



GREENWAY CHAMBERS



SCOTT GOODMAN SC

BARRISTER 2001

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BACKGROUND

Scott's practice is centred upon commercial disputes, to which he brings his considerable experience in commercial law and equity, corporations law, trade practices and insurance law.

Scott was called to the Bar in 2001, and appointed as Senior Counsel in 2016. He appears primarily in the Supreme Court, the Federal Court and the District Court. Scott's clients have included many ASX-listed and other major companies, professional services firms and high net worth individuals.

Scott is also an accredited mediator and is a professional member of the Resolution Institute of Australia, and a member of the Expert Panel appointed by Immediation (www.immediation.com/expert-panel). Scott has been recognised by *Best Lawyers Australia* within the category *Alternative Dispute Resolution* since 2016.

Prior to his call to the Bar, Scott was a commercial litigation partner at national law firm, Clayton Utz.

Scott's initial learning in the law (LLB (Hons) (ANU)) has been supplemented by his LLM (Syd.) (focusing on corporations law and taxation) and complemented by his B.Sc (majors in mathematics and psychology) as well as various courses he has taken at the Securities Institute of Australia.

Scott brings to all of his cases meticulous attention to factual detail and a thorough knowledge of the legal principles applicable to those facts. He has been involved in many factually complex, long running cases. Scott takes a strategic, focussed and collaborative approach to the presentation of cases. Having previously been a paralegal, solicitor, senior associate, partner and junior counsel, he understands the strengths and challenges of each role and how they can be best deployed for the benefit of the client.

FOCUS AREAS + SELECT CASES

COMMERCIAL LAW + EQUITY

X ats Sons of Gwalia - the defence, for a professional services firm, of an auditors' negligence claim by the liquidator of Sons of Gwalia and a shareholders' class action, totalling in the order of \$1.5 billion in the Supreme Court of Western Australia. Scott led his team in a 5-day mediation conducted by the Hon. I.D.F. Callinan AC QC.

Australian Vintage Ltd v Belvino Investments No. 2 Pty Ltd (2015) 90 NSWLR 367 - construction of a contract appointing an expert valuer, including the extent to which the expert's construction of the terms of his retainer was open to review.

Fiduciary Ltd. v Morningstar Inc - defence of proceedings involving a wide-ranging claim including claims of oppression, breaches of directors' duties and misleading and deceptive conduct.

There were numerous interlocutory and other hearings: [2001] NSWSC 1087 (interlocutory injunction); (2001) 55 NSWLR 1 (costs payable forthwith); (2003) 131 FCR 236 (cross-vesting of related proceedings); (2004) 208 ALR 564 (security for costs); (2004) 60 NSWLR 425 (applicability of GST to legal services rendered to an overseas entity); and (2005) 53 ACSR 732 (application to bring a derivative action).

COMMERCIAL LAW + EQUITY – CONTINUED

Grace v Grace [2012] NSWSC 976; (2014) 85 NSWLR 688 - proceedings over the ownership of shares controlling a group of companies valued in excess of \$30m. The proceedings commenced in 2006 with the appointment of a provisional liquidator to some of the companies. The final hearing in October-December 2010 and June 2011 occupied approximately 5 weeks before Brereton J.

These proceedings involved numerous issues of equity, including unconscionable dealing, undue influence, accounts and enquiries and tracing; and corporations law, including oppression and winding up on just and equitable grounds; as well as family law. Following his Honour's principal judgment, accounts and inquiries were dealt with. There were also appeals to the Full Court of the Family Court, and the New South Wales Court of Appeal;

together with satellite litigation, including separate Supreme Court proceedings for breaches of directors' duties; and various actions in the District Court. All of these proceedings were finally resolved in April 2016, following a mediation process over some 9 months.

Tyneside Property Management Pty Ltd v Hammersmith Management Pty Ltd [2013] NSWSC 635; [2014] NSWCA 404; (2014) 103 ACSR 201; [2015] HCASL 127 - defence of proceedings for breach of contract relating to project management of a subdivision development; and subsequent applications in the Court of Appeal concerning the provision of security for costs.

CORPORATIONS LAW LITIGATION

ASIC v Rich (2010) 75 ACSR 1 - defence of proceedings brought by ASIC concerning One.Tel, in which ASIC sought disqualification and compensation orders arising from alleged conduct of directors of One.Tel. The principal proceedings lasted several years before Austin J and involved a complex examination of the financial state of One.Tel at particular times. The admissibility of expert evidence led by ASIC was a central issue. During the hearing of the principal proceedings, there were appeals to:

(a) the High Court on the availability of the penalty privilege: *Rich v ASIC* (2004) 220 CLR 129;

(b) the New South Wales Court of Appeal, on the admissibility of expert evidence: *ASIC v Rich* (2005) 54 ACSR 326.

Gooley; in the matter of Motasea Pty. Ltd., (2014) 97 ACSR 589 - defence of proceedings involving issues as to the operation of the Corporations Act with respect to proof of membership of a company, the inferences that may be drawn, and estoppel. Upheld on appeal: [2015] NSWCA 31.

Ingot v Macquarie Bank (2007) 63 ACSR 1; (2008) 73 NSWLR 653 - defence, on behalf of a professional services firm of proceeding in the Commercial List of New South Wales Supreme Court and Court of Appeal arising out of a prospectus offering for the New Cap Reinsurance Group. The claim was for an amount in excess of \$70m, and the first instance hearing ran for almost 12 months from October 2005 to September 2006 before McDougall J.

Assetinsure Pty Ltd v New Cap Reinsurance Corp Ltd (in liq) (2003) 47 ACSR 306 (NSW Supreme Court); (2004) 61 NSWLR 451 (NSW Court of Appeal); (2006) 225 CLR 331 (High Court) - multi-faceted proceeding concerning the interaction of the Insurance Act 1973 (Cth) and the *Corporations Act* and the implications for the administration of the New Cap Reinsurance Group.

Commissioner of Taxation v Bluebottle UK Pty. Ltd. (2006) 68 NSWLR 558; (2007) 232 CLR 598 - a challenge to the validity of s 255 Income Tax Assessment Act 1936 (Cth) notices issued by the Commissioner of Taxation to companies within the Virgin Airlines group for taxation exceeding \$90m. The central issues in the case were the interaction of corporations law (payment of dividends) and taxation law.

TRADE PRACTICES LITIGATION

ACCC v PRK Corporation Pty Ltd [2008] FCA 403; [2008] FCA 523; [2009] FCA 715 - defence of proceedings for penalties for breaches of s 45 of the *Trade Practices Act 1974* (Cth).

Technology Leasing Limited v Lennmar [2012] FCA 709 - a series of test cases in defence of applications to set aside contracts for the provision of telephone services on the basis of, inter alia, misleading and deceptive conduct, third line forcing, and the *Contracts Review Act*.

Pharmacy 4 Less v Discount Pharmacy Express and ors - proceedings in the Federal Court in Queensland for injunctive relief and damages for misleading and deceptive conduct and breaches of the *National Health Act 1953* (Cth).

Allphones Retail at ACCC [2011] FCA 538 - defence of proceedings alleging breaches of s 51AC Trade Practices Act 1974 (Cth).

INSURANCE LITIGATION

Green v CGU Insurance (2008) 69 ACSR 398 - defence of a claim exceeding \$20 million under a D+O policy relating to insolvent trading of a gold and copper mining company. The defence was based on non-disclosure. The proceedings included a successful application, upheld by the Court of Appeal, for an order that a liquidator provide security for costs: (2008) 67 ACSR 105.

Assetinsure Pty Ltd v New Cap Reinsurance Corp Ltd (in liq) (2003) 47 ACSR 306 (NSW Supreme Court); (2004) 61 NSWLR 451 (NSW Court of Appeal); (2006) 225 CLR 331 (High Court) - multi-faceted proceeding concerning the interaction of the *Insurance Act 1973* (Cth) and the Corporations Act and the implications for the administration of the New Cap Reinsurance Group.

X - defence of proceedings for reinsurers who were defendants to Commercial Division proceedings arising out of the construction of naval vessels in which the plaintiffs sought damages in the order of \$70m.

Tanevski v Trenwick International (2003) 13 ANZ Ins. Cas. 61-587; (2004) HCA Trans 498 - defence for an insurance broker of proceedings involving various issues of insurance and contract law.

Guy Carpenter at HIF - defence of proceedings for more than \$300m for misleading and deceptive conduct in connection with the presentation of the accounts of FAI Insurance before HIF's takeover of FAI.

COMMISSIONS & INQUIRIES, REGULATORY EXAMINATIONS

Scott has represented witnesses at the Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry and several New South Wales ICAC Investigations.

Scott also regularly represents witnesses at compulsory examinations by regulators, including the ASIC, the ATO and the ACCC.