



L I P M A N K A R A S

## Stephen Phillips Principal

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### Professional Experience

Stephen has extensive experience in complex commercial disputes litigated in Australia and internationally. His expertise encompasses obtaining urgent injunctions, large project litigation and appeals in the highest courts.

Stephen has represented and advised clients in connection with disputes litigated in Australia, England, Hong Kong, Bermuda and Guernsey.

Stephen's litigation experience has covered a number of industry sectors and includes cases involving allegations of breach of trust, breach of fiduciary duty, professional negligence and fraud. Stephen takes a hands on approach at all stages of his clients' litigation, and has extensive experience in dealing with a range of urgent matters including obtaining freezing orders for the preservation of assets pending judgment.

### Recent Cases and Projects

#### **Elders Forestry Limited v BOSI Security Services Limited & Ors**

Stephen acted for Elders Forestry Limited ("Elders") as solicitor and junior counsel in urgent proceedings against the security trustee for a syndicate of three large banks. The banks had security over a 50% interest held by Elders' joint venture partner in an incorporated JV, and refused to release that security to facilitate an acquisition by Elders of a 100% interest pursuant to default option rights in the shareholders' deed. The proceedings involved urgent injunctive relief to restrain a third party sale by the syndicate banks and was litigated through to judgment in 5 months, the Court finding in Elders' favour. The default option rights under the Shareholders' Deed were held to constitute incidents of the joint venture partner's shares, such that the securities taken were subject to Elders' option rights. [2010] SASC 223. See also *Elders Forestry Ltd v BOSI Security Services Ltd & Ors* No.s 2 and 3 [2010] SASC 226 and [2010] SASC 228.

#### **ITC Limited v Timbercorp Limited (in Liq)**

Stephen acted for ITC Limited (as solicitor and junior counsel) in urgent proceedings against the liquidators of Timbercorp Limited to enforce option rights over a large woodchip export facility in Western Australia, and to restrain the Liquidators from selling Timbercorp's interest to a third party. The proceedings were commenced in October 2009 and litigated urgently through to a judgment in ITC's favour which was delivered the following month. (2009) 76 ACSR 467.

#### **Akai Holdings Limited**

Stephen has been a key member of the legal team working with the liquidators of Akai on large scale litigation arising following the company's collapse. Stephen's involvement includes:

- **Borrelli v Ting.** Stephen was part of the legal team representing the Liquidators of Akai in their successful appeal to the Privy Council in London [2010] UKPC 21, overturning a decision of the Court of Appeal for Bermuda, and setting aside a settlement agreement with a former director procured through illegitimate means. The decision facilitates the pursuit of claims against the former Chief Executive of Akai in Hong Kong for misappropriation of hundreds of millions of dollars of corporate funds.



- **Akai v Ernst & Young.** In proceedings involving a claim for damages in excess of US\$800million, Stephen took a leading role in numerous pre-trial disputes, including applications for anti-suit injunctive relief and stays of related proceedings in foreign jurisdictions. Two such interlocutory disputes, one concerning the privileged status of private examination transcripts, and the other relating to the Court's jurisdiction to order security for costs, were determined by the Hong Kong Court of Final Appeal in Akai's favour. The action settled on favourable terms at the end of the first week of a trial listed for 6 months.
- **Akai v Ho and The Grande Holdings Limited.** This was another substantial action arising from the Akai liquidation, involving a claim against a public listed company and others to recover several hundred million US dollars in damages. Stephen advised on the applications for freezing orders, and the appointment of receivers to the defendants' assets, including those held in off-shore trust structures. This matter settled before trial on terms favourable to Akai.
- **Akai v Kasikornbank.** Stephen was a member of the legal team advising on Akai's successful appeal against a trial judgment in favour of Kasikornbank. Akai commenced the proceedings to recover damages in respect of a security taken by the bank prior to Akai's collapse, and was awarded a judgment of US\$35 million by the Court of Appeal.

## Background and Qualifications

Bachelor of Health Sciences (University of Adelaide) (1999)

Bachelor of Laws (with Honours) (University of Adelaide) (2002)

Judge's Associate - Supreme Court of South Australia (2002)

Judge's Associate - Federal Court of Australia (2003)

Admitted to the Supreme Court of South Australia (2003)

Admitted to the Federal Court and High Court of Australia (2004)

Admitted to the Supreme Court of England and Wales (2008)