FCA 1014](#)

[\*Sino Group International Limited, in the matter of Toddler Kindy Gymparoo Pty Ltd \(in liq\) v Toddler Kindy Gymparoo Pty Ltd \(in liq\) \[2023\] FCA 904\*](#)

*Sino Group International Limited v Toddler Kindy Gymparoo Pty Ltd (Final Orders) [2023] FCAFC 119*

[\*Sino Group International Limited v Toddler Kindy Gymparoo Pty Ltd \[2023\] FCAFC 110\*](#)

*Cull v Davies [2023] FCA 763*

*Meletsis v Yeo (in his capacity as trustee of the bankrupt estate of Karas [2023] FCAFC 93*

*Roberts v Carrafa (Trustee), in the matter of Roberts (Bankrupt) [2023] FedCFamC2G 463*

*Cull (Trustee), in the matter of Cuthbertson (Bankrupt) v Cuthbertson [2023] FedCFamC2G 442*

*In the matter of All in One Contracting Pty Ltd (in liq) [2023] VSC 330*

*Dixon (Liquidator), in the matter of Victoria Project Pty Ltd v Austhome Group Pty Ltd [2023] FCA 42*

*Re W.W. Property Development Pty Ltd (in liq) [2022] VSC 607*

*Re W.W. Property Development Pty Ltd (in liq) [2022] VSC 606*

*Rambaldi (Trustee) v Meletsis, in the matter of the bankrupt estate of Karas (No 4) [2022] FCA 1516*

*Sino Group International Ltd & Anor v Toddler Kindy Gymparoo Pty Ltd (admins apptd) and others (2022) 160 ACSR 568*

*Rambaldi v Meletsis, in the matter of Karas (Bankrupt) (2022) 157 ACSR 652*

*Rambaldi (Trustee) v Sumpton, in the matter of the Bankrupt Estate of Sumpton [2021] FCA 1119*

*Rambaldi v Meletsis, in the matter of Karas (Bankrupt) [2018] FCA 791*

*HunterStone Pty Ltd (in liq) & Ors v Azad Mortazavi & Anor [2018] VSC 261*

*AshtonLomax v National Australia Bank Ltd [2017] VCC 1231*

*In the matter of Aced Kang Investments Pty Ltd (in liq) [2017] FCA 476*

*Modeca Investments Pty Ltd v Commonwealth Bank of Australia [2017] VSC 119*

*Ky Stockfeeds Pty Ltd v Kelvy [2015] FCCA 3567*

*BJA Practice Co Pty Ltd trading as Belleli King & Associates v Viking Group Holdings Pty Ltd (in liq) & Anor [2015] VSC 699*

*Yeo & Anor v Lenny's Commercial Kitchens Pty Ltd [2015] VSC 539*

*Viking Group Holdings Pty Ltd (in liq) & Anor v BJA Practice Co Pty Ltd trading as Belleli King & Associates [2015] VSC 485*

*Chan v Four C Realty Pty Ltd (in liq) (2013) 95 ACSR 666*

*Chan v Four C Realty Pty Ltd (in liq) [2013] FCA 928*

*Management 3 Group Pty Ltd (in liq) v Lenny's Commercial Kitchens Pty Ltd (No 3) (2011) 278 ALR 754*

*Management 3 Group Pty Ltd (in liq) v Lenny's Commercial Kitchens Pty Ltd (No 2) (2011) 281 ALR 482*

*Management 3 Group Pty Ltd (in liq) v Lenny's Commercial Kitchens Pty Ltd [2011] FCA 662*

*Re-Engine Pty Ltd (in liq) v Fergusson & Ors* (2007) 209 FLR 1

#### BANKING AND FINANCE CASES

*National Australia Bank v Trani & Anor* [2023] VSC 142

*Ganesh v National Australia Bank Ltd* [2021] VSCA 45

*Ganesh v National Australia Bank Ltd* [2020] VSCA 39

*Iloski v National Australia Bank Ltd* [2020] VCAT 124

*Iloski v National Australia Bank Ltd* [2019] VCAT 1039

*Ganesh v National Australia Bank Ltd* [2018] VSCA 224

*National Australia Bank Ltd v Ganesh & Ors* [2016] VSC 738

*National Australia Bank Ltd v Sgargetta* [2014] VCC 1883

*National Australia Bank Ltd v Sgargetta* [2014] VCC 48

*Thompson v National Australia Bank Ltd* [2013] VSC 400

*Norman v National Australia Bank Ltd* [2012] HCATrans 171

*National Australia Bank Ltd v Lawrence* [2011] VSC 556

*National Australia Bank Limited v Koller* [2011] VSC 228

*Siwicki v National Australia Bank Limited* [2010] VSC 547

*Popal v Accounts Control Management Services Pty Ltd & Anor* [2010] VSC 412

#### PROPERTY LAW CASES

*TL Rentals Pty Ltd v Youth on Call Pty Ltd* [2018] VSC 105

*Lakeland Plaza Pty Ltd v PNL Nominees Pty Ltd* [2017] VCC 1124

*National Australia Bank Ltd v Sgargetta* [2015] VSC 537

*National Australia Bank Ltd v Waldron* [2015] VSC 141

*Essendon Apartment Developments Pty Ltd (in liq) v Long & Ors* [2013] VSC 210

*Yeo v Brassil* [2010] VSC 344