

Wednesday 8 October 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Sims v Chong (FCA) - summary judgment - abuse of process - advocates' immunity - claim against legal practitioner struck out

BB Retail Capital Pty Ltd v Alexandria Landfill Pty Ltd (NSWSC) - contract - entitlement to preference shares on conversion of convertible notes

Summaries with links (5 minute read)

Sims v Chong [2014] FCA 1069

Federal Court of Australia

Barker J

Summary judgment - abuse of process - advocates' immunity - applicant sought relief against legal practitioner who acted for him in a contract claim against a company - applicant alleged legal practitioner engaged in misleading, deceptive, and unconscionable conduct, breached contractual and fiduciary obligations, and was negligent - legal practitioner sought summary judgment pursuant to r26.01(1)(a), (c) or (d) *Federal Court Rules 2011* (Cth) on basis proceedings were abuse of process - held: applicant's claims against legal practitioner depended on claim there was an enforceable promise made by company and if lawyers had done better he would still be able to pursue action in Supreme Court - in light of Supreme Court's decision to strike out fifth statement

of claim, it was not now open to applicant to relitigate the contract argument in present proceedings - proceedings were abuse of process - legal practitioner also protected by doctrine of advocates' immunity - proceedings struck out.

[Sims](#)

BB Retail Capital Pty Ltd v Alexandria Landfill Pty Ltd [2014] NSWSC 1363

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff ("BBRC"), first defendant ("ALF") and second defendant entered deed by which BBRC became holder of \$30 million of convertible notes issued by ALF - notes matured and converted into preference shares in ALF - BBRC claimed it was entitled to be issued with number of preference shares dictated by conversion formula in clause of Terms of Issue of convertible notes - defendants accepted that \$10 million of BBRC's convertible notes were converted into preference shares at that rate but that remaining \$20 million of BBRC's notes converted on a "\$1.00 for 1 share" basis - determination of amount of "Organic Debt" in ALF group on conversion date - *Blatch v Archer* principle - held: BBRC's \$20 million convertible notes converted into preference shares at the rate specified in clause of Terms of Issue and not on a "\$1.00 for 1 share" basis - ALF had issued insufficient shares to BBRC and too many shares to second defendant - as to remaining disputes about "Organic Debt", Court concluded one of the amounts said by BBRC to comprise "Organic Debt" did so, and that the others did not - notes converted at the rate in Terms of Issue - level of "organic debt" determined.

[BB Retail Capital Pty Ltd](#)

[Click Here to access our Benchmark Search Engine](#)