



GREENWAY CHAMBERS



FRANCO CORSARO SC

BARRISTER 1985

SILK 2000

02 9151 2922 FRANCO.CORSARO@GREENWAY.COM.AU

BACKGROUND

Franco Corsaro SC is a specialist construction lawyer, but has wide-ranging knowledge and experience in various areas.

He is a recognised leader in construction law, with a long history of successful outcomes in various courts and tribunals at all levels. He is currently listed as a Leading Senior Counsel in the 2018 Doyles Guide. The listing maintains Franco's ranking as a pre-eminent or leading construction law practitioner in the Doyles Guide over several years.

Franco began his legal career with Henry Davis York in 1980 as a commercial litigation lawyer. He was appointed to the position of Senior Associate of that firm in 1982. He was called to the Bar in 1985 and took Silk in 2000.

Franco shifted emphasis into construction litigation in his early years as a junior counsel, but still maintains his interest in general commercial and equity litigation.

Franco is results driven, and is always concerned with implementing the most advantageous approach to resolve each case in the best and most cost-effective way for the client. His emphasis is to extract the significant factual and legal principles on which each case will turn, and to give these the highest priority. He is a diligent

and committed advocate, with an excellent reputation for the development of forensic strategy, effective all-round advocacy, and well-honed and incisive cross-examination skills.

Franco particularly enjoys the factual and legal foundation on which every case is built. He builds from these intellectual underpinnings, to develop the best forensic strategy to maximise the prospects of a successful outcome. He works closely with his solicitors and clients in a collegiate approach, to ensure all concerned have a well-developed understanding of the legal and factual issues on which a case will turn, and to ensure the client has the information required to make the commercial decisions which must be made in every case. Franco provides certainty and peace of mind for his solicitors, and an enriching experience as they explore the matter's inherent legal principles together.

Franco has a keen interest and involvement in alternate dispute resolution. From 2002-2005, Franco was a part-time lecturer in Commercial Arbitration at the University of Technology, Sydney, and has appeared for both claimants and respondents in a variety of domestic and international arbitrations, as well as expert and neutral evaluations.

FOCUS AREAS + SELECT CASES

BUILDING AND CONSTRUCTION

Sugar Australia v Lend Lease [2015] VSCA 98 - Appearing for the principal of a sugar refinery which sought to call on banker's undertakings provided as security for performance of the builder's obligations under a construction contract. In overturning the decision of the primary judge, the Victorian Court of Appeal confirmed and reinforced the accepted principles governing the grant of interlocutory injunctions and the ordinary practice adopted in cases concerning calls on performance bonds. The case is significant for the construction principles adopted by the Court.

Condensing Vaporisers Aust Pty Ltd v FDC Construction & Fitout Pty Ltd (No 2) (2014) 86 NSWLR 360 - At first instance and then on appeal. On appeal appearing for the respondent striking out an appeal by a sub-contractor as incompetent.

Owners - Strata Plan 70798 v Bakkante Constructions Pty Ltd (2014) 88 NSWLR 513 - Appearing for an Owners' corporation on appeal to appeal the striking out of a claim for failure to comply with section 80D of the *Strata Schemes Management Act, 1996*. This case established the issue of an owners' corporation's failure to comply with section 80D did not invalidate legal proceedings commenced in breach of the Act.

BUILDING AND CONSTRUCTION – CONTINUED

Baron Corporation Pty Ltd v Owners of Strata Plan 69567 [2013] NSWCA 238 - Appearing at first instance and on appeal for the proprietor of residential property sued for breach of the statutory warranties under Part 2C of the Home Building Act, 1989. In overturning the trial judge, the NSW Court of Appeal re-affirmed that the owners' corporation under strata scheme was not entitled to statutory warranties as against the non-contracting developer.

Laing O'Rourke Australia Construction v H&M Engineering & Construction [2010] NSWSC 818.

The Owners - Strata Plan No. 51077 v Meriton Apartments Pty Ltd [2014] NSWSC 129 - Appearing for the owners' corporation on a claim for defective work against a developer and builder. This case concerned whether a builder owes a non-delegable duty of care to the owners' corporation for the negligent design of windows in a high rise building.

Allianz v Waterbrook (2009) - 15 ANZ Insurance Cases 224. Appearing for the home owner warranty insurer at trial and on appeal. The insurer contested the right of the owner of a residential development from enforcing its entitlement under home warranty insurance, in circumstances where the owner acquired the development with knowledge of the defective works. This case is important because the Court of Appeal's consideration of the issue of causation, and the determination that loss occasioned by the acquisition of defective property is caused by the failure to properly allow for defective works in the purchase price, not breach of statutory warranty by the builder.

Uszok v Henley Properties (NSW) Pty Ltd [2007] NSWCA 31 - Acting for litigant in person on appeal in connection with residential defects claim and requirements as to rights of litigants in person. This case is significant for the Court of Appeal's determination of the principles that should guide a trial judge in a case where the litigant appears in person.

ENVIRONMENTAL TORT

Assafiri v The Shell Company of Australia Limited [2010] NSWSC 1058 - Appearing for the purchaser of a former service station who successfully claimed damages for breach of a warranty to provide a site suitable for development and the vendor's involvement in providing environmental reports as to the property's condition.

Camellia Properties Pty Ltd and Others v Golder Associates Pty Ltd [1996] FCA 1836 - Defence of claim for damages for contaminated land leased to Duracell batteries and remediation plan.

Caltex Australia Petroleum Pty Ltd v Charben Haulage Pty Ltd - at first instance and at full court level ([2005] FCAFC 371) - Misrepresentation and negligence claim relating to the purchase of a contaminated service station site.

Domestic arbitration involving multi-million-dollar claim for 'clean up' of contamination on a site within Sydney Harbour.

Appearing for the vendor of land contaminated by asbestos to force specific performance of the contractual obligations.

COMMERCIAL LAW

Wang v Kaymet Corporation Pty Ltd [2015] NSWSC 1459 - Appearing in the Supreme Court of NSW for the developers who sold units 'off the plan' and sought to terminate contracts after the sunset date for registration of the strata plan. The developers successfully resisted a claim by 34 purchasers seeking to obtain orders for specific performance of the sale. In that same case appearing for the developers who were able to recover more than \$1m compensation for the undertaking as to damages.

Horne v James [2015] NSWSC 465 - Appearing in the Supreme Court of NSW for the vendors of a rural property successfully resisting a claim for specific performance by purchasers claiming to have entered into a binding agreement for the sale of the land.

Commissioner of Taxation v De Martin and Gasparini Pty Ltd [2011] FCA 286. Appearing for the recipient of a notice issued by Commissioner pursuant to *Taxation Administration Act 1953* (Cth) s 260-5. The Applicant was able to successfully argue that the ATO's standard wording was invalid.

Jennifer Elizabeth James v The Owners Strata Plan No. SP 11478 (No 4) [2012] NSWSC 590 - Appearing for the compulsory strata manager to resist claims by an individual owner of an apartment block.

Jireh International Pty Ltd t/as Gloria Jean's Coffee v Western Export Services Inc (No 2) [2011] NSWCA 294 - Appearing at trial and on appeal for the American company claiming multi-million dollars in damages for breach of an agreement relating to the establishment of the Gloria Jean's coffee franchise.

Nutectime International Pty Limited v Timentel Pty Limited [2011] NSWCA 257 - Appearing at trial and successfully on appeal resisting a claim for damages by a joint venturer claiming an entitlement on a patented wrist watch.

Italform Pty Ltd & Anor v Sangain Pty Ltd [2009] NSWCA 427 - Successfully appearing at first instance in the NSW Court of Appeal, and on appeal in the NSW Court of Appeal, for the purchaser of two tower cranes claiming damages for misleading and deceptive conduct on the sale of the cranes.