

Michael Wise QC



Michael Wise QC practises in commercial law and intellectual property law

QUALIFICATIONS

Bachelor of Laws

CORRESPONDENCE

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CHAMBERS

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COMMERCIAL LAW

Appellate | Banking & Finance | Commercial Arbitration | Competition | Consumer Credit |
Consumer Law | Contractual Disputes | Corporations & Securities | Equity & Trusts | Real
Property | Superannuation | Wills & Probate

EMPLOYMENT & INDUSTRIAL

Appellate | Confidential Information | Employment Contracts | Restraint of Trade

INTELLECTUAL PROPERTY

Appellate | Confidential Information | Copyright & Designs | Information Technology | Trade
Marks

TORT LAW

Appellate | Commissions & Inquiries | Common Law | Major Torts | Negligence | Professional
Negligence

PUBLIC LAW

Appellate | Commissions & Inquiries | Constitutional Law | White Collar Crime

Michael has a substantial practice providing advice, drawing papers and conducting trials and hearings in matters related to all aspects of commercial relationships. He appears in trials and appeals, principally in the higher jurisdictions, as well as Royal Commissions.

Michael prides himself in providing sound and timely advice with commercial outcomes firmly in sight. He is adept at quickly grappling with complex commercial problems and identifying and fixing on the main points that are likely to achieve a positive outcome. He enjoys developing strong working relationships with instructing solicitors, many of whom have briefed him for a decade or more.

Michael is also an experienced and nationally accredited mediator.

Liability limited by a scheme approved under Professional Standards Legislation

Recent Cases

COMMERCIAL LAW

[QSuper Board v Australian Financial Complaints Authority Limited \[2020\] FCAFC 55](#) - Constitutional Law - Application to overturn an AFCA superannuation determination on the ground that it improperly exercised the judicial power of the Commonwealth, contrary to s 71 of the *Constitution Act 1901* (Cth).

[Meneses v Directed Electronics OE Pty Ltd \[2019\] FCAFC 190](#) - Privilege against self-incrimination and self-exposure to civil penalties for single-director, single-shareholder companies in the context of orders for production of documents discovered and seized under search and seizure orders.

[Finetea Pty Ltd v Block Arcade Melbourne Pty Ltd \(Building and Property\) \[2019\] VCAT 1529](#) - 20 day hearing of Landlord and Tenant dispute over abortive redevelopment of premises for Hopetoun Tea Rooms in historic Block Arcade, Melbourne. Claims of unconscionable conduct, and recovery of loans, outstanding rent etc.

[Re Theodoulou \[2018\] VSC 601](#) - Probate - Application for revocation of grant of probate - Whether particulars of grounds of undue influence and lack of knowledge and approval establish a prima facie case.

[Bullhead Pty Ltd v Brickmakers Place Pty Ltd \(in liq\) \[2018\] VSCA 316](#) and [Bullhead Pty Ltd v Brickmakers Place Pty Ltd \(in liq\) \[No 2\] \[2019\] VSCA 7](#)

Trusts and Trustees - Unit trust established for property development - Discounted units issued to some investors in breach of trust deed - Trial judge found applicant had released respondents from all claims through a 'finalisation agreement' - Whether trial judge erred in finding concluded finalisation agreement - Whether trial judge erred in finding all respondents parties to agreement - Whether applicant's lack of full knowledge of circumstances of breach of trust renders release of equitable claims unenforceable.

Trusts and Trustees - Relief - Equitable relief for breach of trust, breach of fiduciary duties, and knowing assistance - *Ancient Order of Foresters in Victoria Friendly Society Ltd v Lifeplan Australia Friendly Society Ltd* (2018) 360 ALR 1 applied - Appropriate reductions made.

[*McCann, in the matter of Walton Construction \(Old\) Pty Ltd \(In Liq\) v QHT Investments Pty Ltd* \[2018\] FCA 1986](#)

Corporations – winding up – voidable transactions – uncommercial transactions – purported agreements to “restructure” insolvent companies – agreements designed to benefit insolvency advisers – not reasonably commercial for insolvent company.

Corporations - winding up – voidable transactions – uncommercial transactions – identifying transaction “of” the company – relevant transaction linked to other transactions – whether artifice or construct to secure benefit for insolvency advisers.

Appeared for the Financial Ombudsman Service before the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

[*Directed Electronics OE Pty Ltd v OE Solutions Pty Ltd* \[2018\] FCA 142](#) - Application for an interlocutory injunction to restrain the unlawful termination of a long term supply agreement.

[*Bullhead Pty Ltd v Brickmakers Place Pty Ltd* \[2018\] VSCA 50](#) - Application for security for costs of appeal.

[*Friends of Leadbeater's Possum Inc v VicForests \(No 3\)* \[2018\] FCA 652](#) - Application for interlocutory injunction to restrain VicForests from logging certain forest coupes because of the presence of an endangered species of glider.

[*Mercer Superannuation \(Australia\) Limited v Billinghamurst* \[2018\] HCATrans 98](#) - Application for Special Leave to Appeal by the Trustee of a Defined Benefit Superannuation fund to overturn a decision of the Superannuation Complaints Tribunal that one of its decisions was invalid as it had acted in a situation of conflict of interest.

[*Colin R Price & Associates Pty Ltd v Four Oaks Pty Ltd* \[2017\] FCAFC 75](#) - Appeal in relation to intra unitholder disputes in a Trust to develop land and between the Trust and some unitholders and the building company. Claims of statutory unconscionability and accessorial liability under *Trade Practices Act* in a business-to-business context, misleading and deceptive conduct, and whether relief should be ordered against all unitholders where trustee in liquidation.

[*Bullhead Pty Ltd v Brickmakers Place Pty Ltd* \[2017\] VSC 206](#) - Dispute between unitholders in a Trust to develop land. Allegations of fraudulent breach of trust, laches and acquiescence, equitable estoppel, statutory limitations defences, misleading and deceptive conduct and whether all claims were compromised by a settlement agreement.

[*Burge v Commonwealth Bank of Australia \(No 3\)* \[2017\] FCA 383](#) - Summary dismissal of proceeding by customer of bank in relation to a claim determined by the Financial Ombudsman Service.

[*Apple and Pear Australia Ltd v Pink Lady America LLC* \[2016\] VSCA 280](#) - Appeal on the proper construction of a perpetual licence to use the Pink Lady Trademark on apples exported from Chile to North America and whether surrounding circumstances are admissible to identify and resolve ambiguity.

[*Colin R Price & Associates Pty Ltd v Four Oaks Pty Ltd* \[2016\] FCA 764](#) - Building contract – whether void for uncertainty – Agency – authority of a single director to bind a company which has more than one director – Unconscionable conduct under s 51AC of the *Trade Practices Act* - where director of

unit holder under significant financial and emotional pressure – where document in effect required unit holder to give up its right to share in large part of proceeds of project to pay for cost overruns.

[*Financial Ombudsman Services Ltd v Utopia Financial Services Pty Ltd \[2016\] WASC 55*](#) - Review of a decision by an external dispute resolution provider requiring a financial planner to compensate client for losses suffered upon advice given in breach of duty and when in conflict of interest.

[*Apple and Pear Australia Limited v Pink Lady America LLC \[2015\] HCATrans 348*](#) and [*Apple and Pear Australia Limited v Pink Lady America LLC \[2015\] HCATrans 349*](#) (18 and 22 December 2015) - Application to the High Court of Australia for a stay on a final decision of the Supreme Court of Victoria pending appeal to the Court of Appeal of the Supreme Court of Victoria, under circumstances where the Court of Appeal had been unable, by pressure of business, to entertain the stay application.

[*Paterson Securities Ltd v Financial Ombudsman Service Ltd \[2015\] WASC 321*](#) - application to review decision of FOS on the basis that it had incorrectly awarded compensation for direct loss when, in fact, the losses were indirect, for which FOS' jurisdiction was limited.

[*Cromwell Property Securities Limited v Financial Ombudsman Service Limited & Ors \[2015\] HCATrans 27*](#) - Application for special leave to appeal to the High Court on the question of the correct standard of 'reasonableness' for a court to review a discretionary decision of the Financial Ombudsman Service.

[*Rilgar Nominees Pty Ltd v BHA Holdings Pty Ltd \[2014\] VSC 632*](#) - Application to summarily dismiss proceeding to enforce disputed agreement purportedly reached at mediation.

[*Berengo v Berengo & Ors \[2014\] VSC 667*](#) - Application by former client to restrain solicitor from acting for the other side in litigation.

[*Goldie Marketing Pty Ltd & Ors v Financial Ombudsman Services Limited & Anor \[2014\] VCS 587*](#) - Application for interlocutory injunction to restrain bank from proceeding with enforcement action pending review of decision by external dispute resolution service to exclude complaint.

[*Cromwell Property Securities Limited v Financial Ombudsman Service Limited & Ors \[2014\] VSCA 179*](#) - Contract and Administrative Law. Appeal from decision refusing application for review of a decision by FOS not to exercise its power to exclude a dispute from its external dispute resolution scheme.

[*Financial Ombudsman Services Limited v Pioneer Credit Acquisition Services Pty Ltd \[2014\] VSC 172*](#) - trial of claim by FOS for fees and of counterclaim by Pioneer Credit alleging that FOS breached express and implied terms of the membership contract when handling disputes.

[*Kyriackou v Martin \[2014\] VSC 122*](#) - Application by client against liquidator of incorporated legal practice for release of documents subject to solicitor's lien.

[*Palizio v NSW Parole Authority \[2013\] NSWSC 1829*](#) - Application for judicial review of a decision of the NSW Parole Authority not to rescind the revocation of a prisoner's parole.

[*Bilaczenko v Financial Ombudsman Service Ltd \[2013\] FCA 1268*](#) - Application for leave to appeal out of time from decision of the Federal Circuit Court to dismiss the applicant's proceeding.

[*Cromwell Property Securities Ltd v Financial Ombudsman Service Ltd \[2013\] VSC 333 \(1 July 2013\)*](#) -

Trial of application to review a decision by the Financial Ombudsman Service not to exercise its discretion to exclude a complaint on the basis that it was more appropriately to be heard in a court. [DNFS Pty Ltd v De Neefe Signs Pty Ltd \[2013\] VSC 88](#) - Trial of contract dispute about veracity of a stock take conducted for the purposes of a sale of business agreement.

[Wealthsure Pty Ltd v Financial Ombudsman Service Ltd \[2013\] FCA 292](#) - Trial of an application for a declaration that three claims against a financial planner had been impermissibly split so to fall within limited monetary jurisdiction of Financial Ombudsman Service.

[Sportsbet Pty Ltd v Harness Racing Victoria \(No 6\) \[2012\] FCA 896](#) - Challenge by a Northern Territory bookmaker to the validity of a fee levied pursuant to the *Gambling Regulation Act 2003* (Vic) for the use of Victorian harness racing information, on the basis that it offended the Northern Territory equivalent of s 92 of the *Constitution* (that trade, commerce and intercourse between the Territory and the States shall be absolutely free).

[Utopia Financial Services Pty Ltd -v- Financial Ombudsman Service Ltd \[2012\] WASC 279](#) - Application for review of a decision by an external disputes resolution body awarding compensation to a retail client of a financial planning advisor for negligent or improper advice.

[Reading Properties Pty Ltd v Mackie Group Pty Ltd \[2012\] VSCA 90](#) -Appeal relating to the construction of an agreement, in particular, the operation of a clause providing for compensation in the event that a further agreement was not reached.

Blackmagic Design Pty Ltd v Overliese [2011] FCAFC 24; (2011) 191 FCR 1 - appeal by employer for breach of fiduciary duty and misuse of confidential information during employment by senior employees intending to set up business in competition; and from miscarriage of discretion on costs.

Blackmagic Design Pty Ltd v Overliese [2010] FCA 13 - Federal Court proceeding by employer for misuse of confidential information during employment by senior employees intending to set up business in competition.

Mackie Group Pty Ltd v Reading Properties Pty Ltd [2010] VSC 131 - claim for payment allegedly due on contractual document. Proper construction of document in controversy.

DNFS Pty Ltd v De Neefe Signs Pty Ltd [2010] VSCA 125 - appeal from determination of preliminary questions relating to proper construction of sale of business agreement.

Solak v Registrar of Titles (No 2) [2010] VSC 146 - application of issue estoppel principles to claim by defrauded owner of land for compensation from Registrar of Titles.

Wealthcare Financial Planning Pty Ltd v Financial Industry Complaints Service Ltd & Ors [2009] VSC 7 - review of determination by the Panel of an external dispute resolution body that a financial planner who had recommended investing in the collapsed Westpoint group pay compensation to clients. Application of proportionate liability under Part IVAA of the Wrongs Act (1958) Vic.

Futuretronics.com.au Pty Ltd v Graphix Labels Pty Ltd [2009] FCAFC 2 - appeal from liability decision on breach of employee's obligations owed to employer and from assessment of damages.

Futuretronics.com.au Pty Ltd v Graphix Labels Pty Ltd (No 2) [2008] FCA 746; 76 IPR 763 - assessment of damages for copyright infringement and breach of contract.

Futuretronics.com.au Pty Ltd v Graphix Labels Pty Ltd [2007] FCA 1621 - trial of liability for copyright

infringement, breach of contract and breach of employee's obligations owed to employer.

Snowy Mountains Organic Dairy Products Pty Ltd v Wholefoods Pty Ltd & Ors [2008] VSC 405 - construction of Deed of Release and determination of Anshun estoppel and abuse of process claim.

Review Australia Pty Ltd v Innovative Lifestyle Investments Pty Ltd (2008) 166 FCR 358; [2008] FCA 74 - infringement of registered design of ladies fashion garment.

Review Australia Pty Ltd v Redberry Enterprise Pty Ltd (2008) 58 IPR 366; [2008] FCA 1009- infringement of registered design of ladies fashion garment.

Review Australia Pty Ltd v New Cover Group Pty Ltd [2008] FCA 1589 - infringement of registered design of ladies fashion garment.

DNFS Pty Ltd v De Neefe Signs Pty Ltd [2008] VSC 424 - questions of construction of a contract for the sale of business.

Re Australian Timeshare & Holiday Ownership Council Ltd and Australian Securities and Investments Commission (ASIC) (2008) 47 AAR 103; [2008] AATA 62 - review of ASIC decision not to approve a proposal for an external dispute resolution body under Corporations Act.

Harpur v Levy (2007) 16 VR 587; [2007] VSCA 128 - appeal from determination on question of construction relating to the validity of a Declaration of Trust.

Levy v Harpur [2004] VSC 241 - determination on question of construction relating to the validity of a Declaration of Trust.

Financial Industry Complaints Service Ltd v Deakin Financial Services Pty Ltd (2006) 157 FCR 229; [2006] FCA 1805 - question of whether an external dispute resolution body had jurisdiction to hear complaints by clients of financial planners who had recommended investing in the collapsed Westpoint group.

Other cases include:

Meridian Retail Pty Ltd v Australian Unity Retail Network Pty Ltd [2006] VSC 223 - franchise dispute.

Invensys Australia Superannuation Fund Pty Ltd v Austrac Investments Ltd (2006) 15 VR 87; [2006] VSC 112 - approval of a deed by which a superannuation trustee intended to distribute a surplus in a superannuation fund.

OneSteel Pty Ltd v Brassil [2005] VSC 401 - claim on a guarantee.

Porter v OAMPS Ltd (2005) 215 ALR 327; [2005] FCA 232 - application to strike out statement of claim containing claims of malicious prosecution and conspiracy.

Ansett Australia Flight Engineers v Ansett Australia Ltd [2004] VSC 18 - approval of a deed by which a superannuation trustee intended to distribute a surplus in a superannuation fund.

Australian Associated Motor Insurers Ltd v Australian Automotive Motor Inspection Centre Pty Ltd (2003) 60 IPR 92; [2003] FCA 1088 - interlocutory injunction for breach of trademark, misleading and deceptive conduct and passing off.

Allianz Australia Insurance Ltd v Oliver [2003] VSC 101 - fraudulent insurance claim by owner and master who sank own yacht.

Num-Hoi, Pon Yu, Soon-Duc Society Inc v Num Pon Soon Inc(2001) 4 VR 527; [2001] VSC 363 - dispute as to who was or was not entitled to be the trustee of a charitable trust established during the gold rush era and standing to sue.

Memberships

Victorian Bar - Commercial Bar Association

Victorian Bar - Indigenous Lawyers Committee

Chair - Board of List G Barristers