

Stefan Balafoutis

TENTH FLOOR SELBORNE WENTWORTH CHAMBERS 174-180 PHILLIP STREET, SYDNEY NSW 2000 DX 375 SYDNEY
PHONE 9232 0630 FAX 9232 0640 MOBILE 0416 056 121 EMAIL BALAFOUTIS@TENTHFLOOR.ORG ABN 75 219 552 087

AREAS OF PRACTICE

Stefan has over 20 years experience in commercial litigation. He is regularly briefed in contractual and equity disputes, corporations law matters, intellectual property cases and litigation over real property. Stefan also has expertise in NSW revenue matters and matters involving the Competition and Consumer Act, including disputes before the Australian Competition Tribunal.

[Contracts, equitable principles and real property](#)

[Corporations Act, including insolvency](#)

[Intellectual Property](#)

[Competition and Consumer Act](#)

[NSW revenue law](#)

[Administrative law](#)

Disputes involving contracts, equitable principles and real property

- Proceedings involving general contractual disputes:
 - seeking damages for breach of a consultancy agreement (*Brand2Content v Solar Australia* [2018] NSWSC 56)
 - alleging a former distributor breached contractual confidentiality obligations (*Career Step v TalentMed* (No 3) [2018] FCA 411, (No 2) [2018] FCA 132; [2017] FCA 492)
 - seeking rectification of a contract (*Jana v Ezistripdemo* [2017] NSWSC 1135)
 - concerning the interpretation of a settlement deed (*Gillies v Gillies* [2017] NSWSC 522)
 - concerning breach of contract and quantum of damages with respect to cancellation of a music tour (*Fernandez v Perez t/as Pitbull* [2012] NSWSC 1242; [2012] NSWSC 1602; [2011] NSWSC 1007)
 - between banker and customer (*Sam Management v Bank of Western Australia* [2009] NSWCA 320).
- Proceedings concerning contracts for the sale of land, including disputes involving:
 - whether a purchaser of land is bound by an unregistered lease (*Ideal Business v Violin Holdings and Jordana* [2018] NSWSC 1249)
 - the validity of a notice to complete, repudiation and return of deposit (*Velik v Steingold* [2013] NSWCA 303)
 - whether a vendor was entitled to rescind contracts for sale of land under a sunset clause (*Churnin v Pilot Developments* [2003] NSWCA 391)
 - whether vendors acted unconscientiously by terminating a contract for sale of land (*Romanos v Pentagold Investments* (2003) 217 CLR 367).
- Proceedings against former employees, including disputes involving allegations that:
 - former employees breached a restraint of trade clause (*Crowe Horwath v Trilogy*, NSW Supreme Court, 2017)
 - former employees misappropriated money, including seeking freezing orders (*Henry Schein v Manning* (NSWSC, 2017); *TAFE Commission v Cordoba* (NSWSC, 2015); *British American Tobacco v Sheikh* (NSWSC, 2015)).
- Proceedings between lessors and lessees, including disputes involving:
 - whether a lease should be set aside for misleading conduct (*Kids Club Rozelle v European Hire Cars* [2018] NSWSC 1115)
 - whether an option to renew a lease had been properly exercised (*Kegran v Warrick*, NSWSC, 2018)
 - rights under the Retail Leases Act (*Rose v Batson Holdings Pty Ltd* [2004] NSWADT 268).

- Proceedings seeking to set aside transactions entered into by elderly persons, including:
 - allegations that a large sum provided by the plaintiff to the defendant was a gift or procured by undue influence and unconscionable conduct (*Hintze v Tsering* [2018] NSWSC 1190)
 - allegations that a deed not to revoke a will should be set aside for undue influence or under the Contracts Review Act (*White v Wills* [2014] NSWSC 1160)
 - allegations that a gift was procured by undue influence, breach of fiduciary duty and unconscionable conduct (*Badman v Drake* [2008] NSWSC 1366).
- Other proceedings involving equitable claims, including:
 - proceedings alleging proprietary estoppel and seeking a constructive trust (*Blackett v Barnett* [2017] NSWSC 1032)
 - proceedings seeking equitable compensation and an equitable charge on the basis of a failed joint venture (*Dean v Aylward* [2017] NSWSC 972)
 - proceedings concerned with priority of competing equitable interests (*Citigroup* [2013] NSWSC 526; *Circuit Finance v Wills* [2006] NSWSC 35).
 - interlocutory applications seeking extension of a caveat (*Franks v Franks*, 2018, ongoing; *Mathews v Council of the Shire of Gunnedah* [2010] NSWSC 412).
- Possession proceedings defended on the basis of misleading and unconscionable conduct (*Secure Funding v Stark* [2015] NSWSC 223; [2013] NSWSC 1729; [2013] NSWSC 1401).
- Proceedings seeking to set aside a mortgage under Contracts Review Act (*Permanent Custodians v Mera & Ors*, NSW Supreme Court, 2007-10)
- Proceedings concerned with Protected Estates Act - now NSW Trustee and Guardian Act ([2014] NSWSC 1810; [2008] NSWSC 36, [2005] NSWSC 581, (2004) 60 NSWLR 513, [2003] NSWSC 621)

Corporations Act disputes, including insolvency matters

Stefan has been awarded an Advanced Certificate in Insolvency from ARITA (the Australian Restructuring Insolvency & Turnaround Association). He is also a professional member of ARITA.

- Proceedings by a liquidator seeking approval of a litigation funding agreement (*Elkerton, in the matter of South Head & District Synagogue (Sydney) (in liq)* [2017] FCA 1206; *In the matter of Hunter Valley Dental Surgery (No 2)* [2017] NSWSC 1027; *Re Opel Networks* [2013] NSWSC 1245).
- Proceedings seeking termination of a winding up (*In the matter of Hunter Valley Dental Surgery (No 2)* [2017] NSWSC 1144)
- Proceedings seeking approval of compulsory acquisition of shares from minority shareholders (*BG & E Management v de Aboitiz* [2016] FCA 1368)
- Appeal from the making of a sequestration order (*Renshaw v Queensland Mining (No 2)* [2016] FCA 1482)
- Proceedings for orders regarding the priority of creditors to be paid by a liquidator (*Weston (Liquidator); In the Matter of 7 Steel Distribution Pty Limited (In Liq)* [2015] FCA 742)
- Proceedings for the inspection of books under the Corporations Act (*Darambazar v Kara Minerals* [2016] FCA 265).
- Proceedings for the appointment of a receiver and manager and the fixing of remuneration (*SMP Consolidated (in liq) v Posmot* [2014] FCA 1382).
- Proceedings alleging oppression and concerning validity of members' resolution (*Re Richardson & Wrench Holdings* (2013) 97 ACSR 351).
- Proceedings seeking judicial advice under s 511 of the Corporations Act (*Re 7 Steel Distribution* [2013] NSWSC 669).
- Ongoing proceedings by an investor against financial advisers (*MBD Management v Butcher* [2010] FCA 1071).

- Proceedings instituted by ASIC concerning breach of director's duties and a managed investment scheme (*ASIC v Weriton*, NSWSC, 2010-11)
- Proceedings seeking the recovery of unfair preferences and uncommercial transactions (*7 Steel v Toyota*, Federal Court, 2013-2015; *Tolcher v Capital Finance* [2008] HCATrans 281, 282 and 316; (2006) 164 FCR 83; (2005) 143 FCR 300; *Maxsted v HP Launder* [2006] SADC 130).
- Proceedings alleging oppression and breach of directors' duties (*Pongrass Group Operations v Paterson*, NSW Supreme Court, 2005-11).
- Miscellaneous Corporations Act proceedings, including liquidator's examinations, winding up applications and applications to set aside statutory demands (eg *Beck v Weinstock* [2010] NSWSC 1068; *Crawford v Oswald Park* [2006] NSWSC 987).

Intellectual property disputes

- Proceedings alleging former distributor engaged in copyright infringement and breached contractual confidentiality obligations (*Career Step v TalentMed* (No 3) [2018] FCA 411, (No 2) [2018] FCA 132; [2017] FCA 492)
- Proceedings alleging former employee engaged in breach of confidence and copyright infringement (*Integratedliving Australia v Maitland*, Supreme Court of NSW, 2017)
- Proceedings alleging trade mark infringement, misleading conduct and passing off (*Clipsal Australia v Clipsal Electrical (No 3)* [2017] FCA 60)
- Proceedings seeking additional damages under the Copyright Act (*Dynamic Supplies v Tonnex International (No 3)* [2014] FCA 909).
- Proceedings concerning the proper interpretation of s 145 of the Patents Act (*MPEG LA v Regency Media* (2014) 105 IPR 202).
- Trade mark proceedings in the Trade Marks Office (*C Coconut Water v Natural Raw C* [2014] ATMO 119).
- Proceedings alleging infringement of copyright including moral rights (*Perez v Fernandez*, Federal Magistrates Court).
- Proceedings alleging misuse of confidential information in an employment relationship (*Macquarie Telecom v Moon*, Supreme Court of NSW).
- Proceedings alleging infringement of performers' rights and misleading conduct (*Washington v Qantas Airways* [2013] FCCA 778).
- Proceedings alleging copyright infringement against companies and their directors and seeking additional damages (*Take-Two Interactive v Taylor*, 2018, FCCA; *PPCA v Cattch* [2013] FCCA 931; *PPCA v Evermore* [2013] FCCA 17; *PPCA v Advanced Beauty & Body Care* [2012] FMCA 486; *PPCA v Camilleri* [2012] FMCA 147; *PPCA v Jabouri Brothers* [2011] FMCA 799; *PPCA v All Girls Entertainment* [2010] FMCA 293; *PPCA v Adelaide City Entertainment* [2005] FMCA 923).
- Copyright Tribunal proceedings assessing reasonable royalties for digital downloads (*APRA v AMCOS* (2009) 84 IPR 402).
- Proceedings seeking Anton Piller orders and Norwich Pharmacal relief arising from copyright infringement (*Australia New College v Li* [2005] FMCA 984).
- Proceedings alleging large scale copyright infringement over the internet (*Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* (2005) 220 ALR 1).

Disputes arising under the Competition and Consumer Act including regulatory disputes

- Proceedings alleging misleading or deceptive conduct (*Kids Club Rozelle v European Hire Cars* [2018] NSWSC 1115; *Brand2Content v Solar Australia* [2018] NSWSC 56; *Chint Australasia v Cosmoluce* [2008] NSWSC 635; *Lewis v McKinnon* [2011] NSWSC 338).
- Full Federal Court appeal from decisions of Australian Competition Tribunal (*Australian Energy Regulator v Australian Competition Tribunal* [2017] FCAFC 79, 80, 144)
- Australian Competition Tribunal proceedings reviewing the Australian Energy Regulator's decisions concerning the electricity distribution network (*Applications by Ausgrid and Others* [2015] ACompT 2; [2015] ACompT 3; [2016] ACompT 1-5)
- Australian Competition Tribunal proceedings reviewing the Australian Energy Regulator's decision concerning the natural gas distribution network (*Application by Envestra* [2012] ACompT 3; [2012] ACompT 4; *Application by APT Allgas* [2012] ACompT 5).
- Proceedings challenging the Australian Energy Regulator's decision concerning electricity prices in the ACT (*ActewAGL v Australian Energy Regulator* [2011] FCA 639).
- Proceedings alleging contravention of s 51AD of the Trade Practices Act and the Franchising Code of Conduct (*Civic Video v Garfell* [2008] NSWDC 3).
- Australian Competition Tribunal proceedings reviewing ACCC's decision to reject Vodafone's and Optus' access undertaking (*Application by Vodafone Network Pty Ltd* (2007) ATPR 42-150; *Application by Optus Mobile Pty Ltd* (2006) 205 FLR 29).

Disputes involving NSW revenue law

- Proceedings involving disputes about stamp duty (*SPIC Pacific Hydro v CCSR*, 2018, ongoing; *Theos Bros v CCSR*, 2018, ongoing; *Esplanade Wollongong v CCSR* [2017] NSWCATAD 157); *Balcaskie v Chief Commissioner of State Revenue* (NSWSC, 2016); *Oak Brick v CCSR* [2016] NSWSC 1039; *Esplanade Wollongong v CCSR* [2015] NSWCATAD 228; *BD Corporation v CCSR* [2015] NSWCATAD 163; *Twyble v CCSR* (NSWSC, 2015); *Temporary Holding Club v CCSR* (NSWSC, 2015); *ETO v CCSR* (NSWSC, 2013); *Southern Cross Airports v CCSR* (NSWSC, 2012)).
- Proceedings involving disputes about payroll tax (*Bayton v CCSR*, 2018, ongoing; *Challenger Cleaning v CCSR* [2018], ongoing; *Dyldam v CCSR*, 2018, ongoing; *Securecorp v CCSR* [2018], ongoing; *Southern Cross v CCSR* [2018], ongoing; *HRC v CCSR* [2018] NSWSC 820; *Knight Watch Security Services v CCSR* [2017] NSWCATAD 223; *Chan & Naylor Australia v CCSR* [2016] NSWCATAD 4).
- Proceedings involving disputes about land tax (*Bellbird Ridge v CCSR* [2016] NSWSC 1637); *Dandaloo v CCSR* (NSWSC, 2014)).

Disputes involving administrative law

- Proceedings seeking judicial review of decisions of the Australian Competition Tribunal (*Australian Energy Regulator v Australian Competition Tribunal* [2017] FCAFC 79, 80, 144)
- Proceedings under the ADJR Act seeking to set aside the decision of the Australian Competition Tribunal (*AER v Ausgrid* (Federal Court, 2016)).
- Proceedings alleging that taxi regulation was acquisition of property on unjust terms (*Aerial Capital Group v Australian Capital Territory* (2013) 217 FCR 153).
- Proceedings under the ADJR Act seeking to set aside the decision of the Australian Energy Regulator (*ActewAGL v Australian Energy Regulator* [2011] FCA 639).
- Proceedings seeking judicial review of decision refusing to grant a lease (*Reid & Darmody v ACT Planning and Land Authority* [2008] ACTAAT 6).
- Proceedings in the Land & Environment Court and Court of Appeal concerned with judicial review of a council's development approval (*Belmorgan v GPT* (2007) 153 LGERA 450; *Mid Western Community Action Group v Mid-Western Regional Council* [2008] NSWLEC 143; [2007] NSWLEC 411; *GPT v Wollongong City Council* (2006) 151 LGERA 116).

- Proceedings seeking prerogative relief and orders under the ADJR Act to set aside a decision of ACT Planning Authority to grant development approval (*Capital Property Projects v Planning & Land Authority* [2007] ACTAAT 7, [2007] ATSC 95, [2008] ACTCA 9).
- Proceedings seeking to invalidate delegated legislation (*Capital Property Projects v Planning & Land Authority* (2006) 206 FLR 328).

PREVIOUS EXPERIENCE AND QUALIFICATIONS

Previous experience

Stefan has over 20 years experience in commercial litigation.

In 1997 he commenced his career as an Associate to Justice Lockhart, who was a Federal Court judge and President of the Australian Competition Tribunal at the time.

Stefan then worked as a solicitor with Corrs Chambers Westgarth in their commercial litigation and trade practices groups before coming to the bar in 2002.

Qualifications

Bachelor of Laws (First Class Honours equiv) (UNSW) 1996

Bachelor of Commerce (Finance) (UNSW) 1996

Advanced Certificate in Insolvency (ARITA) 2017