

GREENS LIST

BARRISTERS



SAM PRENDERGAST

BAR ROLL: 2015 | ADMITTED: 2006

PHONE: +61 3 9225 6486

MOBILE: 0409 210 987

EMAIL: sam.prendergast@vicbar.com.au

Owen Dixon Chambers West, Room 0409, 525 Lonsdale Street, Melbourne VIC 3000

EXPERTISE

[Banking & Finance](#) | [Bankruptcy Law & Insolvency Law](#) | [Building Law & Construction Law](#) | [Commercial Law](#) | [Competition Law & Consumer Law](#) | [Corporations Law & Securities Law](#) | [Intellectual Property](#) | [Property Law](#) | [Public Law & Administrative Law](#)

PROFILE

Sam has more than 18 years' experience in commercial litigation. He accepts briefs in a broad range of commercial matters and has extensive expertise in disputes relating to complex commercial transactions, technology, financial services, corporations, commercial property and insolvency. He appears in all Federal and Victorian courts, civil tribunals and commercial arbitrations.

Sam is a Nationally Accredited Mediator and is also a member of the Victorian Bar's Innovation & Technology Committee.

Sam's experience at the Bar includes:

Commercial acquisitions and complex transactions

Sam regularly appears for and advises clients in relation to disputes arising from complex commercial transactions, including share sale, acquisition, joint venture and investment agreements. Recent matters of significance include:

- Appearing at trial and subsequent appeal for Glencore and Viterra in defence of claims for alleged breach of warranties, misleading or deceptive conduct and non-disclosures in connection with the sale of an Australian malting business ([*Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 28\) \[2022\] VSC 13*](#); [*Viterra Malt Pty Ltd v Cargill Australia Limited \[2023\] VSCA 157*](#)). Sam was the lead junior counsel responsible for key aspects of his clients' defence, including with respect to loss and damage, which successfully limited the quantum of damages to less than half of what was claimed. Interlocutory applications in which Sam also appeared include:
 - Admissibility of evidence disclosing without prejudice communications pursuant to section 131(2)(g) of the Evidence Act ([*Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 14\) \[2018\] VSC 541*](#));
 - Admissibility of expert evidence to be provided by industry experts ([*Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 20\) \[2019\] VSC 44*](#));
 - Amendments to pleadings, ([*Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 18\) \[2018\] VSC 772*](#));
 - Applications for further discovery relating to recent events impacting upon loss and damage ([*Cargill Australia Ltd v Viterra Malt Pty Ltd \(No 9\) \[2018\] VSC 433*](#)).
- Appearing for the purchaser of a group of companies in the travel and hospitality industries in an arbitration against the vendor seeking \$5 million in damages for breach of various warranties in the share sale agreement, including matters relating to non-compliance with employment obligations, inaccuracies in accounts, shortfalls in tax payments, failures to disclose leasing arrangements and leakage of money from the businesses prior to completion (*Imperium Holdings Pty Ltd v P & M Coppin Pty Ltd & Ors* (2021-2022)).

Technology

Sam regularly appears for and advises clients in matters involving the use of technology, including cyber security, IT development agreements and the lawful use of artificial intelligence. He is also a member of the Victorian Bar's Innovation & Technology Committee. A selection of matters in which Sam has acted include:

- Appearing for a client in a proceeding against a real estate agent seeking to recover money paid into the account of a fraudster as a result of the fraudster obtaining access to the real estate agent's email systems. The matter settled at mediation (*White v RT Edgar Boroondara (Sales) Pty Ltd* VCC CI-23-03400).
- Appearing for the Australian Criminal Intelligence Commission in its defence of a claim by NEC Australia in the Supreme Court of Victoria for damages relating to the termination of

contract for the design and implementation of an integrated biometric system for fingerprint and facial recognition and identification. The matter involved a referral by the Court to an IT projects expert for hearings and determinations regarding the quantum of costs and expenses recoverable by NEC Australia and settled following delivery of the special referee's report (led by Suresh Senathirajah KC) (*NEC Australia Pty Ltd v Commonwealth of Australia* VSC S ECI 2019 03263).

Banking/Financial Services

Sam regularly appears for and advises clients in relation to banking and financial services disputes, including compliance with financial services obligations and the enforcement of guarantees and mortgages. A selection of matters in which Sam has acted include:

- Appearing in an application to set aside default judgment for possession of mortgaged properties based on defences relating to unconscionable conduct, unjust terms (pursuant to the Contracts Review Act 1980 (NSW)) and duplicity of a broker (*Prime Capital Securities Pty Ltd v El Hawli* VCC CI-23-02386, judgment reserved);
- Appearing at trial for a guarantor and mortgagor of a business loan in seeking to have the transaction set aside or declared unenforceable based on inadequacies in the guarantee, unconscionable conduct and related claims against the lender and principal debtor. The matter settled near the conclusion of trial (*Bowling v De Silva* VCC CI-19-03184).
- Appearing for an investor in the Great Southern managed investment schemes in his defence of class action enforcement proceedings, including a successful application for orders that he be removed from the group proceeding (and therefore not bound by the settlement) under section 33KA of the Supreme Court Act ([*Murray v Great Southern Managers Aust Ltd \(an Application by Garry James Parker\)* \[2018\] VSC 416](#)). This was the first instance where a group member had successfully been removed from a group proceeding under that section.
- Advising a financial services group of companies in relation to various regulatory issues arising under the Corporations Act and the group's Australian Financial Services Licences relating to fees charged for foreign exchange services.
- Appearing at trial in a successful claim by an assignee of a debt who was permitted to rely upon email communications as effective assignment under the Electronic Transactions (Victoria) Act 2000 notwithstanding section 134 of the Property Law Act 1958 (*Credit Corp Services Pty Limited v Hammet*).

Corporations/Insolvency

Sam regularly appears in the Corporations Lists of the Supreme and Federal Courts including with respect to oppression claims, shareholder derivative claims, winding up applications, applications to set aside statutory demands, public examinations and company reinstatement. A selection of matters in which Sam has acted include:

- Appearing for a landlord in its successful opposition to an application by administrators to

extend the period of time under s 443B of the Corporations Act for which the administrators would not be personally liable for rental during continued occupation of premises ([*Hardy, in the matter of Greencare Developments Pty Ltd \(Administrators Appointed\)* \[2024\] FCA 44](#)).

- Appearing in a proceeding commenced by a shareholder and former director of a composite timber importing company for claims of oppressive conduct and breaches of directors' duties relating to his exclusion from the business (*Kidd v Kwek & Ors* VID 321 of 2021, ongoing).
- Applications for injunctive relief and declarations in relation to the validity of meeting notices and special resolutions under sections 249F and 252D of the Corporations Act ([*Aveo Group Limited v State Street Australia Ltd in its capacity as custodian for the Retail Employees Superannuation Pty Limited as trustee of the Retail Employees Superannuation Trust* \[2015\] FCA 1019](#)).
- Appearing in a successful application for leave to commence derivative proceeding (*Kidd v Kwek & Ors* VID 321 of 2021).
- Appearing in a successful applications to set aside statutory demands (*Siamidis Properties Pty Ltd v Tru Blu Collection Services Pty Ltd* VSC S CI 2015 02467, *Kevlah Pty Ltd v Debono Bros Concrete & Constructions* [2016] VSC 511).

Commercial property

Sam regularly appears for and advises clients in relation to disputes involving commercial property, including commercial and retail leases, property sales and development agreements. Recent matters include:

- Appearing in a successful application, and subsequent appeal, for orders granting preliminary discovery of documents relating to potential claims arising in respect of development agreements ([*Hexin Pty Ltd v Fei* \[2023\] VSC 476](#)).
- Advising in relation to rights with respect to challenging rental determinations pursuant to s 37 of the Retail Leases Act 2003 (2023).
- Advising in relation to enforceability of a retail lease, validity of assignment and responsibility for damage and make good obligations (2023).

Other commercial disputes

A selection of other commercial disputes in which Sam has acted included:

- Appearing for clients in numerous Court and VCAT proceedings in matters relating to building and construction disputes (e.g. [*Y40 Steelfixing Pty Ltd v Solidrok Constructions Pty Ltd* \[2023\] VCAT 697](#)).
- Acting for Clark Rubber in a claim against a supplier for indemnity in the County Court of Victoria in relation to losses suffered as a result of the recall of the supply and subsequent recall of non-compliant product. The matter settled at mediation (*Clark Rubber Franchising Pty Ltd v Hunter Products Pty Ltd* VCC CI-19-05508).

- Advising Swisse Wellness in relation to a claim and subsequent settlement of a dispute with a lessor of merchandising equipment, involving issues relating to implied duties to co-operate, liquidated damages and penalties.
- Advising in relation to a potential application for judicial review of a decision by the City of Melbourne with respect to the allocation of berths to vessels in the Docklands.

Other experience

Before coming to the Bar, was a Senior Associate in the Commercial Litigation team at Norton Rose Fulbright.

Sam's work as a solicitor included acting in a broad range of disputes involving general commercial litigation, corporations law, insolvency, financial services, franchising, competition, trade practices, product liability and real estate. He also acted in applications for court approval of corporate schemes of arrangement and also acted in numerous regulatory investigations, enforcement proceedings and administrative appeals involving government agencies such as ASIC, ACCC, ACMA, the ATO, the Tertiary Education Quality and Standards Agency (TEQSA) and Energy Safe Victoria.

Sam was also a member of Norton Rose Fulbright's Business Ethics and Anti-Corruption team, advising clients in relation to a range of domestic and international compliance issues including directors' duties, managed investment schemes, market manipulation, trade sanctions and bribery.

He has published articles and presented seminars on a variety of subjects including bribery offences, trade sanctions, contracts, privilege and commercial damages.

Sam holds a Bachelor of Laws (with Honours) and a Bachelor of Science (Biomedical) from Monash University.

To get in touch with Sam Prendergast | or for more information please contact the

Clerk on: +61 3 9225 7222 or clerkb@greenslist.com.au