

DAVID SMALLBONE FCIArb FACICA
BARRISTER + INTERNATIONAL DISPUTES LAWYER

FREDERICK JORDAN CHAMBERS

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David Smallbone has maintained a broad commercial and equity practice for over 30 years. He is available to appear in domestic and international arbitration matters as Counsel, or to act as Arbitrator or Expert Determiner.

David is briefed to appear in factually complex, high value disputes. He is valued by his clients for his legal knowledge, commercial acumen and forensic skill across disciplines. He is an accomplished cross-examiner, with or without interpreters. David appears at first instance and on appeal in multi-party, multi-jurisdictional and cross-border disputes, often as lead Counsel, in superior State and Federal Courts throughout Australia.

Approximately one third of David's clients in Australia are citizens of the People's Republic of China and he has considerable experience assisting these clients to acclimatise to an unfamiliar legal system. He obtained the first and second defended judgments in Australia enforcing Chinese judgment debts at common law.

David's transnational practice has seen him appear overseas, in the High Court of the Solomon Islands, the Solomon Islands Court of Appeal and the High Court of Fiji. He has acted in matters involving cross-border property, investment and trade, finance, infrastructure, corporate and insolvency disputes. His international practice has extended to matters involving mainland Chinese, Hong Kong, Japanese, Korean, Russian, United States, Solomon Islands and Fijian law.

David has extensive alternative dispute resolution experience, encompassing mediations, arbitrations, stay applications, enforcement, court applications in aid of arbitrations, construction adjudications and expert determination. He also has acted variously in an impartial capacity or as Counsel in domestic tribunals.

David is a Fellow of the Chartered Institute of Arbitrators (FCIArb) and a Fellow of the Australian Centre for International Commercial Arbitration (FACICA). He assists in the professional development of legal practitioners and law students as pupil master in practical legal training, and has acted as moot arbitrator at the 16th, 17th, 18th and 19th Vis East & Virtual Vis East moots.

ADMISSIONS TO PRACTICE

1990 Admitted to New South Wales Bar, Australia
1988 Admitted as a Solicitor of the Supreme Court of New South Wales

PROFESSIONAL QUALIFICATIONS

2022 Fellow, Australian Institute of International Commercial Arbitration (FACICA)
2017 Fellow, Chartered Institute of Arbitrators (FCIArb)
2016 CIArb Asia Pacific Diploma in International Arbitration
1988 Bachelor of Arts & Laws: Macquarie University

AREAS OF PRACTICE

- Contractual and Commercial Disputes
- Trade Practices
- Corporations Law and Partnerships
- Insolvency
- Equity, Trusts and Estates
- Private International Law & Foreign Judgments
- Arbitration & Mediation (Domestic and International)
- Real Property, Sale of Land and Lease Disputes
- Finance, Investment and Trade
- Infrastructure, Building and Construction

PROFESSIONAL EXPERIENCE

1990 – present Barrister, Frederick Jordan Chambers, Sydney, Australia

1989 Associate to Deputy President BJ McMahon, Administrative Appeals Tribunal

PROFESSIONAL MEMBERSHIPS AND APPOINTMENTS

- Fellow, Chartered Institute of Arbitrators (FCIArb)
- Fellow, Australian Centre for International Commercial Arbitration (FACICA)
- Member, International Council for Commercial Arbitration (ICCA)
- Mediator, Qianhai International Commercial Mediation Centre
- Member, Energy and Resources Law Association
- Bar Councillor, New South Wales Bar Association (2011 – 2012)
- Member, New South Wales Bar Association
- Member, Asian Australian Lawyers Association
- Member, Hong Kong Australia Business Association

INTERNATIONAL AND DOMESTIC SPEAKING ENGAGEMENTS & PAPERS

- *Consumer Protection in Australia – Forum Selection Clauses in Cross-Border Consumer Contracts in Australia* – Virtual presentation to Linli Law, Beijing (March 2022)
- *In Dispute? Recent Cases on Dispute Resolution Agreements from the NSW Court of Appeal* – Asian Australian Lawyers Association (March 2022)
- *Scope and Application of Dispute Resolution Agreements:- Four Recent Cases in the NSW Court of Appeal* – The ACICA Review (December 2021)
- *Mehmet v Carter – Investment Hazard, Objections to Title and Protected Indigenous Objects in Land* - with Ronny Chen (2020)
- *Force Majeure & Doctrine of Frustration – A Practical Outlook Amid Covid-19* - with Kevin Cheng (April 2020)
- *Arbitration in Hong Kong* – for the Hong Kong Australia Business Association at the Art Gallery of New South Wales (August 2019)
- *Enforcing Chinese Judgments in Australia: Requirements and Difficulties* – In-person presentation at Global Law Office in Shenzhen (April 2019)
- *Enforcing Chinese Judgments in Australia: Financial Cases* – in Beijing during China Arbitration Week, at the China Forum on Financial and Investment Disputes in association with Zhong Lun Law Firm (September 2018)
- *What is Just and Equitable?* (2018)
- *Caveats: Essential Step or Tactical Weapon* (2015, updated 2017)

SELECTION OF CASES

ALTERNATIVE DISPUTE RESOLUTION & RELATED LITIGATION

▪ International Arbitration

- Counsel for a world-wide franchisor terminating US Master franchise in arbitration and related Court applications.
- Advised on a “pathological” dispute clause providing for institutional arbitration in two different countries – whether clause conferred an election as to forum or was ineffective.
- Advised an overseas public utility on most expeditious procedure under ICC rules for early or interim determination of an urgent matter.
- Counsel for Award debtor’s subsidiary in enforcement dispute in the Supreme Court: *ML Ubase v. Trigem Computer Inc* (2007) 69 NSWLR 577.
- Enforcement of freezing order under Model Law Art. 17H.

▪ Domestic Arbitration

- Counsel in building dispute that was ultimately resolved by way of arbitration.
- Appeared as Counsel to apply for a stay of Supreme Court proceedings and referral of shareholders’ dispute to arbitration.

▪ Expert Determination

- Lessee’s Counsel in site remediation dispute between a national carpark operator and its landlord.
- Advice on expert determination clause with short limitation period in construction matter.

▪ Construction Adjudication

- Developer’s Counsel in a series of adjudications between a developer of industrial units and a concreter – and in related Court proceedings concerning termination of the contract and a Caveat over the building site.

▪ Domestic Tribunals

- Counsel for a candidate in a pre-selection dispute in the Disputes Panel of a major Australian political party.
- Acted (pro bono) as independent Experienced Lawyer under Church Discipline Ordinance of the Anglican Church Diocese of Sydney assessing disciplinary cases.

COURTS OF THE PACIFIC

High Court of the Solomon Islands; Solomon Islands Court of Appeal

- *Austree Enterprises Pty Ltd & Ors v Guo & Ors* – Corporations – Specific performance – Shareholders' agreement – Restitution – Private international law – Chinese law (led B Buckland, opposed to J Sullivan QC with Jason Ward).

High Court of Fiji

- *Lodhias Ltd v Mainland Products Ltd & Ors* – Trademarks and distribution agreement dispute regarding milk powder.

AUSTRALIAN COURTS (Selection of Recent Cases)

- Lead counsel in current actions in the Supreme Court of NSW to enforce Hong Kong judgments in Australia and to avoid dispositions by debtors to family members in fraud of creditors.
- Sole counsel in current multi-party actions by investor against promoters of two property developments in NSW.
- *In the matter of Caernarvon Canabolas Pty Ltd (In Liq.)* [2022] NSWSC 382 – successful appeal by a shareholder against a liquidator's determination to admit a disputed debt.
- *Karadag v Samkara Holdings Pty Ltd* [2022] NSWSC 380 – Proceedings stayed under the *Commercial Arbitration Act* and inherent power and the matter was referred to arbitration.
- *Lee v Lee* [2022] NSWSC 181 – Client validly terminated contract for sale of land for breach of essential term, though not ready and willing to perform.
- *Wu v Yin* – Obtained summary judgment in the Victorian Supreme Court for a Chinese creditor in this cross border common law debt action on a Chinese judgment from the Ningbo People's Court. Subsequently successfully defended an appeal against this judgment in *Wu v Yin* [\[2022\] VSC 729](#).
- *Suzhou Haishun Investment Management Co Ltd v Zhao* [\[2019\] VSC 110](#) – Obtained summary judgment for Chinese corporation in common law action on Chinese judgment debt in the Suzhou People's Court. This was the first time in a defended application that an Australian Court has enforced a Chinese judgment. Appeared in related applications to obtain freezing orders.
- *CEG Direct Securities Pty Ltd v. Wang & Ors* [\[2021\] NSWCA 76](#) – Appeared for respondent mortgagors to maintain dismissal of mortgagee's action for possession based on registered mortgages executed under forged powers of attorney.
- *Hillsea Pty Ltd v Joseph; McIvor v Joseph* [\[2020\] NSWCA 55](#); *In the matter of Hillsea Pty Limited* [\[2019\] NSWSC 1152](#); [\[2019\] NSWSC 1309](#) – Wound up a family company at the end of its commercial life, on the just and equitable, oppression and suspension of business grounds. Obtained relief under s.1322 of the *Corporations Act 2001* (Cth) protecting sole director against irregularities. Orders upheld on appeal.

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- ***Stojic v Stojic*** [\[2018\] NSWCA 28](#) – see also *Stojic v. Stojic* [2018] NSWSC 723; *Stojic v. Stojic* [2018] NSWSC 1268; *In the matter of Statewide Office Furniture Pty Ltd* [2018] NSWSC 1393; *Stojic v Stojic* [2019] NSWSC 23 – This complex matter required expertise across several disciplines including probate, corporate insolvency, matrimonial, equity, contempt and restitution.
 - ***Broadway Plaza Investments v Broadway Plaza Pty Ltd; In the matter of Combined Projects (Arncliffe) Pty Ltd*** [\[2020\] NSWSC 1778](#) – This was a six-week, multi-party trial before the Chief Judge in Equity. It was a high value dispute concerning agency, bribery, unauthorised payments exceeding AUD \$100 million under forged mandates given to the Commonwealth Bank of Australia, restitutionary claims and director’s liability claims.
 - ***Torok v Becker*** [\[2020\] NSWSC 1570](#) – A son held accountable to his mother’s estate for very extensive debits to her bank account as agent or fiduciary (manager) which he failed to explain, and on the claims of presumed or actual undue influence and unconscionable conduct. The Court passed over him for appointment as executor and held the legacy left to him in his mother’s will was adeemed by his unrepaid receipts.
 - Appeared in the Supreme Court of NSW for a Chinese franchisor to obtain an injunction restraining ex-franchisee and associated parties from publishing injurious falsehoods worldwide against franchisor trading in mainland China, Taiwan, Hong Kong, Australia and USA (led D Ratnam)
 - ***James v Wilson*** [\[2019\] NSWSC 17](#) – Appeared for a candidate in a dispute concerning pre-selection for a political party in the NSW State election (unled, opposed to S Duggan and M J Davis).
 - ***In the matter of Condor Blanco Mines Ltd*** [\[2016\] NSWSC 1196](#) – Appointment of Voluntary Administrator of Listed Company declared invalid (led J Wheeldon).