



Wednesday 1 October 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Falkingham v Peninsula Kingswood Country Golf Club Ltd (VSCA) - corporations - no injunction to restrain dissipation of proceeds of sale of land

Ramus v Contenance Foundation of Australia Ltd (VSC) - employment contract - no repudiation by employer - position not redundant - appeal dismissed

Jensen v RQYS Marina Ltd (QSC) - corporations - statutory derivative action - leave to commence proceedings on behalf of company refused

Pisano v Health Solutions (WA) Pty Ltd (WASC) - contract - credentialling agreement did not grant rights of practice - surgeon's claims dismissed

Summaries with links (5 minute read)

Falkingham v Peninsula Kingswood Country Golf Club Ltd [2014] VSCA 235

Court of Appeal of Victoria

Kyrou JA & Garde AJA

Corporations - oppression - appeal lodged against trial judge's refusal to undo merger of golf clubs - appellant sought interlocutory injunction restraining company from dissipating proceeds of sale of land pending appeal - land had been sold to arm's length purchaser following resolution passed by company's directors - held: injunction would seriously interfere with company's purposes to repay debt and establish future fund - if injunction granted, there were very real risks of significant losses to company - undertaking for damages required from appellants would be large - no evidence of appellant's financial capacity - Court not satisfied injunction would reduce risk of injustice if it turned out it should not have been granted - Court not satisfied balance of convenience favoured injunction - summons dismissed.

[Falkingham](#)

Ramus v Continnence Foundation of Australia Ltd [2014] VSC 477

Supreme Court of Victoria

Williams J

Employment contract - bias - appellant sued former employer in Magistrates' Court claiming damages for alleged repudiation of employment and a redundancy payment under s119(1)(a) *Fair Work Act 2009* (Cth) - Magistrate dismissed claim - held: no bias on grounds of excessive interruption - Magistrate did not misstate test or apply incorrect test to determine whether employer had repudiated appellant's contract of employment - Magistrate did not fail to apply test for redundancy - Magistrate's findings of no repudiation of employment contract and no redundancy open on the evidence - appeal dismissed.

[Ramus](#)

Jensen v RQYS Marina Ltd [2014] QSC 243

Supreme Court of Queensland

Applegarth J

Corporations - statutory derivative action - applicants were berth holders in marina - applicants required to be members of a company which operated marina and which existed to support members of Royal Queensland Yachting Squadron - applicants sought leave pursuant to s237 *Corporations Act 2001* (Cth) to bring enormously complex proceeding on behalf of company against two other companies, and numerous former and current directors of company - proceeding would cost company hundreds of thousands of dollars to litigate - held: proposed claims did not have reasonable prospects of success - applicants had not offered any personal indemnity or undertakings to protect company against adverse costs orders in event that all or part of proposed



proceeding unsuccessful - company exposed to substantial prejudice of incurring costs and risk of adverse costs order - much of the declaratory relief sought was of no practical benefit to company - applicants did not discharge onus to satisfy Court it was in the best interests of company to commence proposed proceeding - application dismissed.

[Jensen](#)

Pisano v Health Solutions (WA) Pty Ltd [2014] WASC 356

Supreme Court of Western Australia

McKechnie J

Contract - plaintiff was surgeon who was accredited and accorded clinical privileges at health campus - campus stopped referring public patients to surgeon or making theatres available to him - surgeon sued campus for a continuation of rights which he said he enjoyed under a combination of letters and bylaws - held: documents relied on by surgeon constituted an agreement between surgeon and campus - extent of agreement was simply to grant clinical privileges - the agreement was a "ticket providing entry to the showground" but did not give "the right to ride any particular attraction" - such particular rights would need to be granted by a separate agreement - credentials did not specify scope of work or make-up of clinical practice - claims dismissed.

[Pisano](#)

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