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Introduction

I specialise in contracts and building and construction disputes and accept briefs as barrister or mediator in such disputes.

Since being called to the Bar in May 2006, I have advised on many such disputes and have appeared led and unled in the New South Wales Court of Appeal, Supreme Court, District Court and the Local Court as well as in tribunals, arbitrations, mediations and expert determinations.

Through my building and construction practice I have obtained extensive experience in many aspects of construction law including contractual disputes, voluminous defective and incomplete work claims, variation claims, extension of time claims, and delay and disruption claims.

I have particular expertise in matters involving the application of the *Building and Construction Industry Security of Payment Act 1999* (NSW).

I have been listed in the Doyle's Guide to Leading Construction Barristers NSW in 2012, 2014, 2016, 2017, 2018, 2019 and in Doyle's Guide to Leading Construction Barristers Australia 2016.

Prior to being called to the Bar, I worked as a solicitor with Minter Ellison Canberra, Mallesons Stephen Jacques Sydney and as a tipstaff in the New South Wales Court of Appeal.

My primary chambers are based in Lismore New South Wales and I am an associate member of Seven Wentworth Selbourne Chambers in Sydney.

Current and recent large building and construction matters

Acciona Infrastructure Australia Pty Ltd v Transport for New South Wales in the Supreme Court of New South Wales 2018 - 2019

I acted as junior counsel to Duncan Miller SC, briefed by King & Wood Mallesons, representing the defendant in proceedings involving alleged misleading and deceptive

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conduct relating to the Sydney Light Rail government procurement process. The plaintiff contractor's claim was for over \$1 billion.

Downer EDI Engineering Power Pty Ltd v Technicas Reunidas 2017 - present

I currently act as junior counsel to Duncan Miller SC, briefed by Pinsent Masons, representing the Applicant in a domestic arbitration out of Western Australia. The proceedings involve inter alia, a damages claim by the Applicant for over \$100 million arising out of construction work undertaken on a Technical Ammonium Nitrate plant in Karratha, Western Australia.

UGL Engineering Pty Ltd & ors ats Thiess Pty Ltd & anor in the Supreme Court of New South Wales 2018 - present

I currently act unled, instructed by Minter Ellison, for UGL Engineering in relation to a dispute involving alleged mechanical defects in the Lane Cove Tunnel.

JR Richards Waste Management Services Pty Ltd v Kingston Building (Australia) Pty Ltd in the Supreme Court of New South Wales 2018 - 2019

I acted as junior counsel to Duncan Miller SC, instructed by Bell Legal, representing the Plaintiff in proceedings involving an alleged defective façade to a commercial building. The Plaintiff's claim was over \$1million.

The Owners SP 86325 v Sovereign Harbourview & Probuild in the Supreme Court of New South Wales - 2018

I acted unled, instructed by Maddocks, for Probuild in relation to alleged defective waterproofing and tiling in a large apartment complex. The Plaintiff's claim was for over \$3.5million.

The Owners SP 76902 v Roads and Maritime Services and ors in the Supreme Court of New South Wales -2018

I acted as junior counsel to Mark Ashhurst SC, briefed by Wotton + Kearney, for the structural engineers Taylor Thompson Whitting (NSW) Pty Ltd in a dispute involving the alleged defective design of the concrete structure to a large residential and commercial building proximate to Sydney Harbour. The quantum of the claim was over \$6 million.

St Vincent's Private Hospital v Peter Eustace and Associates Pty Ltd in the Supreme Court of New South Wales 2018 - 2019

I currently act as junior counsel to Richard Cheney SC, instructed by Hannigans Casino, for the Plaintiff Hospital in a dispute involving the alleged defective design of air conditioning for operating theatres.

Previous large building and construction matters

AJ Lucas Operations Pty Ltd v Gladstone Area Water Board & Gladstone Regional Council

I acted unled for AJ Lucas in an expert determination involving a large and complicated dispute over the construction of a water and sewer pipeline and access road in Queensland. I was also briefed in related proceedings in the Queensland Supreme Court as junior counsel to Mark Ashhurst SC (*Gladstone Area Water Board & Anor v AJ Lucas Operations Pty Ltd* [2014] QSC 311) and on appeal as junior counsel to Brian O'Donnell QC.

PowerServe Pty Ltd v Abengoa Australia Pty Ltd

In 2013 I was briefed by Squire Sanders for Abengoa as Junior Counsel to Duncan Miller SC in Supreme Court proceedings involving a complicated dispute over the construction of a high voltage power line in Tomago NSW. The issues involved included alleged repudiation, variation claims, defective work claims and entitlements surrounding letters of credit. I also appeared unled in a reference hearing as part of the proceedings for which Abengoa was successful. That reference involved the interrelationship of the parties' respective obligations under the *Work Health & Safety Act 2011* (NSW) and the basis upon which Abengoa could retrieve its plant and equipment post termination.

GR Engineering Services Limited v Gold Ridge Mining Limited

In the period July 2012 to October 2012 I was briefed by Clifford Chance as junior counsel to Duncan Miller SC acting for GR Engineering in an international arbitration involving a gold mine and processing plant located in the Solomon Islands. The Applicant's claim was for over \$4 million and the cross claim alleging defective work was for over \$40 million.

Boulderstone Pty Ltd v QIC Ltd

In the period October 2010 to June 2012 I was briefed by Clayton Utz as junior counsel to Simon Kerr SC and to Duncan Miller SC to act for Boulderstone in a large and complicated construction dispute in the Supreme Court which concerned the construction and refurbishment of a large shopping centre. The quantum in dispute was over \$100 million.

Selection of matters which proceeded to judgment

All Seasons Air Pty Ltd v Regal Consulting Services Pty Ltd [2017] NSWCA 289;
Regal Consulting Services Pty Ltd v All Seasons Air Pty Ltd [2017] NSWSC 613

I appeared unled in the Supreme Court and unled in the Court of Appeal on a dispute involving whether a payment claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) could be validly served prior to a reference date arising.

The Owners - Strata Plan No 76902 v Roads and Maritime Services [2017] NSWSC 528

I appeared for the successful Applicant, led by Mark Ashhurst SC, seeking production of otherwise privileged documents on the basis that an implied waiver of privilege had occurred.

Quasar (Constructions) Commercial Pty Limited v Trilla Group Pty Limited [2017] NSWSC 860

I appeared unled in the Supreme Court in relation to proceedings seeking to quash an adjudication under the *Building and Construction Industry Security of Payment Act 1999* (NSW) involving issues of procedural fairness and whether a stay of execution of judgment ought to be granted.

Illawarra Retirement Trust v Denham Constructions Pty Ltd [2015] NSWSC 823

I appeared with Mark Dempsey SC for the successful defendant contractor in opposing permanent injunctive relief on the basis that a payment claim under the *Building and Construction Industry Security of Payment Act 1999* (NSW) was invalid.

Illawarra Retirement Trust v Denham Constructions Pty Ltd [2015] NSWSC 1173

I appeared unled in the above matter to successfully oppose an urgent application to quash an adjudication determination under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Gladstone Area Water Board & Anor v AJ Lucas Operations Pty Ltd [2014] QSC 311

I appeared with Mark Ashhurst SC for the Defendant in the QLD Supreme Court in relation to the question of whether an agreement to settle substantial matters had been reached. This involved a close examination of the law relating to intention to be bound.

Omega House Pty Ltd v Khouzame [2014] NSWSC 1837

I appeared unled for the successful Plaintiff/Principal in relation to a dispute under the *Building and Construction Industry Security of Payment Act 1999* (NSW). The Plaintiff succeeded in having an adjudication under the Act quashed on the basis that there was no applicable reference date to which the alleged payment claim could attach.

Ball v McInerney [2014] NSWCA 331

I appeared with Duncan Miller SC for the successful respondent. The proceedings concerned the design and construction of a horse arena and the issues on appeal concerned the function of pleadings in the context of procedural fairness, the use of Scott Schedules and the proper conduct of the trial judge.

Horsell International Pty Ltd v Divetwo Pty Ltd [2013] NSWCA 368; Rian Lane v

Dive Two Pty Ltd [2012] NSWSC 104

I appeared with Julian Sexton SC for the second cross defendant insurer, Liberty International. Liberty succeeded on a cross claim in denying indemnity under a business purpose policy and obtained a Sanderson Order against the insurance broker, the first cross defendant such that Liberty had its costs of the proceedings paid by the insurer for the broker. This decision was upheld on appeal.

Ball & Ball v Martin McInerney t/as Wildthorn Landscapes (unreported) 3 May 2013
NSWDC 2013

I appeared unled in the District Court for the successful defendant in this case which involved a 6 day trial concerning the construction and maintenance of a commercial horse arena. A significant aspect to the result was the cross examination of the plaintiff's geotechnical engineer.

Cardno ITC Pty Ltd v 33 York Street Pty Ltd [2013] NSWDC 312

I appeared unled for the successful plaintiff in a dispute over entitlements under a lease upon termination.

The Trustees of the Roman Catholic Church for the Diocese of Lismore v T F Woollam and Son [2012] NSWSC 1559

I appeared unled for the successful plaintiff in having an adjudication quashed on the basis that compliance with s13(5) of the *Building and Construction Industry Security of Payment Act 1999* (NSW) was a jurisdictional question and the effect of *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* (2011) 78 NSWLR 393 was that previous cases which held to the contrary were no longer good law.

Lew v Bluescope Distribution Pty Ltd [2010] NSWSC 794

I appeared unled for the successful applicant in setting aside a caveat to facilitate an urgent sale notwithstanding the caveatable interest.

Gordon v The Trustees of the Roman Catholic Church of the Diocese of Lismore
[2010] NSWADT 230

I appeared unled for the successful respondent landlord on an application for the return of monies alleged to be 'key money' in contravention of the Retail Leases Act.

Shepherds Producers Co-operative Limited v John Scott Lamont & Ors [2009]
NSWSC 294

I appeared with Robert Newlinds SC for the successful defendant directors of a company which involved allegations of professional negligence case and the operation of a release.

Johnson v Hansen (Home Building) [2009] NSWCTTT 560

I appeared unled for the successful applicant home owner in a 4 day trial on a pro bono basis in a complicated residential defective building case.

Allen v Tweed Shire Council [2008] NSWSC 937

I appeared unled for the successful appellant in the Supreme Court from a decision of the Local Court involving whether an engineer engaged by an applicant on a DA owed the council a duty of care to prevent economic loss.

RCM Constructions Pty Ltd v S & Y Painting and Decoration Pty Ltd [2008] NSWDC 247

I appeared unled for the successful plaintiff company in a two week trial concerning defective painting and surface preparation in a large residential development.

A selection of other matters in which I have appeared and which have proceeded to judgment include:

- *Stonestreet v Stonestreet* [2015] NSWSC 477
- *Built NSW Pty Ltd v Politic Pty Ltd* [2015] NSWSC 380
- *National Australia Bank v Savage (No. 2)* [2013] NSWSC 1927
- *Baden Cranes Pty Ltd v Smith; Brambles Australia Ltd v Smith* [2013] NSWCA 136
- *Rian Lane v Dive Two Pty Ltd (No 2)* [2012] NSWSC 209
- *Rian Lane v Dive Two Pty Ltd* [2012] NSWSC 104
- *McLeod v McKendry* [2012] NSWSC 1646
- *Smith v Brambles Australia Ltd* [2011] NSWSC 963
- *Shepherds Producers Co-Operative Ltd (In Liquidation) v Lamont* [2009] NSWSC 798
- *Alexander v Blue Pie* [2008] NSWSC 189
- *3WJ Pty Ltd & Anor v Kanj* [2008] NSWCA 321
- *Richards v Patras Pty Ltd* [2009] FCA 380
- *Wilson v Interhealth Energies Pty Limited & anor* [2008] NSWSC 1137
- *Hyatt v Public Trustee; Public Trustee v Hyatt* [2007] NSWSC 1525

Clerk

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