

Thursday, 21 June 2018

Daily 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)

Domino's Pizza Enterprises Limited v Precision Tracking Pty Ltd (No 6) (FCA) - pleadings - discovery - interlocutory application - plaintiff granted leave to make certain amendments to pleadings - respondent to give further discovery - orders made

Mal Owen Consulting Pty Ltd v Ashcroft (NSWCA) - contract - negligence - dismissal of claim against solicitor arising from delay in pursuing proceedings against third party - appeal allowed

LSKF Holdings Pty Ltd v Shield Lifestone Holdings Pty Ltd (NSWCA) - contract - shareholders' agreement was not uncertain and did not lack consideration - shareholders' agreement not void - appeal dismissed

Lowe v Kladis (NSWCA) - real property - easements - primary judge erred in finding appellants required to consent to development application in relation to construction of 'elevated driveway' - appeal allowed

Minister for Local Government v Blue Mountains City Council (NSWCA) - judgments and orders - planning and environment - Minister appealed against injunction - primary judge erred in finding serious question to be tried - appeal allowed

The Edge Development Group Pty Ltd v Jack Road Investments Pty Ltd (VSC) - contract - specific performance - sale of land - informal agreement - no binding legal relations arose between parties - proceeding dismissed

Kay & Anor v Kreis (QCA) - succession - family provision - refusal of extension of time to seek family provision from deceased's estate - appeal dismissed

Summaries With Link (Five Minute Read)

Domino's Pizza Enterprises Limited v Precision Tracking Pty Ltd (No 6) [2018] FCA 910

Federal Court of Australia

Robertson J

Pleadings - discovery - interlocutory application - applicant sought leave to amend pleadings, and orders that respondent provide further discovery by certain categories - four 'groupings' of proposed amendments - rr16.53 & 20.14 *Federal Court Rules 2011* (Cth) - delay - prejudice - 'content of standard discovery' - held: parties had 'mixed success' - Court granted leave to amend in certain 'groupings' - application to amend otherwise dismissed - Court required respondent to give further discovery - orders made.

[Dominos](#)

Mal Owen Consulting Pty Ltd v Ashcroft [2018] NSWCA 135

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Barrett AJA

Contract - negligence - solicitors' duties - appellant retained respondent solicitor to recover amount owed to it by third party - respondent 'negligently failed' to pursue the proceedings - new solicitors pursued proceedings - appellant obtained judgment - third party entered bankruptcy - appellant did not recover amount from third party - appellant sued respondent in District Court for 'negligent delay' in pursuit of proceedings - respondent admitted breach of duty but trial judge was not satisfied appellant proved loss - trial judge dismissed claim - whether sufficient for appellant to have established 'loss of a commercial opportunity having some value', even if financial loss not established on balance of probabilities - whether trial judge erred in failing to find appellant had established 'probability of financial loss' - whether *Civil Liability Act 2002* (NSW) (Civil Liability Act) altered elements of cause of action for breach of contract - meaning of 'harm' in s5 Civil Liability Act - held: appeal allowed.

[View Decision](#)

LSKF Holdings Pty Ltd v Shield Limestone Holdings Pty Ltd [2018] NSWCA 129

Court of Appeal of New South Wales

Leeming, Payne & White JJA

Contract - shareholders' agreement - outstanding issue in proceedings otherwise resolved by mediation - issue was whether shareholders' agreement was "void due to lack of consideration and/or uncertainty" - primary judge found that the shareholders' agreement did not lack consideration and was not uncertain - *Corporations Act 2001* (Cth) - whether consideration was illusory - 'outer limits of what is sufficient to constitute consideration' - held: contentions based on uncertainty and lack of consideration failed - shareholders' agreement not void - appeal

dismissed.

[View Decision](#)

Lowe v Kladis [2018] NSWCA 130

Court of Appeal of New South Wales

Meagher & White JJA; Sackville AJA

Real property - easements - primary judge required appellants to consent to development application which respondent lodged in relation to construction of elevated driveway which would be partly on respondent's land, and partly on land over which respondent's land had benefit of right of carriageway - appellants contended proposed driveway unjustifiably interfered with their rights - whether erroneous decision that appellants were required to consent to development application - held: Court satisfied that proposed development 'would substantially interfere' with appellants' rights as dominant tenements' owners - Court also satisfied proposed development would 'unreasonably interfere' with rights of neighbouring proprietor of lot - appeal allowed.

[View Decision](#)

Minister for Local Government v Blue Mountains City Council [2018] NSWCA 133

Court of Appeal of New South Wales

Bathurst CJ; McColl & Leeming JJA

Judgments and orders - injunction - planning and environment - equity - Supreme Court issued the following injunction: "The [Minister] shall be restrained until further order of this Court or the Land and Environment Court from making the proposed decision the subject of the notice dated 14 February 2018 and given to the [Council] pursuant to s 438K of the Local Government Act 1993 (NSW)." - Minister sought to appeal - whether Supreme Court had jurisdiction to issue injunction - whether erroneous finding there was serious question to be tried - whether erroneous finding that balance of convenience favoured relief - construction of ss438I & 438K *Local Government Act* 1993 (NSW) (Local Government Act) - held: Supreme Court had jurisdiction to issue injunction - primary judge erred in construction of ss438I & 438K Local Government Act with result primary judge erroneously concluded there was serious question to be tried - appeal allowed.

[View Decision](#)

The Edge Development Group Pty Ltd v Jack Road Investments Pty Ltd [2018] VSC 326

Supreme Court of Victoria

Riordan J

Contract - specific performance - sale of land - plaintiff sought specific performance agreement for sale of land with defendant - defendant submitted that it accepted the offer to purchase land but there was no intention to enter binding legal relations until formal contract executed - informal agreement - whether formal contract executed - whether 'intention to create contractual relations' - *Masters v Cameron* [1954] HCA 72; (1954) 91 CLR 353 - held: formal contract not executed - Court not satisfied that there were, in the circumstances, binding legal



relations between the parties

[The Edge Development](#)

Kay & Anor v Kreis [2018] QCA 128

Court of Appeal of Queensland

Fraser & Gotterson JJA: Boddice J

Succession - family provision - appellants sought family provision in respect of deceased's estate - primary judge, on bases of delay and prejudice, dismissed appellants' application for extension of time to commence application notwithstanding finding that they had arguable claim - whether miscarriage of discretion in refusal to grant extension of time - s41(8) *Succession Act 1981* (Qld) - whether primary judge erroneously focussed only on delay - whether erroneous failure to weigh 'relevant circumstances' - whether erroneous finding that appellant sent sale proceeds of deceased's house to try to evade those funds forming part of estate - whether erroneous finding that appellants brought application when they became aware Italian law could render the Italian assets part of estate - interests of justice - held: no error in decision of primary judge - no basis to interfere with exercise of discretion - appeal dismissed.

[Kay](#)

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