

Nicholas J Phillipott

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PROFILE

Nicholas practices in all aspects of Building and Construction litigation, including regularly advising and appearing in domestic building disputes, commercial construction litigation, construction arbitrations, *Building and Construction Industry Security of Payment Act* matters, professional negligence claims, insurance claims and litigation, Building Appeals Board matters, *Water Act* claims and building practitioner regulatory matters. In addition, Nicholas has an established practice in Owners Corporation litigation and general commercial litigation.

RELEVANT CASES

Selected reported decisions include:

Commercial Construction Disputes

Oberin v Brandrick & Anor – [2022] VCC 1829

Nicholas appeared for the Second Defendant on an application by the First Defendant to determine the application of Part IV and Part IVA of the *Wrongs Act* 1958 (led by Mr R. Andrew).

Building and Construction Industry Security of Payment Act Matters

Radman v Open Plan Pty Ltd and Anor - [2020] VSC 318

Nicholas appeared for the First Defendant in a Judicial Review Application of an Adjudication Determination under the Act, including making submissions with respect to the issuing of a Appeal Costs Certificate in the proceeding.

Citi-Con (VIC) Pty Ltd v Trojan Build Pty Ltd and Anor - [2020] VSC 557

Nicholas appeared for the First Defendant in a Judicial Review Application of an Adjudication Determination under the Act.

MKA Bowen Investments Pty Ltd v Carelli Constructions Pty Ltd & Anor - [2019] VSC 436

Nicholas appeared for the First Defendant in a Judicial Review Application of an Adjudication Determination concerning the question of the validity of premature Payment Claims.

John Beever (Aust) Pty Ltd v Paper Australia Pty Ltd - [2019] VSC 126 and [2019] VSC 575

Nicholas appeared (led by Mr J.A.F. Twigg QC) for the Plaintiff in an application for judgment under s.16(2) of the Act, with subsequent written submissions on the applicability of s.12 of the Act.

Valeo Construction Pty Ltd v Pentas Property Investments Pty Ltd - [2018] VSC 243

Nicholas appeared (led by Mr M.A. Robins QC) for the Defendant in an application under s.16(2) of the Act, concerning the question of the withdrawal of a Payment Claim.

Ian Street Developer Pty Ltd v Arrow International Pty Ltd & Anor - (2018) 54 VR 721 and [2018] VSCA 294

Nicholas appeared for the Plaintiff in a Judicial Review Application of an Adjudication Determination under the Act concerning the question of an adjudicator's obligations and jurisdictional error. Nicholas also appeared at the subsequent appeal (led by Mr R. Andrew).

Domestic Building Disputes

Owners Corporation 1 Plan No. PS707553K & Ors v Shangri-La Construction Pty Ltd & Ors – [2022] VCAT 400, [2022] VCAT 451, [2022] VCAT 1351, [2022] VCAT 1385 and [2023] VCC 222

Nicholas appeared for the Applicants in a series of interlocutory applications in a domestic building dispute which covered questions of combustible cladding, s.77 of the *Victorian Civil and Administrative Tribunal Act* 1998 and defences under Part IVAA of the *Wrongs Act* 1958.

Upton & Anor v Hartman Construction & Development Pty Ltd - [2022] VCAT 224

Nicholas appeared for the Applicants at trial in a domestic building dispute, involving questions of defective works and defences under Part IVAA of the *Wrongs Act* 1958.

DJJ Promotions Pty Ltd v Gianacopoulos & Anor - [2019] VCAT 177 and [2021] VSC 203

Nicholas appeared for the Respondents at trial in a domestic building dispute concerning termination of the contract and defective building works. Nicholas subsequently appeared (led by Mr R. Andrew) in the appeal of the matter to the Supreme Court of Victoria.

Owners Corporation 1 Plan No PS640567Y & Ors v Shangri-La Construction Pty Ltd - [2020] VCAT 1157

Nicholas appeared for the Applicants at an interlocutory application to join parties, considering the question of a defence under Part IVAA of the *Wrongs Act* 1958.

Owners Corporation 1 Plan No PS63800J v Equiset Construction Melbourne Pty Ltd - [2019] VCAT 671

Nicholas appeared for the Applicant at an interlocutory application to join parties, considering the question of a defence under Part IVAA of the *Wrongs Act* 1958.

McClafferty v Greg Smith Pty Ltd - [2019] VCAT 299

Nicholas appeared for the Respondent at an interlocutory application to join parties, considering the question of a 'concurrent wrongdoer' under Part IVAA of the *Wrongs Act* 1958.

Neil Fletcher Design Pty Ltd v Fullinfaw - [2018] VCAT 188, [2019] VSC 142 and [2019] VSC 173

Nicholas appeared for the Applicant at trial concerning the entitlement of a builder under s.41 of the *Domestic Building Contracts Act* 1995. Nicholas subsequently appeared at the appeal of the matter to the Supreme Court of Victoria.

Mackie Pty Ltd v Republic of Turkey - [2017] VCAT 620, [2017] VCAT 129, [2019] VSC 103, [2021] VSCA 77 and [2021] VSCA 189.

Nicholas appeared for the Respondent (led by Mr R. Andrew) at trial concerning extensions of time, variations and defective building works under an ABIC domestic contract. The trial also consisted of an interlocutory application for reconstitution of the Tribunal. Nicholas also appeared at the appeal to the Supreme Court of Victoria, and to the Court of Appeal (both again led by Mr R. Andrew).

Shao v A G Advanced Constructions Pty Ltd - [2017] VCAT 903, [2018] VSC 116, [2019] VSCA 93 and [2020] VCAT 14

Nicholas appeared for the Applicant at trial concerning termination of a contract under s.41 of the Domestic Building Contracts Act 1995. Nicholas subsequently appeared (led by Mr R. Andrew) at the appeal to the Supreme Court of Victoria and then to the Court of Appeal. Nicholas has also appeared at the remitted trial at VCAT. The matter is currently on further appeal to the Supreme Court of Victoria.

Water Act Disputes

Hill & Anor v Owners Corporation PS524229U – [2022] VCAT 494 and [2023] VCAT 1015

Nicholas appeared for the Applicants at trial concerning a claim under both the *Water Act* 1989 and the *Owners Corporation Act* 2006 for damages and an injunction arising from a flow of water into the Applicants' property.

Building Appeals Board Matters

Perilli v McCuskey - [2020] VBAB 182

Nicholas appeared for the Applicant at trial to seek and order to quash a Building Order made by against the Applicant, pursuant to s.149(1)(b) of the *Building Act* 1993.

McParland v Hartley - [2020] VBAB 86 and [2020] VBAB 86

Nicholas appeared for the Applicants at trial to seek a determination that Regulation 74 of the *Building Regulations* 2018 did not apply and to quash a Building Order made by against the Applicants pursuant to s.149(1)(b) of the *Building Act* 1993.

Owners Corporation Disputes

Barouche v Owners Corporation No. 409234V - [2017] VCAT 1917

Nicholas appeared for the Respondent at trial concerning the validity of a special resolution allocating car parking spaces to lot owners.

Stokes v Alexander & Anor - [2017] VCAT 514

Nicholas appeared for the First Respondent at trial concerning the validity of a special resolution entering into a lease over part of lot property.

Arbitrations

Lin Tiger Plastering Pty Ltd v Platinum Construction (Vic) Pty Ltd - [2018] VSC 221

Nicholas appeared for the Plaintiff in an application under s.16 of the *Commercial Arbitration Act* 2011, seeking a ruling on the jurisdiction of an arbitral tribunal.

Amaysa Enterprises Pty Ltd v Asta Developments (Aust) Pty Ltd - [2016] VSC 326

Nicholas appeared for the Plaintiff (led by Mr M. Wheelahan QC and Mr R. Andrew) in an application to set aside a domestic award under s.16 of the *Commercial Arbitration Act* 2011.

EXPERIENCE

Since 22 October 2015
Barrister-at-Law • Victorian Bar

August 2013 to August 2015
Lawyer • Noble Lawyers

April 2012 to August 2013
Associate to the Honourable Justice Ginnane • County Court of Victoria, then Supreme Court of Victoria upon His Honour's elevation

QUALIFICATIONS

Signed Bar Roll
Victorian Bar (22 October 2015)

Admitted to Practice
Supreme Court of Victoria (14 August 2013)

Graduate Diploma in Legal Practice
Australian National University (2013)

Bachelor of Laws / Bachelor of Economics
La Trobe University (2012)