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# Daily Banking

## A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (One Minute Read)

**Australian Mud Company Pty Ltd v Globaltech Corporation Pty Ltd (No 5)** (FCA) - each infringement of a patent is a separate cause of action, and the patent owner may elect between damages and an account of profits on an infringement by infringement basis

**Forshaw v Qantas Airways Limited (No 2)** (FCA) - proposed amendments to statement of claim to remedy what had been struck out as a vague "workplace culture plea" did not cure the problem

**Liesa Wilson v Andrew Wilson** (NSWSC) - Court made an order recognising and enforcing a money judgment of a Utah Court in family law proceedings

**In the matter of Stamford Bridge SW6 Pty Ltd** (NSWSC) - service of a statutory demand on an email address the company used during business dealings and in an adjudication under the *Building and Construction Industry Security of Payment Act 1999* (NSW) was valid

**McCarthy & Chatterton v ACT Property Inspections Pty Limited** (ACTSC) - Court considered that some, but not all, impugned paragraphs in a statement of claim were embarrassing and should be struck out with leave to replead

## Summaries With Link (Five Minute Read)

**Australian Mud Company Pty Ltd v Globaltech Corporation Pty Ltd (No 5) [2024] FCA 58**

Federal Court of Australia
Besanko J
Patents - the applicants sued, alleging breach of a patent that provided a method and system for identifying the *in situ* orientation of the core sample in the surrounding rock prior to extraction - the Court had decided the question of liability in 2018, finding that infringement was established, and dismissing a cross-claim challenging the validity of the patent - an appeal to the Full Court was dismissed - the Court had made a freezing order against the respondents because of the liability judgment and that there had been a transfer in the ownership of one of the respondents, and an overseas company, within the same group, had started to use similar technology, and had declined to make a freezing order against a third party (see Benchmark 30 May 2023) - the Court now determined quantum of relief - the applicants told the Court they would split their election as to the type of monetary relief they sought, claiming damages in respect of infringing tools supplied by the respondents that were used in Australia, an account of profits in respect of infringing tools supplied by the respondents that were exported from Australia, and damages in respect of any other infringing tools - the respondents denied the applicants were entitled to split their election in this way - held: the applicants were entitled to make a discrete election for each infringement of the patent - the manufacture and sale or supply of each infringing tool was a separate infringement and a distinct cause of action - the applicants were therefore entitled to make a series of elections on a tool by tool basis - an applicant is not bound to exercise the election in a way that mitigates loss to the infringer - if an applicant chooses a split election that creates a difficulty for it in terms of the assumptions to be made and the facts that it must prove, then that is the applicant's problem - the Court resolved a number of issues related to the calculation of damages and the account of profits - parties to be heard further.
Australian Mud Company Pty Ltd

**Forshaw v Qantas Airways Limited (No 2) [2024] FCA 446**
Federal Court of Australia
Snaden J
Employment law - the applicant sued Qantas for alleged contravention of s340 and s351 of the *Fair Work Act 2009* (Cth) by taking adverse action against her and had discriminated against her on the basis of sex - she pleaded breach of s340, breach of s351, and a "workplace culture plea" that sought to hold Qantas to account for what she described as "a workplace that was hostile to women", which she claimed had the effect of injuring her in her employment and discriminating against her relative to Qantas's male employees - Qantas had successfully applied strike out parts of the breach of s340 and s351 pleadings, and all of the workplace culture plea - the applicant sought to file an amended statement of claim - she principally sought to add a new paragraph pleading that the Board and chief officers of Qantas were responsible for implementing and maintaining an inclusive and diverse workplace culture at Qantas and a workplace that is free from discrimination and sexual harassment, with particulars referring to the Qantas Inclusion and Diversity Policy 2019 - held: the power of the Court to grant or refuse leave must be exercised in the way that best promotes the Court's overarching purpose to

facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible - the Court's power to grant leave to amend is broad and has the remedial objective of ensuring that any defect in the pleadings is cured and that the real questions in the controversy are properly agitated and to avoid a multiplicity of proceedings - leave to amend should be granted unless the proposed amendment is futile, such that the issue sought to be added is unlikely to succeed, the amendment is likely to be struck out, or would cause substantial prejudice or injustice to the opposing party in a way that cannot be compensated by costs - the amended pleadings did not cure the problems with the earlier pleadings - each aspect of the workplace culture plea was still vague - it was impossible for Qantas to respond to it in any sensible way - the allegations were so patently imprecise as to defy even the most conscientious attempt at rejoinder - the proposed amended pleading proceeding on a misunderstanding of how Part 3-1 of the *Fair Work Act* operates - s351(1) does not prohibit conduct that has the effect of injuring women in their employment or visiting upon them discriminatory consequences on account of their sex; rather it prohibits conduct that visits injurious or discriminatory impacts if, and only if, it is taken against a person because he or she possesses a prescribed attribute - application dismissed.
Forshaw

**Liesa Wilson v Andrew Wilson [2024] NSWSC 506**
Supreme Court of New South Wales
Campbell J
Private international law - the parties were married but had separated - the wife lived in Utah and the husband lived in NSW - the wife commenced proceedings in Utah seeking divorce and other relief in the nature of spousal support and a division of property - the Utah judge made orders for the husband to pay arrears of spousal support, half of the proceeds of the sale of certain shares, and an amount for the wife's legal costs - the husband did not pay these amounts - the Utah judge then granted a motion to enforce judgment and entered judgment against the husband in an amount of about $560,000 - the wife then commenced proceedings in NSW, seeking recognition and enforcement of the Utah judgment as a foreign monetary judgment - held: the Utah Court was not a designated jurisdiction of substantial reciprocity for the purposes of the *Foreign Judgments Act 1991* (Cth) and so the application was decided mostly on common law principles - there were essentially four elements which the wife needed to establish by evidence to invoke the Court's power to enter judgment in accordance or conformity with the foreign judgment: (1) the foreign court must have exercised jurisdiction of the requisite type over the defendant (known as jurisdiction "in the international sense") (2) the judgment must be final and conclusive; (3) there must be identity of parties between the foreign judgment debtors and the defendants in the enforcement action; and (4) the judgment must be for a fixed liquidated sum - s11 of the *Foreign Judgments Act* still applied, and provided that the Utah Court should not be taken to have jurisdiction in the international sense merely because the husband had entered an appearance or participated in the Utah proceedings for certain limited purposes - the Court was satisfied that the Utah Court had had jurisdiction in the international sense - the judgment entered by the Utah Court had been a final judgment - there

was no question that the identity of the parties in the two proceedings was identical - although the wife advanced a number of separate claims for arrears of spousal support, for division of property and for costs, she made no claim for ongoing or continuing spousal support and all of her entitlements had been quantified and crystallised in the judgment of the Utah Court - that judgment was therefore for a fixed liquidated sum - the husband had raised no defences to the claim for recognition and enforcement of the foreign judgment, such as fraud, contravention of public policy, the judgment amount being punitive, the denial of natural justice, or estoppel in its various forms - judgment in favour of the wife against the husband for about USD$600,000, including interest.
View Decision

**In the matter of Stamford Bridge SW6 Pty Ltd [2024] NSWSC 486**
Supreme Court of New South Wales
Williams J
Insolvency - two directors incorporated a company for the sole purpose of a property development at Mascot - the company entered into building contracts for the construction of two homes on that property - disputes arose between the company and its builder in relation to the builder's payment claims and alleged defects in the building works - the company engaged Cox to prepare an expert report to be used in proceedings that were then on foot between the company and the builder - Cox issued an invoice to the company for this work, the company responded by issuing a payment schedule under the *Building and Construction Industry Security of Payment Act 1999* (NSW), and an adjudication under that Act resulted in a determination in favour of Cox in the sum of about $85,000 - judgment for the adjudicated sum was entered in favour of Cox in the Local Court - Cox purportedly served a statutory demand on the company in respect of that judgment debt, by sending it to the email address of one of the directors, which was the email address the company had nominated as its address for communications in the adjudication - the company sought an order pursuant to s459G and s459H of the *Corporations Act 2001* (Cth) that the statutory demand be set aside - the Court answered two questions as separate questions: (1) whether the statutory demand was served for the purposes of s600G of the *Corporations Act*, having regard to the definition of "nominated electronic address" in s9 of the Act, or by way of informal effective service; and (2) whether, if the demand was served, the application to set it aside was filed and served within 21 days - held: by the emails sent to Cox by the director on behalf of the Company from his email address as a reply to Cox's invoice and sending the payment schedule in response, the company had nominated this email address to Cox as the electronic address for the company to receive electronic communications within the meaning of s9(a) - the director had never communicated to him that, notwithstanding his use of his email address to send emails on behalf of the company, his email address was not an address at which the company would receive emails - even if this were not the case, on the evidence, the email address was an electronic address that Cox believed on reasonable grounds to be a current electronic address for the Company for receiving electronic communication and therefore was the company's nominated electronic address within the meaning of s9(b) - a statutory demand may be served by electronic

communication, provided that the requirements of s600G(4) are satisfied - the statutory demand had been validly served by the email - the company had failed to discharge its onus of establishing that its application to set aside the statutory demand, together with an affidavit in support of that application, was filed and served within the 21-day statutory period after service - proceedings dismissed.
View Decision

**McCarthy & Chatterton v ACT Property Inspections Pty Limited [2024] ACTSC 131**
Supreme Court of the Australian Capital Territory
Taylor J
Civil procedure - the plaintiffs purchased a home in Kambah - as part of the process of the sale of the property the defendant authored a Building and Compliance Inspection Report, which was a required document in contracts for the sale of residential property under the *Civil Law (Sale of Residential Property) Act 2003* (ACT) - the plaintiffs alleged that there was significant active and historical termite damage to the property, discovered after the purchase of the property was finalised, which was not disclosed or referred to within the Report - the plaintiffs commenced proceedings, claiming a breach of statutory duty and that the defendant was liable under s19(1)(a) of the Act, or alternatively breach of duty of care - the plaintiffs claimed the cost of demolishing and rebuilding the property, the cost of alternative accommodation during this, the cost of the Report, and interest and costs - the defendant sought to strike out certain paragraphs of the statement of claim - held: the starting point is the originating claim, which must state briefly and specifically the nature of the claim made and relief sought - the purpose of a pleading is to expose the case the party intends to run, and properly exposing the case to be pursued falls within a party's obligations under s5A of the *Court Procedures Act 2004* (ACT) - an "embarrassing" pleading is one that cannot serve the function of a pleading, namely, in succinct fashion, to put the defendant properly on notice of the real substance of the claim made against it and to know what case it is that the defendant has to meet - a pleading that, on a certain date, the plaintiffs observed significant damage caused by active and historical termite activity at the property lacked clarity about the nature and extent of the "significant damage" alleged - however, the Court was satisfied that the particulars given made clear to the defendant the extent of the "significant" termite damage referred to, and was satisfied that the defendant was on notice about the substance of the claim with respect to the extent of the termite damage said to exist in the property at the time the Report was completed, observed by the plaintiffs - certain other paragraphs also not struck out as they were adequately explained by the particulars - certain paragraphs that were legal conclusions that failed to plead the material facts relied upon to found those conclusions were embarrassing, and were struck out with leave to replead.
McCarthy & Chatterton

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