

David Ananian-Cooper

Barrister-at-Law

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PRACTICE

David was called to the Bar in 2014. He is admitted as a lawyer in New South Wales and Queensland, and as an Attorney in New York State.

David is an experienced barrister practising in commercial litigation, with a focus on matters involving complex forensic or financial considerations. He has a background in mathematics and computer programming that is of particular assistance in such matters. David has acted led and unled in various matters in the State and Federal Courts. He has, for the last six years, had primary conduct as lead junior of a highly complex suite of professional negligence claims exceeding \$260 million.

Prior to being called to the Bar, David practised as a Solicitor in Sydney at King & Wood Mallesons, Gilbert + Tobin and Sparke Helmore Lawyers. He was Associate to the Honourable Justice PD Finn of the Federal Court of Australia in 2008.

David has taught law courses at the University of New South Wales, Adelaide University and University of Queensland, as well as for the Queensland Bar Practice course. His scholarship has been cited by the Full Court of the Federal Court of Australia and the Victorian Court of Appeal.

PROFESSIONAL QUALIFICATIONS

- Master of Laws (James Kent Scholar, Columbia University, New York).
- Bachelor of Laws (1st Class Honours, Australian National University).
- Bachelor of Science (Mathematics and Theoretical Physics) (Distinguished Scholar, Australian National University).

SIGNIFICANT MATTERS

LM Investment Management Limited (in liquidation) as responsible entity of the LM First Mortgage Income Fund v Ernst & Young (Queensland Supreme Court)

- Acted for over six years in an "exceedingly complex" Supreme Court claim against Ernst & Young for audit negligence claiming more than \$260 million, instructed by the Court appointed receiver of the LM First Mortgage Income Fund.
- Acted as lead junior with primary conduct of the preparation of the matter for trial, led by R Derrington QC and then S Doyle QC.
- Advised on and settled the evidence substantiating the plaintiff's claim, including extensive expert evidence reconstructing the financial statements of the Fund over a

five year period, opining on the competence of Ernst & Young's conduct of 14 separate audit and review engagements, valuing 27 distinct real property securities over a 6 year period, and assessing loss and damage by comparing what occurred to the hypothetical expenses and receipts in an earlier winding up of the Fund.

- Appeared (led by R Derrington QC) at the hearing of an application by Ernst & Young to strike out certain causes of action as out of time (*LM Investment Management Limited v Ernst & Young* [2017] QSC 73).
- Appeared (unled) at the hearing of an application to amend the claim to introduce a new claim under section 1325(2) of the Corporations Act (*LM Investment Management Limited v Ernst & Young* [2018] QSC 226).
- Appeared (unled) at the hearing of the defendants' application for leave to proceed against various third parties, successfully arguing that certain pleaded claims did not amount to serious questions to be tried (*LM Investment Management Limited v Ernst & Young (No 3)* (2019) 2 QR 436).
- Appeared (led by J McKenna QC) at the hearing of an application contesting Ernst & Young's reliance on the privilege against self-incrimination in its Defence (*LM Investment Management Limited v Ernst & Young (No 5)* [2020] QSC 264).
- Appeared (led by S Doyle QC) at the hearing of the application for judicial advice approving a confidential settlement of the proceedings (*Re LM Investment Management Ltd (in liq)* [2022] QSC 132).

McMahon Services Australia Pty Ltd v Pinkenba Quarrying & Recycling Pty Ltd & Anor (Federal Court of Australia)

- Acting (unled) for a supplier of topsoil defending a breach of contract and misleading and deceptive conduct claim in which it is alleged that it delivered asbestos contaminated product.
- Acting (unled) in related third-party proceedings for negligence, equitable contribution and misleading and deceptive conduct against both the Suitably Qualified Person and the contaminated land Auditor, who were responsible for the management of the site undergoing remediation to which the topsoil was delivered under the *Environmental Protection Act 1994* (Qld).
- Appeared (unled) at various applications, including to transfer the proceedings to Queensland, regarding categories of discovery, for leave to amend the pleading with an adjournment of the trial, and for security for costs (*McMahon Services Australia Pty Ltd v Pinkenba Quarrying and Recycling Pty Limited* [2023] FCA 360).
- Listed for a two-week trial before S Derrington J in July 2023.

MQ Partners Pty Ltd & Ors v Hospitality & Strata Pty Ltd & Anor (Queensland Supreme Court)

- Acting (unled) for a syndicate of buyers against an accountant seeking damages allegedly caused by the negligent preparation of a financial verification report, in connection with the acquisition of a series of managed rights businesses.

Commonwealth Bank of Australia v Dowd Lawyers Pty Ltd & Ors (Queensland Supreme Court)

- Acting (led by C Heyworth-Smith KC) for the CBA against defaulting borrowers, disputing their liability in debt on the basis of a counterclaim alleging loss and damage caused by breaches of duty to act as a prudent banker, and a negligent valuation by a valuer appointed by the bank.

Re LM First Mortgage Income Fund (Queensland Supreme Court)

- Acted for the Court appointed receiver of the LM First Mortgage Income Fund in a variety of disputes with the liquidator of LM Investment Management Limited.



- Appeared (led by J McKenna QC) to resist an application by the liquidator for indemnity for expenses including his legal costs of an appeal from the orders appointing the receiver, on the basis that the costs were not properly incurred, and relying on the clear accounts rule (*Park v Whyte (No 3)* [2018] 2 Od R 475).
- Appeared (unled) to resist an application by the liquidator for indemnity for his 'corporate' remuneration, and regarding the proper GST treatment of the liquidator's indemnity claims (*Park v Whyte (No 4)* (2019) 2 QR 412).
- Appeared (led by J McKenna QC) to resist an application by the liquidator in substance to transfer management of the Fund to the liquidator, and to seek authority to make an interim distribution to members (*LM Investment Management v Whyte* [2019] QSC 233).
- Appeared (unled) to resist a further application for indemnity for legal expenses on the basis that the liquidators had a right to recover part of those expenses from a third party (*Park v Whyte (No 5)* (2020) 3 QR 409).
- Appeared (led by D O'Brien KC) in relation to a dispute as to the receiver's powers to cause LMIM to pay an adverse costs order from the property of the Fund (Judgment reserved).

Re Ellume Limited (Administrators Appointed) (Federal Court)

- Appeared (unled) on an application to fix the registration time of a security interest under section 588FM of the Corporations Act 2001 (Cth) (*Re Ellume Limited (Administrators Appointed) v Evangayle Pty Ltd* [2022] FCA 1102).

Wang v Hur (Queensland Court of Appeal)

- Acted on appeal in relation to proceedings for misleading or deceptive conduct which allegedly caused the Plaintiff to acquire shares in a company for more than their real value, resulting in loss and damage.
- Appeared (led by M Condon SC) at the appeal from the decision of the District Court in *Wang v Hur* [2022] QDC 162 (Judgment reserved).

Ma v He (Queensland Supreme Court)

- Acted (led by C Heyworth-Smith QC) for a shareholder seeking declaratory relief in relation to an alleged trust over shares held by the other shareholder of the company.
- Appeared (unled) at hearing of Defendant's application for leave to amend and adjourn the trial.

Miskeljin v Morgans Financial Limited (Queensland Supreme Court)

- Acted (led by D Campbell QC) for the lead plaintiff in a class action against Morgans Financial for allegedly negligent financial advice.

HS South Brisbane Pty Ltd v United Voice (Queensland Supreme Court)

- Acted (unled) for an innocent encroaching landowner in a Supreme Court action for substantial damages allegedly caused by the encroachment.
- Appeared (unled) at the hearing of a separate question relating to the proper construction of the encroachment provisions of the *Property Law Act 1974* (Qld) (*HS South Brisbane Pty Ltd v United Voice* (2019) 2 QR 556).

LM Investment Management Limited (in liquidation) v LM Investment Management Limited (in liquidation) & Ors (Queensland Supreme Court)

- Acted (led by R Derrington QC and then J McKenna QC) for the Court appointed receiver of the LM First Mortgage Income Fund in an action seeking to unwind certain preferential redemptions and income distributions to related 'feeder funds', that were allegedly without power and in breach of trust.

- Appeared (led by J McKenna QC) at the hearing of an application for judicial advice approving a confidential settlement of the proceedings (*Bruce v LM Investment Management Ltd (in liq) & Ors* [2019] QSC 126).

Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd (Queensland Supreme Court)

- Acted (led by J McKenna QC) for three users of a coal terminal in proceedings against Adani Abbot Point Terminal Pty Ltd for unconscionable conduct, in a pre-trial disclosure dispute.
- Appeared (led by J McKenna QC) at the hearing of the application (*Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2019] QSC 240).

Davidson v Suncorp-Metway Limited (Queensland Supreme Court and Federal Court)

- Acted (led and unled) for Suncorp-Metway in various proceedings relating to enforcement action against Mr Davidson, a defaulting mortgagee.
- Appeared (unled) to oppose injunctive relief on appeal from a refusal of such relief at first instance (*Davidson & Anor v Suncorp-Metway Ltd & Ors* [2017] QCA 317).
- Appeared (led by D Clothier QC) to seek orders for possession, on the basis that the mortgagee's undue influence and duress claims did not have real prospects (*Suncorp-Metway Limited v Nagatsuma and Davidson* [2019] QSC 16), and (unled) resisting a stay of execution (*Davidson v Suncorp-Metway Ltd* [2020] QSC 315).
- Appeared (unled) at hearings of an application by Mr Davidson for preliminary disclosure (*Davidson v Suncorp-Metway Limited* [2020] FCA 795; (No 2) [2020] FCA 879; (No 3) [2020] FCA 1593; (No 4) [2021] FCA 25; (No 5) [2021] FCA 256).

Re Canford Property Group (Federal Court)

- Acted and appeared (unled) for a shareholder of a company in relation to issues arising in relation the appointment of a liquidator on the just and equitable ground (*Harris (Trustee for the Nedyah Investment Trust) v Evans, in the matter of Canford Property Group Pty Ltd* [2019] FCA 840).

Shoujaa Pty Ltd & Anor v Haboob Pty Ltd & Ors (Queensland Supreme Court)

- Acted (led by R Derrington QC and then J McKenna QC) for the trustee of the Shoujaa Trust, defending an action by the primary beneficiary for his removal as trustee and appointor, and for a *quantum meruit* for work performed as trustee.
- Appeared (led by J McKenna QC) at pre-trial applications and at trial, prior to settlement of the matter mid-trial.

Balanced Securities Limited v Tom Lu International Trading Pty Ltd & Ors (Queensland Supreme Court)

- Acted (unled) for a lender seeking to enforce the indefeasibility of its mortgage, under a mortgage procured by the fraud of a third party against the owner of the property.

Peter Anthony Lucas as liquidator of Queensland Maintenance Services Pty Ltd & Anor v Frank Gerard Zullo & Ors (Queensland Supreme Court)

- Acted (led by R Derrington QC and then T Sullivan QC) for the liquidator of Queensland Maintenance Services Pty Ltd, claiming more than \$19 million in relation to alleged unfair preferences and uncommercial related party transactions.

Davis v Cuthbert (Magistrates Court of Queensland)

- Acted and appeared (unled) for the defendant in a 3-day civil trial resisting a claim for damages in detinue and conversion of certain antique motor cars.



Krasnoff v Krasnoff (District Court of Queensland)

- Acted (unled) for the applicant in a dispute over the proceeds of sale following the realisation of jointly owned property by a trustee for sale under the *Property Law Act 1974* (Qld).
- Appeared (unled) at hearing of separate question of the correct interpretation of the order for appointment of trustee as to the accounting for the proceeds (*Krasnoff v Krasnoff* [2017] QDC 100).

ASIC v Anthony Bishop (ASIC Delegate hearing)

- Acted and appeared (unled) for a financial adviser resisting a banning order under section 920A(1) of the *Corporations Act 2001* (Cth) by a Delegate of the Australian Securities and Investments Commission.

Stacks Managed Investments Limited v Tolteca (Queensland Supreme Court)

- Acted (led by D O'Sullivan QC) for the plaintiff bank seeking possession and defending an action for unconscionable conduct by the defaulting mortgagee.
- Appeared (led by D O'Sullivan QC) at various pre-trial applications and at trial (*Stacks Managed Investments Limited v Tolteca* [2015] QSC 80; [2015] QSC 234; [2015] QSC 276).
- Appeared (unled) at application for security for costs of the appeal (*Stacks Managed Investments Limited v Tolteca Pty Ltd* [2016] QCA 64).

Gordon Corporation Pty Ltd & Anor v Helensvale Property Development Pty Ltd & Ors (Queensland Supreme Court)

- Acted (led by R Derrington QC and then G Gibson QC) for the plaintiff developer in a dispute with another property developer, in which the plaintiff sought a declaration that certain property was held on constructive trust under the equity in *Pallant v Morgan*, or under a joint venture fiduciary relationship.

Flour Australia Pty Ltd v Herbert Smith Freehills (Queensland Supreme Court)

- Acted and appeared (led by J McKenna QC) for Herbert Smith Freehills defending an application that it be enjoined from acting in a dispute with Santos Limited due to it having previously acted for Flour Australia Pty Ltd (Settled after hearing).

TEACHING

- Bar Practice Course: Pleadings (2018 and 2019); marking Advice 1 assignment (2021, 2022 and 2023).
- University of Queensland: Civil Procedure (2016, 2018 to 2021), Interpretation of Statutes and Instruments (UQ LLM programme, 2021), Civil Litigation (UQ LLM programme, 2022).
- University of New South Wales: Public Law (2014).
- Adelaide University: Constitutional Law (2008).



PUBLICATIONS

D Ananian-Cooper, *'The Liability of Third Parties for Breaches of Trust or Fiduciary Duty: A comparative look at five themes across four jurisdictions'* in Thomson Reuters, Weaver & Craigie's *The Law Relating to Banker and Customer in Australia*, vol 5 (2008, at Update 63) [25-1701].

- Cited by the Full Court of the Federal Court in *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296 at [249] (Finn, Stone and Perram JJ).
- Cited by the Victorian Court of Appeal in *Harstedt Pty Ltd v Tomanek* (2018) 55 VR 158 at [67] (fn 25) (Santamaria, McLeish and Niall JJA).

D Ananian-Cooper, *Bank Guarantees in the Balance*, Proctor (May 2015) at 22.

K E Downes QC and D Ananian-Cooper, *Back to Basics - Views and Demonstrations*, Proctor (October 2015) at 34.

