

Jane Muir

Year of call: 2008

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GERARD BRENNAN
CHAMBERS

Areas of practice

- Appellate
- Arbitration, Mediation & Evaluation
- Banking & Finance
- Bankruptcy & Insolvency
- Building & Construction
- Commercial
- Competition & Consumer Law
- Conflict of Laws
- Constitutional
- Contract
- Corporations
- Equity & Trusts
- Industrial & Employment
- Insurance
- Mining, Energy & Resources
- Professional Negligence
- Property
- Tort
- Trade Practices & Competition

Education

2000 BA (Hons Year) (English Literature) (University of Sydney)

1998 LLB (Hons) (University of Queensland)

1996 BA (University of Queensland)

Admissions

2008 Barrister (New South Wales)

2001 Legal practitioner (New South Wales)

2000 Solicitor (Queensland)

Professional experience

- 2006–2008** Solicitor, McCann FitzGerald, Dublin (Banking & Finance)
- 2004–2006** Solicitor, Freshfields Bruckhaus Deringer, London (Financial Institutions Disputes)
- 2001–2004** Solicitor, Freehills, Sydney (Litigation, Corporate)
- 1999** Articled clerk, Allens Arthur Robinson, Brisbane (now Allens) (Litigation)
- 1998** Associate to the Honourable Mr Justice JDM Muir, Supreme Court of Queensland

Selected cases

Commercial

Li & Ors v Margate Beach Properties Pty Ltd (Supreme Court, Qld) – purchasers’ claim under s. 18 ACL for representations made about asbestos contaminated land (leading M Daley) (current).

Gispac Pty Limited v Michael Hill Jeweller (Australia) Pty Limited [2 0 2 4] N S W S C 1 8 (leading Antony Newman) – incorporation of terms in written contract, “take or pay” provisions, misleading or deceptive conduct under s. 18 ACL, estoppel.

Dalmar Bare Pty Ltd v Auto Group Leaders (in liq) & Ryan (Supreme Court, Qld) - claim for rescission of contract for sale of industrial land and breach of s. 18 ACL (settled).

Collard, Twin Creek Rural Holdings Pty Ltd & Anor v Dique (Supreme Court, Qld) - constructive trust and partnership dispute over Central Qld farm land (2022-24) (settled at mediation).

DJHoworth Property Holdings Pty Ltd v Cannonview Developments Pty Ltd (District Court, Qld) - claim for specific performance where failure to complete contract for sale of land (2023) (settled).

Heffernan v Heffernan & Anor (Supreme Court, Qld)) - application for substitution of trustee (2022) (settled).

Chen v Peng, Ye and L&Y Investment Group Pty Ltd (Supreme Court, Qld) - misappropriation of joint venture funds, breach of fiduciary duty and knowing assistance in breach of duty (2021, 2023) (ex tempore judgment).

Acting for examinees in examinations under section 19 *Australian Securities & Investment Commission Act* 2001 (Cth) (2021, 2019).

Stocon Pty Ltd & Anor v AMPE Sarl South Pacific Pty Ltd & Anor (Supreme Court, NSW) – claims for breach of contract and negligence regarding transport of allegedly contaminated waste (2017/8) (settled).

Kingvest Pty Ltd v Apple Pty Ltd (Supreme Court, NSW) - dispute over market rent review in lease for Apple’s George Street Sydney store (2016/7) (led by Peter Brereton SC, settled).

Elanor Funds Management Limited v Mega & Company Pty Ltd (NCAT Appeal Panel) - option to renew commercial lease (2016) (led by Mark Steele SC, settled).

Mega & Co Pty Ltd t/as Oporto Clarence Street v Elanor Funds Management Ltd as Trustee for 193 Clarence Hotel Syndicate [2016] NSWCATCD 60 - option to renew commercial lease

A.J. Lucas Operations Pty Limited v C.P.W. Trailer Sales & Repairs Pty Ltd & Ors (Supreme Court, NSW) - conversion and detainue of concrete pipes, knowing assistance in breach of fiduciary duty (2015-6) (led by Stuart Donaldson SC, settled).

Petronaitis v Petronaitis [2016] NSWSC 765 - enforcement of settlement reached at mediation.

Jennings v Jennings [2015] NSWSC 1826 - enforcement of settlement reached at mediation

GrainCorp Oilseeds Pty Ltd v W & M Mahony Pty Ltd (Supreme Court, NSW) - dispute with silo operator regarding destruction of grain (2014/5) (led by Stuart Donaldson SC, settled).

Illawarra Hotel Company Pty Ltd v Walton Construction Pty Ltd (No 3) [2014] NSWCA 130 - application for leave to re-open after judgment (led by Stuart Donaldson SC).

Riverland Oilseeds Pty Ltd v QBE Insurance (Australia) Limited (Supreme Court, NSW) - dispute regarding application of insurance policy to loss caused by destruction of grain (2014) (led by Stuart Donaldson SC, settled).

Sungho Pty Ltd v Pie Face Pty Ltd & Ors (Federal Court) - franchisee's claim for misleading and deceptive conduct (2014) (led by Stuart Donaldson SC, settled at mediation).

Virginia Nemeth (by her tutor) v Australian Litigation Funders Pty Ltd & Ors [2013] NSWSC 529 - unconscionable conduct, Contracts Review Act (led by C R C Newlinds SC).

Commercial arbitration between a government timber supplier and a timber purchaser regarding pricing review (2010 - 2012) (led by Robert Dick SC).

Jaksic v Yim [2011] NSWSC 962 - appeal from Local Court decision.

Itaoui v Yamaha Motor Finance Australia Pty Ltd [2009] NSWSC 1363 – appeal from Local Court decision (led by C R C Newlinds SC).

Employment, industrial, discrimination

Connell v Fareilly Constructions Pty Ltd (FWC) – general protections (2024) (settled).

Nicholls v State of Qld (QIRC) – general protections (2023-4) (settled).

Hickson-Jamieson v University of the Sunshine Coast [2023] QCAT 66 - indirect discrimination claim by student who sought to perform her teaching practical experience part time.

Wright v Gregson & Weight Pty Ltd (FC&FCoA) – general protections (2022) (settled at mediation).

McAlister v Yara Australia Pty Ltd (2021) 307 IR 300 - general protections, reasonable notice, redundancy (leading Ermelinda Kovacs).

Willebrand v Tenants Queensland Inc (FCCA) - general protections (2018) (settled).

Obeid v Stryker South Pacific Limited (FCCA) - general protections (2016/7) (settled).

Rossiter v Core Mining Limited & Anor [2015] NSWSC 360 – judgment in foreign currency.

Rossiter v Core Mining Limited & Ors (Supreme Court, NSW) – CFO's claim for shares, options and unpaid entitlements (2014) (settled at trial, led by Ian Neil SC).

Duncan v West Corugan Irrigation District (FCCA) – general protections (2014) (settled).

Rice v Wedgetail Asset Management Ltd & Ors (Supreme Court, NSW) – claim for unpaid salary and quantum meruit by CIO of funds manager (2013) (settled).

Banking, bankruptcy, insolvency, corporations law

Pearson v ING Bank (Australia) Limited (2023) 14 QR 170 – security for costs against impecunious individual plaintiff in claim for damages based on bank's alleged failure to comply with Code of Banking Practice 2004 and ASIC Act (leading Marjorie Daley).

Pearson v ING Bank (Australia) Limited (District Court, Qld) – dismissal and strike out before defence (leading K O'Hare) (ex tempore judgment).

Low v Barnet (Trustee); In the Matter of Mathai (2017) 250 FCR 562 – appeal to Full Federal Court in creditor's application for "risk premium" under s. 109(10) Bankruptcy Act (led by Bernard Coles KC, Scott Aspinall).

RHG Mortgage Corporation Limited v Millard & Anor (Supreme Court, NSW) – "lo docs" loan, Contracts Review Act (2016/7) (settled).

Rossiter v Core Mining Limited (The Eastern Caribbean Supreme Court, High Court of Justice, Virgin Islands, Comm. Div.) – Australian law advice in winding up proceedings and registration of foreign judgment proceedings in the BVI (2015/6).

Low v Barnet (Trustee); In the Matter of Mathai [2015] FCA 1386; 13 ABC (NS) 427 – creditor's application for "risk premium" under s. 109(10) Bankruptcy Act and for review of Trustee's decision (led by Bernard Coles KC, Scott Aspinall).

Health Services Union v Jackson (No 3) [2015] FCA 694 – application for leave to proceed against bankrupt (led by Roger Marshall SC).

Low v Barnet (Trustee); In the Matter of Mathai [2014] FCA 728; 12 ABC (NS) 107 – right of discharged bankrupt to be heard in creditor's application under s. 109(10) Bankruptcy Act (led by B Coles KC).

Low v Barnet (Trustee); In the Matter of Mathai [2014] FCA 1187 – right of discharged bankrupt and son to be heard in creditor's application under s. 178 Bankruptcy Act (led by B Coles KC).

Pokfulam Investments Pty Ltd & Anor v Wedgetail Asset Management Ltd (2013) (Supreme Court, NSW Corps List, ex temp judgment) – interim injunction to restrain unauthorised selective share buy-back.

Goodridge v Macquarie Bank Limited & Anor (2010) 265 ALR 170 – customer's claim for breach of margin loan and security agreement (led by John Sheahan KC).

Buggy v Victorian Securities Corporation [2010] FMCA 724 – bankruptcy.

Permanent Trustee Company Limited v Gillian O'Donnell Permanent Trustee Company Ltd [2009] NSWSC 902 – "lo docs" loans, Contracts Review Act (led by Adam Bell SC, A Abadee).

Building & construction

Queensland Motorways Limited v CBP Contractors Pty Limited (formerly Leighton Contractors Pty Ltd) & Anor (Supreme Court, Qld) – dispute over liability for alleged defects in the Gateway Motorway Upgrade works, including "downstream" claims against consultants and sub-consultants

International arbitration for port owner's claim against contractor for breach of fitness for purpose obligation under D & C contract in respect of a container Terminal in Papua New Guinea; costs (2021/2) (led by L Kelly KC, then M Stewart KC).

McConnell Dowell Constructors (Aust) Pty Ltd v Cardno (Qld) Pty Ltd & Anor [2019] QSC 320 – application for referral to referee(s) of factual question in dispute about defective work on Gold Coast Light Rail Project (led by G A Thompson KC SG)

John Holland Pty Ltd v Adani Abbot Point Terminal Pty Ltd – domestic arbitration of parties' claims under marine works and ship loader contracts for construction at Adani's Abbot Point terminal (2014-5, 2017) (led by R Holt KC, then M Stewart KC and D Piggott).

Kountouris v Kountouris (District Court, NSW) – claim for breach of contract and *quantum meruit* regarding construction work done on domestic dwellings (2013) (settled at trial).

The Owners Strata Plan No. 64622 v Australand Constructions Pty Limited [2009] NSWSC 948, [2009] NSWSC 1083 – review of referee's decision (led by S Kerr SC).

Administrative law and public law

Step toe & Anor v State of Qld (Supreme Court, Qld) - injunction – Scenic Rim landowners seeking to restrain the State from baiting their properties for fire ants (2023) (*ex tempore* reasons, undertakings).

R v Neal (Yarrabah Magistrates Court, Qld) – Crown’s public interest immunity claim over documents said to be relevant to constitutional defence to charge of breach of *Liquor Act* provisions (led by Simeon Beckett SC) (2024-5, *ex tempore* reasons).

Application for declaration of validity of the enduring power of attorney of Melissa Louise Caddick (Adult), client number G43991 (2020) (QCAT) (*ex tempore* reasons).

Versic v Chartered Accountants Australia and New Zealand (Supreme Court, NSW) – judicial review of professional body’s appeal panel decision (2019) (settled).

Hoxton Park Residents Action Group Inc. v Liverpool City Council & Ors [2017] HCASL 60 - constitutional law (led by B Katekar).

Hoxton Park Residents Action Group Inc. v Liverpool City Council & Ors [2016] NSWCA 157; 212 LGERA 446 – constitutional law appeal to New South Wales Court of Appeal (led by B Katekar).

Acting for a retired bishop in the Royal Commission into Institutional Responses into Child Sexual Abuse – Case Study 42 (Newcastle Anglican Diocese) (2016).

Crime

R v Anderson (2012) (District Court, NSW) – sentence for aggravated enter dwelling with intent to commit a serious indictable offence and assault in company.

R v Trudgett (2012) (District and Local Courts, NSW) – hearing and appeal against severity of sentence for offence under s. 8(3) *Summary Offences Act*.

R v Ji (2011) (Local Court, NSW) – hearing, accused charged with reckless wounding.

Opinions

I have given opinions on issues including:

- a first mortgagee’s right to recover expenditure on completing a development ahead of second mortgagee.
- whether *ex gratia* settlement payment received from insurer must be brought to account in assessing damages in separate proceedings.
- whether under the *Australian Citizenship Act* 1948 (Cth) and *Migration Act* 1958 (Cth), an individual born before Independence in Port Moresby, PNG, is an Australian citizen.
- whether special resolution to buy back shares contravenes the *Corporations Act*.
- employment law, including restraints of trade, termination of employment, redundancy.
- lease disputes, including validity of notices and the exercise of options to renew.
- partnership law, including a partner’s right of indemnity against other partners.
- a liquidator’s ability to assign causes of action in debt and *quantum meruit* to a third party.
- ability to enforce an Australian judgment, and obtain world-wide freezing orders, against a British Virgin Islands registered defendant (joint opinion).
- a purchaser’s prospects in a claim for misleading or deceptive conduct against the vendor of a New Zealand iron sands mine (joint opinion)

- whether a binding agreement for exclusive distributorship existed where long-term commercial relationship.
- whether an accountant's conduct in relation to an insolvent group of companies constituted knowing assistance under the second limb in *Barnes v Addy* (joint opinion).
- rights available to majority shareholders of a private company and whether oppression may be effected by the minority (joint opinion).
- the construction of corporate documents, including shareholders' agreements, share purchase agreements, guarantees and indemnities.
- ability to bring claim for breach of s. 52 *Trade Practices Act* and breach of contract in New South Wales while related proceedings were on foot in New York.
- whether a litigation funding agreement is a "managed investment scheme" under section 9 *Corporations Act* (joint opinion).
- a borrower's rights against the bank in relation to a co-borrower's unauthorised drawdown.
- operation of exclusion clauses in insurance policies.