

Thursday, 16 April 2015

Insurance

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)

Independent Commission Against Corruption v Cunneen (HCA) - administrative law - statutory interpretation - ICAC had no power to investigate alleged conduct as it was not *corrupt conduct* under *Independent Commission Against Corruption 1988* (NSW) - appeal dismissed

Traderight (NSW) Pty Ltd v Bank of Queensland Ltd (NSWCA) - trade practices - no misleading or deceptive conduct or unconscionable conduct by bank towards franchisees - appeal dismissed

Riverwood Legion & Community Club Ltd v Repaja & Co Pty Ltd (NSWSC) - equity - club entitled to relief against fraudsters arising from payment of its money into bank account

Summerdowns Rail Ltd v Stevens (NSWSC) - corporations - no breach of duties by director and secretary to company in relation to payment in favour of another company

Smith v Offermans (QCA) - summary judgment - real prospect of defending claim for insolvent trading - leave to appeal granted - appeal allowed

Matton Developments Pty Ltd v CGU Insurance Ltd (No 2) (QSC) - insurance policy - contractors and plants insurance policy did not respond to crane owner's claim arising from collapse of crane boom

Benchmark

Summaries with links (5 Minute Read)

Independent Commission Against Corruption v Cunneen [2015] HCA 14

High Court of Australia

French CJ; Hayne, Kiefel, Gageler & Nettle JJ

Administrative law - statutory interpretation - ICAC decided to investigate first respondent Deputy Senior Crown Prosecutor - Prosecutor challenged inquiry on basis allegations could not constitute *corrupt conduct* under s8(2) *Independent Commission Against Corruption 1988* (NSW) - meaning of expression *adversely affects, or that could adversely affect ... the exercise of official functions by any public official* in definition of *corrupt conduct* in s8(2) - ss2A, 8, 9, 12A - held (by majority; Gageler J dissenting): preferred meaning of *adversely affect* was “adversely affect or could adversely affect the *probity* of the exercise of an official function by a public official” - not disputed that if expression had this meaning then the alleged conduct was not *corrupt conduct* within meaning of s8(2) - Commission had no power to investigate alleged conduct - special leave to appeal granted - appeal dismissed.

[ICAC](#)

Traderight (NSW) Pty Ltd v Bank of Queensland Ltd [2015] NSWCA 94

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Barrett JA

Trade practices - consumer protection - franchisees operated owner managed branches of bank in New South Wales - franchisees operated owner - branches closed or were taken over by bank - franchisees claimed bank engaged in misleading or deceptive conduct or unconscionable conduct in contravention of *Trade Practices Act 1974* (Cth) or *Fair Trading Act 1987* (NSW) as in force at the relevant time and that they thereby suffered loss or damage - claims also brought in negligence including negligent misstatement, and claims based on *Industrial Relations Act 1996* (NSW) - primary judge found no franchisees entitled to relief - “with respect to any future matter” - silence - “pre-opening non-disclosure” - held: “target statements” and “break-even statements” made by bank were not representations as to future matters within meaning of s51A Trade Practices Act - no reasonable expectation in the circumstances that information about actual financial performance of established owner managed branches in New South Wales - franchisees did not establish error in primary judge’s conclusions that bank contravened s52 Trade Practices Act or s42 - the Fair Trading Act - appeal dismissed.

[Traderight](#)

Riverwood Legion & Community Club Ltd v Repaja & Co Pty Ltd [2015] NSWSC 383

Supreme Court of New South Wales

Stevenson J

Equity - fourth defendant was CEO of plaintiff club - proceedings arising out of payment CEO caused club to make into bank account of first defendant company - second defendant was director of company - club claimed CEO had no authority from club to make payment and acted

in breach of contractual duty of fidelity to club, fiduciary duties of loyalty to club and and his obligations pursuant to ss180, 181 and 182 *Corporations Act 2001* (Cth) - in effect club contended CEO stole the money from the club - held: Court satisfied CEO stole the money - funds belonged to club - director and company knew CEO misappropriated the money - director did not invest stolen funds on CEO's behalf but used them to pay amount at fifth defendant's direction purportedly in "repayment" of funds fifth defendant advanced to director - club entitled to relief sought against director of company, company, CEO and fifth defendant - club and fifth defendant were both victims of director's fraudulent activities - club also victim of CEO's fraudulent activities - fifth defendant must bear burden of loss caused by fraudulent conduct subject to right of recovery from director and company

[Riverwood](#)

Summerdowns Rail Ltd v Stevens [2015] NSWSC 321

Supreme Court of New South Wales

Robb J

Corporations - company sought compensation under s1317H *Corporations Act 2001* (Cth) ("the Act") against director and secretary for contraventions of ss180, 181 & 182 and for breach of equitable duties in relation to payment made out of company's bank account in favour of a consultancy company - held: defendants believed they were authorised to participate in making payment by resolution of three of four directors at meeting - defendants were not authorised because meeting was not valid - however defendants did not breach duty to company by acting in bad faith or against best interests of company - no improper purpose - even if duties breached, company failed to establish any damage - originating process dismissed.

[Summerdowns](#)

Smith v Offermans [2015] QCA 55

Court of Appeal of Queensland

M McMurdo P; Morrison & Phillipides JJA

Summary judgment - applicant was director of company in liquidation - liquidator made claim against director including claim for insolvent trading pursuant to s588M(2) *Corporations Act 2001* (Cth) - summary judgment granted - director sought leave to appeal - r292 *Uniform Civil Procedure Rules 1999* (Qld) - held: contrary to finding of primary judge there was real prospect of defending claim - liquidator needed to do more to establish debt incurred during alleged period of insolvency than mere assertion in affidavit - liquidator failed to put forward evidence that loss or damage sustained - leave to appeal granted - appeal allowed.

[Smith](#)

Matton Developments Pty Ltd v CGU Insurance Ltd (No 2) [2015] QSC 72

Supreme Court of Queensland

Flanagan J

Insurance policy - contractors and plants insurance - insurance company refused to indemnify crane owner for damage to crane when boom collapsed - competing hypotheses concerning



Benchmark

circumstances in which boom collapsed - construction of policy - operation of exclusion clauses
- ss13 & 54 *Insurance Contracts Act 1984* (Qld) - held: policy did not respond to plaintiff's claim
- allegation that insurance company breached the contract of insurance failed - claim dismissed.

[Matton](#)

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