

Commercial Litigation



Protect your interests. Assert your rights.

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Lawyers

Contents

What is Commercial Litigation?	3
Example Matters We Have Handled	4
Bankruptcy, Insolvency & Reconstruction	6
Building & Construction (Disputes)	8
Corporate, Trust & Partnership Disputes	10
Debts	12
Property Disputes	14
Planning & Environmental Disputes	15
Defamation	16
Employment Law	17



What is Commercial Litigation?

So what is commercial litigation and when do you need one of our expert team who practice in this area of specialty?

You need a commercial litigation lawyer when:

your dispute:

- concerns a business, whether operated by you or somebody else;
- is over money owed by you or to you concerning any commercial arrangement;
- concerns the purchase of goods or services;
- concerns a contract such as a loan agreement, any lease, building contract, franchise agreement, insurance contract, employment contract, contract concerning property; and
- is related to a company, a trust, a partnership or any other agreement or arrangement between people:

you:

- have debts you cannot pay or are owed money by people who have not paid you;
- are being stuffed around by someone who does not do what they said they would do, or does not do what they should do;
- are being prevented from doing something you would like to; and
- are uncertain about your rights concerning any of the above.

We recommend that you get advice from us early so you can move quicker than your opponent and resolve your matter quickly. There are often strict time limits and deadlines in commercial disputes, so do not delay, especially if court proceedings have been commenced against you, or a notice such as a bankruptcy notice, statutory demand, directors penalty notice, garnishee notice, notice to remedy breach, notice of defect (or any other notice you are unfamiliar with) arrives.



Example Matters We Have Handled

Commercial litigation matters are very diverse. Matters our lawyers have handled include:

- successfully recovering debts owed or rejecting alleged debts that are not owed (see our separate debts page);
- acting in matters concerning bankruptcy, insolvency and reconstruction;
- disputes involving companies, trusts or partnerships;
- defamatory conduct;
- planning and environment disputes;
- property disputes;
- employment law;
- building and construction disputes;
- professional negligence;
- advising a champion breeder of dogs who was prevented from entering a dog show;
- negotiating favourable terms concerning transponder space on a satellite;
- acting for a franchisor against a franchisee who refused to pay franchise fees;
- obtaining an injunction preventing a foreign company broadcasting into Australia in breach of a contract;



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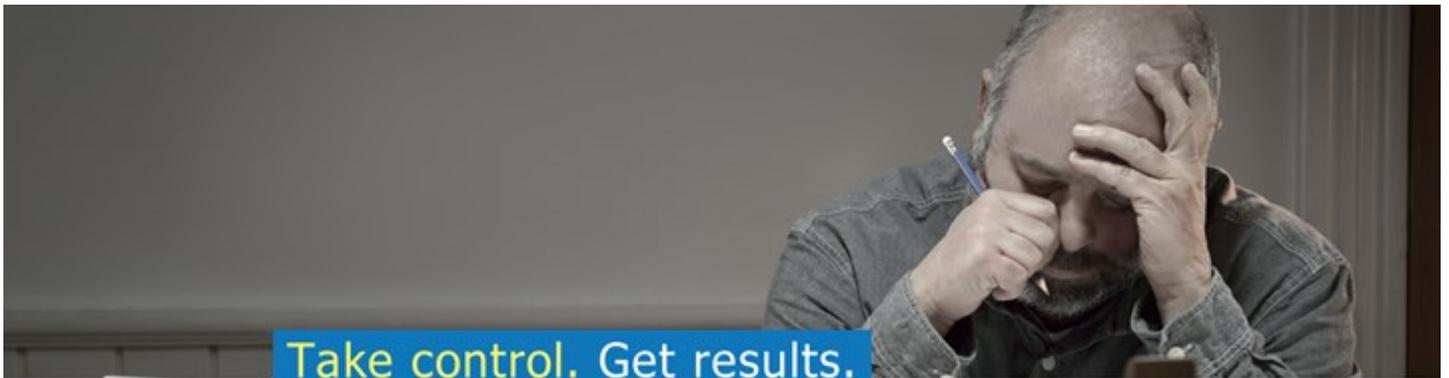
- obtaining urgent court orders freezing the bank accounts of parties where it is suspected that funds would be removed from those bank accounts and placed out of reach of our clients;
- advising the president of a peak national sporting association who had just been kicked out by the association members;
- obtaining an injunction to ensure that a foreign call centre mentioned GST inclusive prices to potential Australian clients;
- acting for lenders against people who haven't repaid loans and mortgages;
- acting for borrowers to successfully obtain substantial reductions in the amount owed to financiers, including major banks;
- acting for a property developer where an unsightly, decrepit and highly visible building was next door to one of his developments;
- advising an importer of counterfeit luxury products; and
- acting in commercial disputes against:
 - banks and financiers at all levels, including major Australian banks;
 - governments at all levels, including local, state and commonwealth;
 - insurance companies;
 - high net worth individuals; and
 - large companies of any kind, including major building companies, multinational corporations; publicly listed companies, both Australian and foreign, and superannuation funds.



Bankruptcy, Insolvency & Reconstruction

When you owe money, there are many options available to you. You can pay all your debts in full and on time, but this isn't always the smartest move. The best plan for you depends on:

- your asset position;
- the debts owed and who they are owed to;
- how your debts are structured, for example you may have companies or trusts;
- your income and expenses;
- most importantly – your plans for the future.



We regularly deal with bankruptcy, corporate insolvency including liquidation, administration and receivership and all related legal issues. When debts are pressing you sometimes need advice from insolvency professionals other than lawyers and we can connect you with the best people to help you. The network of insolvency professionals we draw upon have done it all from restructuring small businesses right up to some of the largest corporate insolvencies in Australian history.

And when people owe you money? Or if you are a bankruptcy trustee, liquidator, administrator or receiver?

You can also take advantage of our specialist insolvency knowledge!

Continued

The team and plan we will put together for you:

- takes into account your individual circumstances – we listen!
- draws on our experience – we are the experts!
- helps you achieve the best possible outcome – you win!

Matters our lawyers have handled include:

- advising people considering bankruptcy, including one individual who allegedly owed over \$40,000,000;
- assisted with the process by which bankrupts can end their bankruptcy early (called “annulment”);
- acting for a franchisee to have a provisional liquidator appointed to a franchisor who refused to pay franchise fees (or staff wages) - resulting in a suitable settlement arrangement;
- advising on statutory demands and bankruptcy notices - often resulting in arrangements which do not result in bankruptcy or liquidation;
- negotiating with the Australian Taxation Office (ATO) concerning unpaid tax debts;
- providing advice of all kinds to company administrators, liquidators and receivers;
- acting for liquidators to recover preferential payments made to certain creditors which are unfair to other creditors;
- acting for company directors against the Australian Securities and Investments commission (ASIC) - including when allegations are made concerning very large amounts of money;
- preparing deeds of company arrangements - which enable companies to keep trading with an arrangement in place with creditors; and
- acting for secured creditors to have receivers appointed and recover secured assets, including entire operating businesses.



Building & Construction (Disputes)

It is frustrating when:

- you are a builder or subcontractor and:
 - the Queensland Building and Construction Commission (QBCC) is trying to take your licence, due to circumstances beyond your control;
 - you have a multimillion dollar contract to build a commercial premises, and when prefabricated buildings turn up they are too large for the slabs you have just laid;
 - you are running a large operation with several offices and multimillion dollar turnover - but unexpectedly find yourself bankrupt;
 - you have not been paid:
 - despite doing the job perfectly;
 - which is understandable as you have done a shonky job;
- you have engaged a builder, building inspector or other contractor and:
 - the building that is built is completely different from what you ordered, leaks or falls apart;
 - once court proceedings commence against them they:
 - lose sanity and no longer come out of their house or speak; or
 - win the lotto, despite promising that you won't get a cent
 - your house has internal wall panels on the outside and looks suspiciously like Weet-Bix when it rains;
- you were once a large property developer/ builder/ contractor with millions of dollars worth of work and/or assets, but are now considering bankruptcy.



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We have dealt with such matters, have seen it all before and can help you. Matters our lawyers have handled include:

- acting for all of the recently mentioned in all courts and the Queensland Civil and Administrative Tribunal (QCAT);
- successfully resolving construction disputes through the use of mediation, informal settlement conference, negotiation, court or tribunal proceedings and formal offers according to the rules of court;
- relentlessly pursuing negligent or unscrupulous people and companies who have ripped off our clients;
- advising about the termination of building contracts, delays, disruption, and rights under construction contracts;
- advising about payment claims, payment schedules, and adjudication applications, including claims totalling approximately \$16,000,000 - which had no basis at all and were successfully rejected;
- successfully dealing with unsatisfactory adjudicators' decisions - including having such decisions stayed or overturned;
- acting in relation to the Subcontractors' Charges Act;
- acting against the QBCC (previously the QBSA);
- acting promptly to obtain a court order freezing funds in the bank account of a negligent party, enabling our client to reach a favourable settlement which involved the purchase of her unsatisfactory home by the negligent party;
- acting for subcontractors against large building companies concerning payments not received;
- acting for a contractor owed over \$5,000,000 by a large building company; and
- successfully settling a matter where the negligent builder had lost all mental capacity, the matter was listed for trial and a favourable settlement for our client was reached at mediation with a representative of the insurer.



Corporate, Trust & Partnership Disputes

Going into business with others can be like entering into a marriage, except it is often harder to get out of a business relationship. Regardless of the structure you use, such as a company or companies, a trust or trusts or through a partnership, when conflict occurs it is imperative that you get proper advice to protect your interests.

If you do not get advice, the other individuals involved may well do so and take advantage of strategies that can make your head spin and leave you wondering what the hell happened with a knife protruding from your back.

To ensure that you prevail when conflict occurs, it may be in your interest to have us:

- conduct alternative dispute resolution to attempt resolution at an early stage;
- obtain injunctions or freezing orders to protect the status quo and prevent the transfer of assets, funds, your business etc;
- correspond with other parties or their lawyers to “draw a line in the sand” and let them know that your interests are being protected;
- provide robust advice to you so that you are fully informed and can make the right decision;
- investigate the use of other professionals (administrators, receivers, liquidators, accountants, valuers and others) to assist you obtain the desired result;
- commence court proceedings against other parties to protect your rights; and
- devise a unique strategy for you which takes into account your situation and objectives.

For obvious reasons, we don't want to say too much about this here, but we urge you to contact us as soon as possible. Because if you don't, the person that is giving you grief at board meetings or partner meetings probably is. Your future and that of your business is too important to leave to chance!



Continued

Matters our lawyers have handled include:

- a dispute between company directors where administrators were appointed and the business later sold to another entity;
- matters where we have attended board or other meetings, including where everything said in the meeting is recorded and transcribed;
- our client was an equal participant in a business (or so she thought) until she discovered that she was not mentioned on the company records. A liquidator was appointed and the business sold, resulting in payment to our client which had been refused by the other director;
- matters where board meetings are held at our offices;
- a partnership dispute between professionals in Mackay;
- a dispute between shareholders where one of the shareholders had advised the Australian Securities and Investments Commission (ASIC) that the shares of the other shareholders should be transferred because “he owes me money” and without proper authorisation;
- situations where a company director refuses to return vehicles and other property owned by the company;
- our company director and shareholder client did not want to continue in the business, but no payment was offered and it was suggested that she simply resign and transfer her shares without receiving anything in return - until court proceedings were commenced;
- during a dispute our client instructed us that the business had been sold with settlement due to occur that day and the sale proceeds spirited away - which did not occur due to an injunction we obtained from the Supreme Court of Queensland on that same day;
- a dispute between property developers involving several trusts and corporate trustees as well as substantial land assets;
- matters where company records, trust deeds etc are incomplete or missing; and
- a situation where our client was uncertain about the business structures used and where investigations were required to substantiate the client’s rights and interests and a suitable strategy developed.

Debts

Collecting debts is crucial to cash flow and business sustainability. If people do not pay you for the goods and services that you provide you will soon no longer be in business, despite the size of your organisation.

It is equally as frustrating when somebody is chasing you for a debt where:

- the goods or services they provided or claim to have provided:
 - were not provided at all;
 - were not what you ordered
 - were of poor quality and had to be replaced or redone;
- you have already paid; or
- an agreement was reached concerning payment, which is not being honoured.

Incidentally, these are the very excuses that purchasers use when they do not want to pay your bill!

It is reassuring to know that our expert lawyers can assist you collect payment when it is due, and also deal with payments wrongfully demanded from you. We assist with all kinds of debts, including relatively minor debts right through to extremely large and complex debt situations involving proceedings in the Supreme Court of Queensland or Federal Court of Australia.

Thankfully, we know all the tricks and will ensure that you are properly advised and can make smart decisions. If you are involved in a situation where the payment or non-payment of a debt is a matter of life and death (so to speak) you should also see our bankruptcy, insolvency and reconstruction page which may assist you.



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Matters our lawyers have handled include:

- acting for a secured creditor who had sold a business but was continually being put off with excuses when it came to repayment - we organised the appointment of a receiver and removed the debtor from the business, allowing the creditor to take the business back;
- acting for a lender where the loan was secured by a mortgage and where repayment had stopped - when the borrower realised that she either had to repay or move out, she swiftly arranged refinance and the lender was paid in full;
- acting for a company director where one of the employees (who happened to be a relative) had mysteriously spent large sums of money on the company credit card – which stopped once she heard from us;
- acting for a franchisor against the owner of some franchises who was significantly behind in payment of franchise fees - until a receiver was appointed by the court to his company;
- acting for a landlord who had leased commercial premises where rent was significantly in arrears, and the tenants had disappeared overseas - who returned to find that their keys no longer worked and their business was gone;
- acting for a foreigner who had lent a large sum of money to a restaurant owner who refused to pay back anything at all - until winding up proceedings were commenced against his company;
- acting for a franchisee against a franchisor who demanded payment - until we pointed out that our client could never have operated the franchise, as he did not have the required licence, and never could have obtained it despite promises made to him;
- acting for a foreign lender against a local entrepreneur who had seriously breached the conditions of the loan;
- acting for a franchisor against an ex-franchisee who had done the midnight runner leaving a debt - until we obtained a court order freezing their bank account; and
- acting for the purchaser of a business who had done so using vendor finance and where the vendor had obtained a court judgement against our client for non-payment of the debt - we obtained an instalment order allowing our client to repay the debt over time and not put its numerous employees out of work.

Property Disputes

If you are involved in a dispute concerning property, the dispute is unlikely to be unimportant to you. Property disputes often involve questions of great wealth – with a loss meaning economic disaster.

You need expert guidance so you can make the right decisions and property disputes are an area where we are particularly experienced.

Our commercial litigation team regularly handles property disputes from questions concerning boundaries right up to ownership disputes where millions of dollars of property is involved.

Where specialist property knowledge or evidence is required we don't mess around. Not only do we have a specialist property law team that works with our litigators to assist you, we also have relationships with some of the best specialist property law barristers available, property valuers used to appearing in court and other expert witnesses and will put together a team that is best suited to fight for you.

Matters our lawyers have handled include:

- disputes where several millions of dollars of property are at stake;
- acting for tenants whose lease had been terminated and who had been evicted, who wished to re-establish their interests in property;
- acting for property owners who asserted that an easement had been extinguished;
- acting for property developers where land has been resumed;
- acting for property owners where land has been affected by the activities of property developers next door;
- a rural family had always agreed that the property was to be divided between the children, but when the parents passed away one of the sons sold the property and excluded his brother;

- the local council failed to require the demolition of an unsightly and dangerous structure next to our client's property;
- our client worked hard to develop a family, but when the partner passed away the deceased partner's parents refused to transfer property to our client as had always been the arrangement;
- a refurbished apartment development had just been completed and apartment owners moved in – and immediately had to collectively fork out \$1,000,000 due to leaks in the roof;
- an enforcement notice had issued against our client by the local council and the lessor threatened to evict our client who operated a business from the premises;
- disputes between family members concerning contributions to property;
- a purchaser off the plan:
 - was unable to obtain finance due to dropping property values; and another who
 - did not want to complete the purchase as the apartment was not as had been promised;
- acting for a property developer where a purchaser did not complete the sale and could not be found;
- acting for a purchaser who suffered from a multiple personality disorder and did not recall signing a contract to purchase property; and
- acting for a client where the neighbour had actually sent a bulldozer onto our client's property to remove an unwanted feature.

Planning & Environmental Disputes

Are spotted owls in your trees preventing you from developing? Have you just purchased an old petrol station and looking to build? Is there a monstrosity going up next door which you feel powerless to stop? Does your local council just not share your vision about the next Sanctuary Cove which you plan to build? Have you been fined for environmental damage... storing dangerous material illegally for years... dumping waste into your local creek?

Then you need our lawyers who are expert in planning and environmental disputes.

We have seen some shocking allegations made against our clients, including multiple counts of alleged offenses where the maximum penalties are hundreds of thousands of dollars. We work with specialist barristers, town planners, valuers and other professionals and will put together a team to fearlessly fight for you!

When:

- your plans are knocked back and not approved;
- the council just doesn't get it;
- development threatens to encroach on your rights;
- you have been accused of any type of unlawful damage to the environment

you should see us promptly to eliminate potential costs and maximise potential profits. Strict time limits apply in planning and environment matters so you may well be in a situation where time does equal money. Further, a situation that may have been resolved through negotiation may be beyond changing if you don't see us promptly.

Matters our lawyers have handled include:

- an unwanted development was being build next to our client's property with no reference to our client's wishes - until we commenced proceedings in the Planning & Environment Court on our client's behalf;
- advising clients on unexpected local council charges;
- our client's development was not approved - until experts we recommended produced evidence to enable negotiation;
- our client was charged with significant environmental damage, even though approval had been given by council;
- advising a client concerning development on contaminated lands;
- our client's neighbour breached orders made by the Planning & Environment Court;
- advising developers concerning land resumptions;
- advising on objections to development applications;
- our client stored "dangerous material" without a permit including several semi-trailers and building material;
- advising a client who required guidance about waste disposal;
- our client's application was unusually delayed; and
- a builder allegedly dumped water into the local creeks, causing damage to turtles and dolphins(!), despite the unusually heavy rain falling from the sky and despite complying with all requirements concerning drainage.



Defamation

When people say or write lies about you, or as we see more commonly these days, publish lies about you on the internet, substantial damage can be caused. So what do you do to fight back?

You should:

- keep detailed records of what happened, when, where and who was responsible;
- keep any newspaper articles, printouts of webpages or recordings of radio interviews et cetera - we use media monitoring services and can most likely obtain copies of material published in the media, but you should act quickly to collect all the evidence you can before it disappears; and
- come and see us as soon as possible, as there are technical rules about defamation in Queensland that you need to consider before going further.

We have heard it all, including lies about attempted murder, sexual offences, sexual orientation, sexual infidelity, sexual liaisons of all kinds, beatings that never occurred, workplace incompetence, financial mismanagement or weakness, theft, assault, abuse of public office, (all imaginary of course) and the list goes on.

Shutting these people down can be as simple as us writing a letter on your behalf, but when you need to commence proceedings in court our lawyers are ready to spring into action. In addition, we work with barristers who are highly experienced in this area so you can be assured that we will fight ferociously to protect your rights.

Matters our lawyers have handled include:

- acting for clients (yes, unfortunately on more than one occasion in totally unrelated incidents) about whom allegations of paedophilia had been made;
- nasty rumours of workplace incompetence, designed to result in the sacking or demotion of the target;
- corruption allegations against government officials, including a police officer and a mayor in South-East Queensland;
- allegations in the media concerning the financial viability of businesses;
- a matter where a person allegedly lied about the negligent discharge of a machine gun while in a combat zone;
- a matter where a person was allegedly told that they treat their wife like a slave;
- allegations of corruption between a police officer and a person involved in the exotic entertainment industry;
- acting for a television personality concerning lies told about them resulting in death threats made to them and their family;
- acting for a guru who allegedly ran a cult operation;
- advising a person concerning allegations about murdering friendly forces under enemy fire;
- matters involving allegations of sexual misconduct in the workplace;
- advising the owner of a hotel about allegations that insufficient security and staff practices allowed drunks to wreak havoc upon the town;
- allegations concerning suicide;
- allegations that a business with multimillion dollar turnover was insolvent and unable to pay its debts; and
- allegations of professional incompetence against an accountant.

Employment Law

As a party to an employment contract you have a deal with your employer or your employees governing how the relationship is intended to proceed. Specific legislation governs your relationship and what options are available to you if the relationship isn't going as planned or ends for any reason.

Situations we have seen include:

- I arrived at work and the boss has disappeared - along with my wages and superannuation entitlements;
- I arrived at work and was assaulted;
- I suffered serious permanent injuries at work;
- I called in sick and was sacked;
- I was sacked;
- my employee has been stealing from me;
- I have been stealing from my employer;
- I have seriously defrauded my employer over a long period of time;
- myself and hundreds of my fellow employees are being systemically ripped off by our corrupt employer;
- I have been accused of sexually assaulting my employer/ employee/ work colleagues;
- I have been underpaid;
- I have been accused of underpaying my staff;
- my employer is suing me;
- I am suing my employer or former employer;
- I am suing my employee or former employee;
- I am self employed – who can I sue?
- I owe my former employer millions of dollars in legal costs;
- my employees have left me and set up in competition; and
- my employees are fictitious and do not really exist. Should I be concerned?

In summary, we have seen it all. Our lawyers can assist you no matter who you are and what your situation is. You need to see us promptly so that:

- if the relationship is still going - you can call the shots; and
- if the relationship has ended - you can get the best deal possible.

Matters our lawyers have handled include:

- advising an employee whose assets had been frozen by a Supreme Court order obtained by the employer;
- advising a group of non-union employees employed by a very large corporation;
- acting for the CEO of an organisation with several billions of dollars under management in a dispute with the board of directors;
- advising employees about anti-competition clauses in their contracts;
- advising on a contract between a top private school and a prospective new school principal;
- acting for the store manager of a leading Australian retailer who had been told not to come back to work;
- acting for a senior employee of a major Australian bank who was being pressured to resign;
- acting for an employee who was in a dispute about hundreds of thousands of dollars which the employee had paid themselves pursuant to an employment contract;
- acting for a board of directors where an employee had paid themselves a large amount of money that the employee was not entitled to;
- acting for clients who have been underpaid by their employer;
- drafting employment contracts for employers;
- acting where discrimination is alleged to have occurred; and
- advising employers and employees about all aspects of the work relationship.



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