

Tuesday, 14 July 2015

Daily Composite Insurance, Banking, Construction & Government 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)

Mortimer v Proto Resources & Investments Ltd, in the matter of Proto Resources & Investments Ltd (FCA) - corporations - notice of general meeting invalid - company restrained from proceeding with business at meeting purportedly convened (I B C)

Sherrah v Commonwealth Superannuation Corporation (FCA) - superannuation - processing of claim for benefit - determination affirmed - appeal dismissed (I B)

AAI Ltd v Motor Accidents Authority of New South Wales (NSWSC) - judicial review - dismissal of application for review of medical assessment - review refused - summons dismissed (I G)

Roxo v Normandie Farm (Dairy) Pty Ltd (NSWSC) - mortgages - possession - lender entitled to possession of property (B)

Seeto Kui (Holdings) Ltd v Chow (QSC) - costs - judgments and orders - application to register four judgments obtained in Papua New Guinea dismissed (I B C)

Watts v RHG Mortgage Corporation Ltd (WASCA) - judgments and orders - possession - suspension of enforcement of judgment granted (B)

Zwambila v Wafawarova (ACTSC) - defamation - publication of article defamatory of Zimbabwean ambassador to Australia - damages - aggravated damages (I)

Benchmark

Summaries With Link (Five Minute Read)

Mortimer v Proto Resources & Investments Ltd, in the matter of Proto Resources & Investments Ltd [2015] FCA 654

Federal Court of Australia

Gleeson J

Corporations - plaintiffs were directors of company - plaintiffs sought declaration that Notice of General Meeting of first defendant company purporting to convene general meeting of company was invalid and of no force and effect - agenda for meeting included proposed resolutions that plaintiffs be "dismissed" as directors - plaintiffs also to restrain company from convening, holding or arranging any general meeting of company pursuant to notice of general meeting - ss180, 183, 203D, 249C, 249D, 249E, 249L, 249HA & 1322 *Corporations Act 2001* - obligation and power to convene meeting - construction of s249D - held: no general meeting called in accordance with requirements of s249D in response to requisition notice - notice of general meeting ineffective to call meeting pursuant to s249D - notice of general meeting invalid - company restrained permanently from proceeding with any business at general meeting purportedly convened in accordance with notice.

[Mortimer](#) (I B C)

Sherrah v Commonwealth Superannuation Corporation [2015] FCA 698

Federal Court of Australia

Besanko J

Superannuation - applicant member of Commonwealth Superannuation Scheme sought extension of time to appeal from Superannuation Complaints Tribunal's affirmation of first respondent's determination in relation to processing a claim for benefit - *Superannuation Act 1976 (Allocated Interest – CSS) Determination 2007* - competency - 'termination day' - offer of compensation - ss14 & 37 *Superannuation (Resolution of Complaints) Act 1993* - held: extension of time granted - notice of objection to competency dismissed - no improper construction of 'termination day' - determination not invalid - matters raised concerning quantum of offer did not raise question of law - appeal dismissed.

[Sherrah](#) (I B)

AAI Ltd v Motor Accidents Authority of New South Wales [2015] NSWSC 912

Supreme Court of New South Wales

Button J

Judicial review - insurer sought judicial review of decision of proper officer of Motor Accidents Authority to dismiss its application for review of a medical assessment by review panel made pursuant to s63 *Motor Accidents Compensation Act 1999* (NSW) - whether proper officer erred in refusing to order review of medical assessment when assessment did not attempt to 'disentangle' degree to which components of alleged incident caused psychiatric injury to claimant - whether reasonable cause to suspect medical assessment incorrect in material respect - ss3, 3A, 44, 58, 58(1)(d), 61, 62, 62(1)(b), 63, 63(2), 63(3), 65, 92(1) & 131 - held: no

Benchmark

error of law established by analysis of Act, or decision and reasons of proper officer - judicial review refused - summons dismissed.

[AAI](#) (I G)

Roxo v Normandie Farm (Dairy) Pty Ltd [2015] NSWSC 895

Supreme Court of New South Wales

Schmidt J

Mortgages - possession - defendant registered proprietor granted plaintiff registered mortgage over property to secure loan - principal due to be repaid in June 2005 - plaintiff sought possession of property under s60 *Real Property Act 1900* - defendant claimed plaintiff bound by an oral agreement he made with its sole director and shareholder who also borrowed funds from plaintiff - on basis of agreement defendant claimed plaintiff not entitled to recover interest - defendant claimed it had repaid all it owed to plaintiff and plaintiff was not entitled to possession - held: plaintiff established relevant default under mortgage - plaintiff established entitlement to order for possession - defendant failed to establish basis for resisting order - judgment for plaintiff - possession order made.

[Roxo](#) (B)

Seeto Kui (Holdings) Ltd v Chow [2015] QSC 193

Supreme Court of Queensland

Martin J

Costs - judgments and orders - applicant sought that respondent pay its costs of application to register four judgments obtained in Papua New Guinea under *Foreign Judgments Act 1991* (Cth) - respondent objected on basis no step had been taken for over two years before making application - respondent also contended applicant not entitled to obtain registration of three of the judgments and had lost the right to register the fourth judgment - s238 *Companies Act 1997* (PNG) - s6(6) *Foreign Judgments Act 1991* (Cth) - r389(2) *Uniform Civil Procedure Rules 1999* - 'step' - 'judgment creditor' - held: no step taken in proceedings for a more than two years before application brought - applicant required leave to proceed - applicant was not person in whose favour three of judgments were given - rights in those judgments were not vested in applicant - applicant was not 'judgment creditor' in whose favour three of the four judgments were given - applicant would have failed in application to register the three judgments - applicant did not demonstrate it should have leave to proceed in respect of fourth judgment - application dismissed.

[Seeto](#) (I B C)

Watts v RHG Mortgage Corporation Ltd [2015] WASCA 139

Court of Appeal of Western Australia

McLure P & Newnes JA

Judgments and orders - possession - Master ordered appellants to deliver vacant possession of properties to respondent - properties had been mortgaged to respondent to secure loans and credit facilities - Master also ordered appellants to pay sum to respondent - appellant sought order suspending enforcement of judgment until determination of appeal - s15 *Civil Judgments*

Benchmark

Enforcement Act 2004 - procedural fairness - National Credit Code - held: appellants had reasonable prospects of persuading Court there were arguable grounds of defence that should go to trial - balance of convenience favoured appellants - special circumstances established to justify suspension of enforcement of judgment - enforcement suspended until further order.

[Watts](#) (B)

Zwambila v Wafawarova [2015] ACTSC 171

Supreme Court of the Australian Capital Territory
Penfold J

Defamation - plaintiff was Zimbabwean ambassador to Australia - plaintiff claimed second defendant published defamatory article in Zimbabwean newspapers and republished allegations on his website - Div. 9.4.3, ss123, 139G & 139K *Civil Law (Wrongs) Act 2002*, s15(1) *Service and Execution of Process Act 1992* (Cth) - *Civil Law (Wrongs) Non-economic Loss Declaration 2015* - choice of law - cultural significance of allegations - assessment of damages - aggravated damages - held: second defendant was publisher of defamatory material - identification of defamatory imputations not challenged by second defendant - having regard to nature of defamation, nature and extent of the original publication, personal hurt, significance of plaintiff's reputation and the need to vindicate her position Court considered plaintiff should receive \$160,000 damages with additional \$20,000 aggravated damages having regard to further harm done by defendant's approach to requests for apology or retraction.

[Zwambila](#) (I)

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