

# LIST G BARRISTERS

## 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 Segal has a broad commercial practice, specialising in banking and insolvency, Corporations and property litigation. 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 a nationally accredited mediator under the National Mediator Accreditation System (NMAS).

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

## Recent Cases

### NOTABLE CASES

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Notable cases which Adam has appeared in recently include:

*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 QC 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.

*Iloski v National Australia Bank Ltd* [2020] VCAT 124 – appeared in VCAT to successfully resist an application for an extension of time to bring an application under section 120 of the *Victorian Civil and Administrative Tribunal Act 1998* to re-open an order on the basis that the application had a reasonable excuse for not attending at the hearing.

*Queenfield Pty Ltd v Gordon Finance Pty Ltd & Ors* (2019) 60 VR 118 and [2020] VSC 292 – appeared with Hamish Austin QC 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 QC 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.

*Pages Property Investments Pty Ltd v Boros* [2019] NSWSC 1778 – appeared in the Supreme Court of New South Wales in respect of various applications for production of documents sought under subpoena.

*JPA Finance Pty Ltd v Gordon Nominees Pty Ltd* [2019] VSC 171 and [2019] VSCA 159 – appeared with Jonathan Evans QC 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.

*Iloski v National Australia Bank Ltd* [2019] VCAT 1039 – appeared in VCAT on behalf of the bank to successfully resist an application that the bank had engaged in misleading and deceptive conduct and that it had unlawfully sold a property in its capacity as mortgagee in possession. *Grace Christian Chapel v Canaan Holdings Pty Ltd* [2019] VSC 5 – appeared in the Supreme Court of Victoria to successfully resist an application for security for costs where the defendant sought additional security. The critical issue in the application was whether the set off and counterclaim was a counter-attack on a different front, so that the defendant was effectively in the position of a plaintiff in respect of those claims.

*Ganesh v National Australia Bank Ltd* [2018] VSCA 224 – appeared in the Court of Appeal of the Supreme Court of Victoria to successfully resist an application for an extension of time to file an application for leave to appeal. The substantive proceeding concerned the enforcement of various mortgage securities.

*Rambaldi v Meletsis, in the matter of Karas (Bankrupt)* [2018] FCA 791 – the court was required to

consider whether the trustees of a bankrupt estate had the power to acquire assigned claims. Adam appeared with Jim Peters QC in the Federal Court of Australia to successfully obtain declarations from the Court that the trustees in bankruptcy had power to acquire claims from a liquidator as specified in a deed of assignment and further that the trustees were justified, in the proper exercise of their discretion in the administration of the bankrupt estate, in acquiring the causes of action from the liquidator as specified in the deed of assignment. The decision is one of the first to consider the September 2017 insolvency law reforms and highlights the manner in which insolvency practitioners may approach causes of action.

*Pages Property Investments Pty Ltd v Boros* [2018] NSWCA 269 and [2018] NSWSC 986 – appeared with Andrew Tokley SC in the Court of Appeal of the Supreme Court of New South Wales (and in the NSWSC) in relation to the defendant's summons to dismiss the proceeding as an abuse of process where it is alleged that the predominant motive in bringing and maintaining the proceeding was for a collateral advantage.

*HunterStone Pty Ltd (in liq) & Ors v Azad Mortazavi & Anor* [2018] VSC 261 - appeared for the liquidators to successfully resist an application for dismissal for want of prosecution pursuant to Rule 24.05 of the *Supreme Court (General Civil Procedure Rules) 2015* (Vic)

*TL Rentals Pty Ltd v Youth on Call Pty Ltd* [2018] VSC 105 – appeared on behalf of an equitable mortgagee at the hearing of an application for an equitable injunction to restrain the Registrar of Titles from registering a mortgage and in relation to an application under s90(2) of the *Transfer of Land Act 1958*.

*BKA Practice Co Pty Ltd trading as Belleli King & Associates v Viking Group Holdings Pty Ltd (in liq) & Anor* [2015] VSC 699 – appeared on behalf of the respondents to resist an appeal from orders granting leave to amend the name of the defendant after the time for commencing proceedings under s588FF(3) of the *Corporations Act 2001* had expired on the basis that there had been a mistake in the name of the defendant.

*Vasco Investments Ltd v Morgan Stanley Australia Ltd* (2014) 108 IPR 52 – appeared with Michael Jones SC in the Supreme Court of Victoria in relation to a claim for breach of confidential information as well as quantum meruit for services provided by an advisory firm relating to the plan for the recapitalisation of the Orchard property funds management business.

*Stamford Aus-Trade & Press Pty Ltd v Aloysius David Pty Ltd & Anor* [2014] VSC 324 – appeared with Michael Pearce SC in the Supreme Court of Victoria in relation to a claim to beneficial entitlement to funds in a bank account by way of an express trust, alternatively a *Quistclose* trust. Orders had earlier been obtained by way of freezing order to preserve the funds in the bank account. See also *Stamford Aus-Trade & Press Pty Ltd v Aloysius David Pty Ltd & Anor (No 2)* [2014] VSC 436. The decision was overturned on appeal to the Court of Appeal – See *Melbourne Orthopaedic Group Pty Ltd v Stamford Aus-Trade & Press Pty Ltd* [2015] VSCA 150.

*Vasudevan & Ors v Becon Constructions (Aust) Pty Ltd & Anor* (2014) 41 VR 445 – appeared with Philip Crutchfield QC in the Victorian Court of Appeal on behalf of the respondent to the appellants' (liquidators) application that the execution of a deed of settlement and a mortgage was an unreasonable director-related transaction within the meaning of s588FDA of the *Corporations Act 2001*. The respondent's submission that the transaction was not within the meaning of the phrase

"on behalf of, or for the benefit of" the director of the insolvent company was overturned on appeal.

*Chan v Four C Realty Pty Ltd (in liq)* (2013) 95 ACSR 666 and also [2013] FCA 928 appeared with Michael Wyles SC on behalf of the liquidators of Four C Realty Pty Ltd (in liq) in the Federal Court of Australia in relation to application made under s471B, 477(2B) and 477(6) of the Corporations Act 2001 (Cth). At issue was whether the applicant and the liquidators of the company had entered into a binding and enforceable contract to purchase the business assets of the company and if so, whether the Court should approve, nunc pro tunc, the entry by the liquidators of that contract.

*Norman v National Australia Bank Ltd* [2012] HCATrans 171: appeared for the respondent (NAB) in the High Court of Australia to successfully resist an application for a stay of execution of judgment pending the special leave application. The application for special leave to appeal was subsequently dismissed with costs [2012] HCASL 194.

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

#### GENERAL COMMERCIAL

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

*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

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

*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

*Sgargetta v Thomas* [2015] VCAT 357

*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

#### BANKING AND FINANCE

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

#### INSOLVENCY

*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  
*BKA 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 BKA 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

#### CORPORATIONS LAW

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

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

*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

#### **PROPERTY LAW**

*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 Sgarretta* [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

#### **INSURANCE**

*Allstate Exploration NL v QBE Insurance (Australia) Ltd* [2008] VSCA 148

*Allstate Exploration NL v QBE Insurance (Australia) Ltd* [2007] VSC 380