

Monday, 13 August 2018

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

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Executive Summary (1 minute read)

Farah Custodians Pty Limited v Commissioner of Taxation (FCA) - pleadings - discovery - interlocutory applications - parts of pleading based on misfeasance in public office and *Barnes v Addy* struck out - application for leave to amend refused - application for discovery deferred.

University of Sydney v ObjectiVision Pty Limited (No 8) (FCA) - pleadings - contract - licence agreements - cross-claimant refused leave to amend quantum particulars - interlocutory application dismissed

Chapman v South Eastern Sydney Local Health District (NSWSC) - personal property - widow granted declaration of entitlement to deceased's extracted sperm - first defendant to deliver up possession of sperm on conditions

Australia Health & Nutrition Association Limited v Hive Marketing Group Pty Limited (NSWSC) - judgments and orders - contract - dismissal of proceedings on basis of exclusive jurisdiction clause

Ideal Business Centres Pty Ltd v Violin Holdings Pty Ltd atf The Violin Investment Trust (NSWSC) - leases and tenancies - real property - equity - purchaser of premises bound to honour terms of unregistered lease

Matter Technology Ltd (administrators appointed) v Mrakas; Mrakas v Matter Technology Ltd (administrators appointed) (No 2) (NSWSC) - costs - corporations - solicitors' duties - gross sum costs order granted - application for dismissal of proceedings dismissed

Murray & Anor v Great Southern Managers Aust Ltd & Ors (an Application by Garry James Parker) (VSC) - judgments and orders - group proceeding - order granted that applicant cease to be a group member

Summaries With Link (Five Minute Read)

Farah Custodians Pty Limited v Commissioner of Taxation [2018] FCA 1185

Federal Court of Australia

Wigney J

Pleadings - discovery - interlocutory applications - respondent sought to strike out parts of applicant's pleading of liability based on 'conscious maladministration', misfeasance in public office, and *Barnes v Addy* - whether claims properly pleaded - applicant sought leave to amend and discovery - whether pleading disclosed reasonable causes of action - whether prejudice or embarrassment likely to be caused by pleading - r16.21(1) *Federal Court Rules 2011* (Cth) - held: Court satisfied to strike out parts of pleading based on misfeasance in public office and *Barnes and Addy* - application for leave to amend refused - application for discovery deferred.

[Farah](#)

University of Sydney v ObjectiVision Pty Limited (No 8) [2018] FCA 1184

Federal Court of Australia

Burley J

Pleadings - contract - licence agreements - cross-claimant sought to 'amend particulars of quantum' - cross-claimant sought to change case for damages from claim based on copyright and 'confidential information, to 'wasted expenditure' claim or 'notional royalties' claim - application followed closure of evidence at trial - prejudice - extent of and explanation for delay - amendments' 'nature and importance' - held: leave to amend particulars refused - interlocutory application dismissed.

[University of Sydney](#)

Chapman v South Eastern Sydney Local Health District [2018] NSWSC 1231

Supreme Court of New South Wales

Fagan J

Personal property - plaintiff was deceased's widow - samples of sperm of deceased had been extracted, cryopreserved and stored at hospital - plaintiff sought declaration of entitlement to sperm's possession - plaintiff sought orders discharging restraint on removal from storage and use of sperm - parens patriae jurisdiction - *Guardianship Act 1987* (NSW) - *Human Tissue Act 1983* (NSW) - held: declaration granted that plaintiff entitled to sperm - first defendant to deliver up possession of sperm to plaintiff on conditions in respect of transportation - sample to be destroyed if not collected by certain date.

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Australia Health & Nutrition Association Limited v Hive Marketing Group Pty Limited [2018] NSWSC 1236

Supreme Court of New South Wales
McDougall J

Judgments and orders - contract - second defendant sought dismissal or permanent stay of proceedings, or that summons' service be set aside - second defendant relied on "exclusive jurisdiction" clause in contract between it, first plaintiff and first defendant - in event second defendant's application failed, plaintiffs sought leave to proceed against second defendant - presumption in respect of exclusive jurisdiction clauses - whether to deprive party of its enjoyment of contractual right's benefit - opposition to application based on risk of 'multiplicity of proceedings and inconsistent findings' - held: second defendant established claim for relief - proceedings between first plaintiff and second defendant dismissed.

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Ideal Business Centres Pty Ltd v Violin Holdings Pty Ltd atf The Violin Investment Trust [2018] NSWSC 1249

Supreme Court of New South Wales
Kunc J

Leases and tenancies - real property - equity - plaintiff was a lessee of commercial premises - second defendant was premises' registered proprietor under *Real Property Act 1900* (NSW) (Real Property Act) - first defendant purchased premises - proceedings concerned whether first defendant was bound to honour unregistered lease's terms - plaintiff contended first defendant was bound to honour the lease - no doubt first defendant was on notice of lease's terms - proper construction of lease - 'acknowledgment' in clause of lease - whether plaintiff had benefit of 'in personam' equity overcoming first defendant's indefeasible title under s42 Real Property Act - held: first defendant bound to 'observe and give effect to' the lease - plaintiff had no claim against second defendant.

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Matter Technology Ltd (administrators appointed) v Mrakas; Mrakas v Matter Technology Ltd (administrators appointed) (No 2) [2018] NSWSC 1245

Supreme Court of New South Wales
Stevenson J

Costs - corporations - solicitors' duties - Court gave judgment in proceedings - Court ordered defendants to pay Matter's costs on ordinary basis to certain date and on indemnity basis after that date - Matter, pursuant to s98(4)(c) *Civil Procedure Act 2005* (NSW) sought gross sum costs order - first defendant sought dismissal on basis of 'want of authority to act by the Plaintiffs' Solicitors' - held: gross sum costs order granted - first defendant's notice of motion dismissed.

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Murray & Anor v Great Southern Managers Aust Ltd & Ors (an Application by Garry



James Parker) [2018] VSC 416

Supreme Court of Victoria

Croft J

DATE: 10 August 2018

HEADLINE: Judgments and orders - group proceedings

Judgments and orders - group proceedings - managed investment scheme - deed of settlement

- applicant sought extension of time in which to opt out of group proceeding under s33J(3)

Supreme Court Act 1986 (Vic) or that he cease to be group member under s33KA(1) of the Act -

whether appropriate to extend time where three years had passed since settlement of group

proceeding - held: Court satisfied, on basis of group member's 'insufficient connection' with

Australia, to order that applicant cease to be a group member under s33KA(1) of the Act.

[Murray & Anor](#)

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