



David S Allen

Barrister

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| Areas of practice | Commercial, Banking and Finance, Building & Construction, Corporations, Employment, Equity, Financial Regulation, Insolvency, Real Property, Trusts, |
| Professional | Called to the Bar (2020) Senior Associate, Ashurst – Sydney (2018-2020) Associate, Allen & Overy – London (2015-2017) Associate, Allens – Sydney (2011-2014) Admitted as a solicitor in England and Wales (2016) Admitted as a solicitor in New South Wales (2011) |
| Education | Master of Economics (Finance, Economics), University of Sydney (2011) Bachelor of Laws (Hons I), University of Sydney (2009) Bachelor of Arts (Hons I), University of Sydney (2007) First place, University of Sydney Senior Moot (Equity) (2008) Blake Dawson Prize for Personal Taxation (2008) Walter Reid Memorial Prize, Honours in Ancient History (2007) Cooper Scholarship in Classics (2004) UAI 100 and Dux of Sydney Grammar School (2003) First in State, HSC Classical Greek Continuers and Extension (2003) |
| Presentations and Publications | <i>‘Equity, mate’ – Equitable principles limit the effect of general words in releases</i> , Law Society Journal (2022) <i>LexisNexis Practical Guidance: Insolvency – Retention of Title</i> (2022) “Recent Banking and Finance Cases”, City of Sydney Law Society (2022) “Liability of officers for misleading or deceptive conduct”, Arnold Bloch Leibler (2022) ”Recent Banking and Finance Cases”, Ross Parsons Centre, University of Sydney (2021) <i>LexisNexis Practical Guidance: Personal Property Securities</i> , co-author (2014) |
| Industry experience | At the Bar, David has advised banks, fintechs and financial services firms on aspects of financial regulation, and as a solicitor completed placements at ANZ Bank (2020) and Morgan Stanley (2017) David has assisted Dr R P Austin AM in the preparation of independent expert reports in relation to the operation of AFCA, instructed by Herbert Smith Freehills (2021) |
| Pro bono | Signatory to the National Pro Bono Target (since 2020) |

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| Selected cases | David has experience appearing in all New South Wales courts, the Federal Court of Australia (including the Full Court) and the NSW Civil and Administrative Tribunal (NCAT). | |
| Financial Regulation, Trusts | <i>Re Legal Super Pty Ltd</i> [2023] VSC 545 (Lyons J) | Judicial advice - <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) – amendment of trust deed to introduce a fee-charging power – compliance with statutory covenants |
| | <i>Application by SCS Super Pty Limited atf Australian Catholic Superannuation and Retirement Fund</i> [2022] NSWSC 686 (Hallen J) | Appearing for APRA- trustee proposal altered – judicial advice given – Led by B J Doyle KC; instructed by APRA |
| | <i>Application by United Super Pty Ltd atf Construction and Building Unions Superannuation Fund</i> [2021] NSWSC 1679 (Henry J) | Led by S Cooper QC (as his Honour then was) |
| | <i>Application by Motor Trades Association of Australia Superannuation Fund Pty Ltd atf Spirit Super</i> (2021) 113 ATR 868; [2021] NSWSC 1672 (Henry J) | |
| | <i>Re HEST Australia Ltd</i> (2021) 66 VR 338; [2021] VSC 809 (Button J) | Led by Dr R P Austin AM |
| | <i>Re Care Super Pty Ltd</i> [2021] VSC 805; (No 2) [2021] VSC 845 (Lyons J) | |
| Banking and finance | <i>Ut Ian v Macquarie Bank Limited</i> [2023] FCA | Banking – de-banking – alleged unconscionable conduct – alleged breach of banking code of practice Advising depositor – deposit restored Instructed by James & Jaramillo Lawyers |
| | <i>Casaceli v Westpac and Ors</i> [2023] NSWSC | Mortgages – alleged misconduct in relation to mortgagee sale – alleged failure to account to mortgagor Deed of settlement – alleged misrepresentation – alleged undue influence – application to set aside Summary dismissal – application to strike-out plaintiff’s claim Appearing for plaintiff – application to strike-out dismissed Unled; direct access brief |
| | <i>ASCF Managed Investments v Khoury</i> [2023] NSWSC | Mortgages – application for possession by second mortgagee |

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| | | Acting for second mortgagee – settlement in favour of second mortgagee Unled; instructed by Summer Lawyers |
| Real Property | <i>Ozoris Investments Group v Malabar Headlands</i> [2023] NSWCATCD | COVID regulations – prohibition on increases in rent – alleged wrongful re-entry by lessor Relief against forfeiture – new lease to third party – indefeasibility of title Appearing for lessor and new lessee – possession granted to new lessee and former lessee’s claim for damages dismissed Unled; instructed by Gladwin Legal |
| | Advice to a hotel operator | Commercial leasing – covenants of repair and replacement Led by G Farland; instructed by Watson Farley & Williams |
| | <i>Lingquist Testamentary Trust v Ku-ring-gai Council</i> [2022] NSWLC | Nuisance – tree roots Appearing for owners – settlement for owners Unled; direct access brief |
| Commercial, Employment | <i>Integrate AV v Gordon</i> [2023] FCA | Employment – alleged breach of post-employment restraint – alleged misuse of company information – alleged breach of fiduciary duty Accessorial liability – alleged knowing involvement in statutory contravention – alleged knowing assistance in fiduciary breach Appearing for former employer – settlement in favour of former employer Unled; instructed by Antunes Lawyers |
| | <i>Kalmar Equipment (Australia) Pty Ltd v PortxGroup Pty Ltd</i> [2022] FCA | Preliminary discovery – alleged breach of confidentiality obligations Appearing for employee respondent and new employer – application for preliminary discovery dismissed with costs Unled; instructed by Holding Redlich |
| | <i>Joseph v Parnell Corporate Services Pty Ltd</i> (2021) 284 FCR 546; [2021] FCAFC 67 (Logan, Katzmann and Snaden JJ) | Executive employment – <i>Fair Work Act 2009</i> – breach of duty by executive – costs in Fair Work Act proceedings Appearing for employer – executive appeal dismissed |

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| | | Led by D Barnett; instructed by Atanaskovic Hartnell |
| Building and Construction | <i>Owners – Strata Plan No. 81376 v Insurance Australia Limited t/as Lumley Insurance</i> [2023] NSWSC (Darke J) | <i>Home Building Act 1989</i> – claim against home warranty insurer – limitation of actions Appearing for owners – owners’ application to amend claim and join insurer allowed Led by M Ashhurst SC; instructed by Bannermans Lawyers |
| | <i>Render Bros v Elcham</i> – SOPA Adjudication | Payment claim – informal arrangements – dispute about performance of works Acting for contractor – adjudication in favour of contractor in full Unled; instructed by Hilton Bradley |
| | <i>Galileo Miranda Nominee Pty Ltd v Capitol Property Services Pty Limited (formerly Duffykennedy Pty Limited)</i> [2020] NSWSC 00304221 (Hammerschlag J) | Security for costs – cross-claim by builder against developer Appearing for developer – security for costs of cross-claim awarded Notice to produce – access to terms of insurance policies – production ordered <i>Design and Building Practitioners Act 2020</i> – claim by developer against sub-contractors Led by D Sibtain SC; instructed by Mills Oakley |
| Commercial – partnership and shareholder disputes | <i>Thangavel v Ahmed</i> [2023] FCA | Business partners – shareholders – separation of business Appearing for director and shareholder – agreement to separate businesses Led by M Dawson; instructed by Maguire & McInerney |
| | <i>Cowie v Eames</i> [2021] NSWSC | Business partners – partnership – exclusion from profits Appearing for excluded partner – substantial settlement obtained Led by P Lane; instructed by Mbt Lawyers |
| Commercial – Insolvency | <i>Richard Stone as liquidator of Ironbark Blacksmithing v Stephen Mizzi</i> [2021] [2023] FCA NSD710 (Halley J) | Insolvent trading – recovery by liquidator of loans from company to directors – alleged breach of directors duties – effect of ATO |

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| | | <p>payment arrangements – expert accounting evidence - trial</p> <p>Limitation periods – application for strike-out</p> <p>Appearing for directors - Liquidator’s claim struck out in part</p> <p>Unled; instructed by Circle Bridge Legal</p> |
| | <p><i>Equitable Financial Solutions Pty Ltd (in liquidation) v Summiya Usman</i> [2020] NSWSC 290076 (Ball J)</p> | <p>Application for judgment on settlement deed – appearing for liquidator</p> <p>Judgment entered</p> <p>Unled; instructed by Hall & Wilcox</p> |
| | <p><i>Future Invented Pty Ltd v Gebaut Environment</i> [2021] FCA NSD65 (Registrar Segal)</p> | <p>Winding up application – application for leave under s 459S - appearing for company</p> <p>Winding up application dismissed</p> <p>Unled; instructed by Home Legal</p> |
| Misleading or deceptive conduct | <p><i>Lefevre v Empassion Natural Pty Ltd; Andrew Keely & Mark Neveceral</i> [2022] NSWLC</p> | <p>Misleading or deceptive conduct – sale of distributorship – accessory liability of defendant directors</p> <p>Appearing for franchisee - judgment for franchisee plaintiff against directors personally</p> <p>Unled; instructed by AMK Law</p> |
| | <p><i>Anis Car & Truck Rental v Muhammad Tauha Ali</i> [2021] 00323384 (Assessor Connelly)</p> | <p>Misleading or deceptive conduct – zero liability insurance – appearing for hirer</p> <p>Claim against hirer dismissed</p> <p>Unled; direct access brief (pro bono)</p> |
| Pro bono and Not for profit | <p>Advice to NSW RSL Hunters Hill Sub-Branch, Aboriginal Elders & Community Care Services Inc, Nature Conservation Trust of NSW and Not for Sale Australia</p> <p>David is the company secretary of University Chambers</p> | |