

Tim Kentish

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Experience

Barrister, Murray Chambers, Adelaide, 2020
Principal, Lipman Karas, Hong Kong, 2009 to 2020
Senior Associate / Principal, Lipman Karas, Adelaide, 2005-2009
Associate / Senior Associate, Kelly & Co, Adelaide, 2001-2005

Admissions

Solicitor of the High Court of Hong Kong, 2009
Barrister and Solicitor of the Supreme Court of South Australia, 2001

Education

LLB (Hons), University of Adelaide, 2000
B.Com, University of Adelaide, 1998

Experience as Advocate

Reported decisions as sole counsel:

Re Company A [2015] HKCFI 1823 – whether entry into a funding agreement by Liquidators was contrary to the prohibition of maintenance and champerty.

Re The Grande Holdings Limited [2015] 1 HKLRD 743 – whether a claim by foreign lawyers was a liquidated debt for the purpose of voting at a meeting of creditors.

Golden Brothers, Inc v. Medicare Asia Ltd [2016] HKCFI 1707 – email fraud case, application for a Mareva injunction and Bankers' Books order to trace stolen funds.

Borrelli v Chan [2017] HKCFI 845 (CFI); [2018] 2 HKLRD 496 (CA) – application to set aside leave to commence contempt proceedings, whether leave could be granted to amend to rectify the errors, or whether leave should be set aside.

Cypress House Capital Ltd v. Hua Han Health Industry Holdings Ltd [2019] HKCFI 1826 (CFI); [2019] HKCFI 2032 (CFI leave to appeal); [2019] 4 HKLRD 286 (CA leave application) – contested application by a contributory for appointment of provisional liquidators to a HK listed company the subject of allegations of serious fraud and financial manipulations.

Pacific Andes Enterprises (BVI) Ltd (In Liquidation) v. HSBC [2019] HKCA 1039 – application for leave to appeal against order staying a Norwich Pharmacal order.

Reported decisions as junior counsel:

Hewitt v ATP Tour Inc [2004] SASC 286 – led by Andrew Harris QC and Sam Doyle – successfully resisting application to strike out proceedings brought by Lleyton Hewitt alleging breach of contract and defamation by the ATP.

Hing Yip Holdings (Hong Kong) Limited v Cellmark China Ltd [2018] HKCFI 1653 – led by Charles Manzoni SC – application for security for costs.

Moulin Global Eyecare Holdings Ltd (in liq) v Olivia Lee [2019] 3 HKLRD 833 – led by Charles Manzoni SC – trial in absence of defendant of a claim for breach of fiduciary duty by a former director and solicitor to the company.

Re Mark Taylor Simpson QC [2019] HKCFI 2689 – led by Jason Karas – whether foreign counsel could be admitted on an ad hoc basis to lead solicitor advocates at trial.

Selected Major Litigation Projects (Australia)

Adelaide Brighton Cement Limited v Hallett (2020 –)

Junior counsel (led by Brendon Roberts QC) representing Hallett and other defendants in proceedings in the Supreme Court of South Australia in relation to issues arising from long term cement supply agreements. Issues in the proceedings include matters of contract and competition law.

Australian Agricultural Company v AMP Life Limited (2005 – 2007)

Acted for AACo in proceedings against AMP Life Ltd in relation to the sale of the Stanbroke Pastoral Company, alleging breach of contract and misleading and deceptive conduct by AMP in the conduct of the sale tender process. The matter settled through mediation shortly after the commencement of trial.

Gartner v Ernst & Young (2003-2004)

Acted for EY in defence of proceedings brought by the Gartner family alleging negligent financial advice, arising from the failure of a winery. The matter settled through mediation shortly before the commencement of trial.

Catto v Hampton Australia Ltd (2003-2004)

Acted for subsidiary of Normandy Mining in successfully defending proceedings brought by Mr Catto alleging improper purpose and abuse of process in the winding up of Hampton Australia Limited. Reported as (2004) 89 SASR 234.

Selected Major Litigation Projects (Hong Kong)

China Forestry Holdings Co. Ltd (2016-2020)

I led a team in the investigation and pursuit of claims against former directors and auditors arising from the liquidation of China Forest acting on instructions from its liquidators. China Forest purported to be a major forestry company in China. China Forest raised approximately US\$600 million in debt and equity in 2009 and 2010 and collapsed with no material realisable assets in 2015. Proceedings were ongoing on my departure from LK.

Sino Forest Corporation (2015-2020)

Sino Forest was a company listed on the Toronto Stock Exchange that purported to own significant tracts of forestry land in China. Sino Forest raised in excess of US\$2.5 billion in debt and equity before its collapse. Following the publication of a short-seller report in 2011, Sino Forest was exposed as a fraud. Following a restructuring of Sino Forest, its claims were transferred to a litigation trust and I led the team at LK acting for the trustees in substantial recovery proceedings. Proceedings in Canada against the former Chairman of Sino Forest, Alan Chan, resulted in a judgment against Mr Chan of over US\$1 billion (see Borrelli v Chan 2018 ONSC 1429, 2019 ONCA 525). Other proceedings against former valuers and auditors to SFC were ongoing on my departure from LK.

Ocean Grand Holdings Limited (2010-2020)

Ocean Grand was a HKEx listed company that engaged in the manufacture of aluminum extrusion products and chemicals trading. The Ocean Grand group collapsed in 2006 and its former Chairman was subsequently prosecuted and sentenced to 7 years imprisonment for false accounting. I acted in proceedings by a subsidiary of Ocean Grand, Hing Yip, against two former purported suppliers of aluminum to a subsidiary of the group alleging knowing receipt and dishonest assistance. The suppliers engaged in circular transactions with Ocean Grand involving the sale and repurchase of aluminum, which facilitated the extraction of millions of dollars from the Ocean Grand group's trade finance facilities, and to the benefit of the former chairman. The proceedings were ongoing on my departure from LK.

Moulin Global Eyecare Holdings Ltd (2010-2019)

Moulin collapsed in 2005 and was exposed as a fraud, with management having falsely inflated sales and engaged in trade finance fraud. Ms Lee was a non-executive director and legal advisor to Moulin. The proceedings alleged that she breached her duties to Moulin by failing to respond appropriately (or at all) to various indicia of fraud that she became aware of.

I acted for the liquidators of Moulin in relation to proceedings brought against a former non-executive director, Olivia Lee. The proceedings were vigorously defended and included interlocutory litigation to the Court of Final Appeal in relation to whether amendments to the Statement of Claim were time barred and pleaded a viable cause of action (see: [2012] 4 HKLRD 263 (CFI); [2012] 1 HKLRD 744 (CA); [2014] 17 HKCFAR 466). I worked closely

with counsel on submissions for all hearings, including assisting overseas leading counsel (Robin Dicker QC) in the drafting of the written submissions for the CFA. The CFA decision is the leading authority in Hong Kong for the effect of filing a writ for limitation purposes, and also addresses the nature of a directors' fiduciary obligations. In late 2016, Ms Lee abandoned her defence of the proceedings. The matter proceeded to trial in late 2018 in Ms Lee's absence. I acted as junior counsel at trial, led by Charles Manzoni SC ([2019] 3 HKLRD 833).

I also acted in relation to judicial review proceedings brought against the Inland Revenue Department to seek to recover tax that was paid on falsified profits. The proceedings were litigated to the Court of Final Appeal (see: [2011] 3 HKLRD 216 (CFI); [2012] 2 HKLRD 911 (CA); [2014] 17 HKCFAR 218). I worked closely with counsel on submissions for all hearings, including assisting overseas leading counsel (Robin Dicker QC) in the drafting of the written submissions for the CFA. The CFA decision is the leading authority in Hong Kong on the question of attribution of the acts and/or knowledge of individuals to a company.

Mingyuan Medicare (2018-2019)

I acted for Deloitte in defending audit negligence proceedings brought by Mingyuan, a HK listed company with operations in mainland China. Under the control of new management, Mingyuan alleged that former management had engaged in a series of frauds to misappropriate assets of the business, and that Deloitte had acted negligently in failing to identify those frauds and warn the board accordingly. I was responsible for developing and executing the strategy for the defence of the proceedings and leading the defence team. The claim was settled on favourable terms shortly before hearing of an application to strike out the majority of the claim on the basis that it was time barred.

3D Gold Jewellery Holdings Ltd (2011-2017)

3D Gold was a listed Hong Kong jewellery retailer and wholesaler that collapsed in 2008. I acted for the liquidators (Deloitte) in audit negligence proceedings against PwC. Management had created substantial false sales and assets to cover up what was in reality a loss-making enterprise. In addition to settling all pleadings and evidence filed, I instructed counsel and drafted skeleton arguments on interlocutory applications in relation to (a) the service of the writ ([2014] 4 HKC 528); and (b) an application to strike out the reply ([2016] HKCFI 855). The matter settled prior to trial.

Sunlink International Holdings Limited (2016-2017)

I acted for Deloitte in defending audit negligence proceedings brought by the liquidators of Sunlink (EY). I instructed counsel and prepared the skeleton arguments in relation to applications (a) for access to all evidence filed in support of ex-parte applications to extend the validity of the writ ([2016] 3 HKLRD 827); and (b) for further discovery in relation to the writ extension applications ([2017] HKCFI 172). The proceedings settled before argument of an application to set aside the writ extensions.