

Monday, 6 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)

Picos v Seven West Media Ltd (FCA) - summary dismissal - disjoinder - sex discrimination - proceeding dismissed insofar as it related to first and second respondents (I B)

The Gateway at Ryde Pty Ltd v Ryde Ex-Services Memorial & Community Club Ltd (NSWCA) - corporations - no serious question as to underlying claim - leave to appeal under s444E(3) *Corporations Act 2001* (Cth) refused (B)

Ransley v Chubb Insurance Company of Australia Ltd (NSWSC) - contract - insurance - Directors and Officers Liability policy - insurer's maximum liability - maximum aggregate liability - separate questions answered (I B)

Scrivener v Raffles Medical Group (NSWSC) - negligence - contract - claims against defendant in Singapore - Supreme Court of New South Wales was clearly inappropriate forum - statement of claim set aside (I)

Ciavarella v Hargraves Secured Investments Ltd ACN 089 001 267 (NSWSC) - injunction refused to restrain defendant from exercising mortgagee's power of sale - application dismissed (B)

Hallett v City of Port Phillip (VSC) - public health - noise nuisance - erroneous affirmation of improvement notices issued by Council (B C)

Mantonella Pty Ltd v Grancroft Pty Ltd (QSC) - security for costs - trusts and trustees -

security for costs granted with proceeding stayed pending their provision (I B)

Summaries With Link (Five Minute Read)

Picos v Seven West Media Ltd [2015] FCA 660

Federal Court of Australia

Perry J

Disjoinder - summary dismissal - sex discrimination - applicant claimed former employer and its officers (third fourth and fifth respondents) sexually harassed and unlawfully discriminated against her contrary to ss14 & 28B *Sex Discrimination Act 1984* - applicant further claimed first and second respondents liable by being in partnership with employer - first and second respondents sought orders removing them as parties on basis they were improperly or unnecessarily joined, or summary judgment insofar as proceeding related to them - held: claims against first or second respondents for breaches of Act had no reasonable prospects of success - claim on ground of breach of contract must fail - applicant's application dismissed insofar as it related to first and second respondents.

[Picos](#) (I B)

The Gateway at Ryde Pty Ltd v Ryde Ex-Services Memorial & Community Club Ltd [2015] NSWCA 184

Court of Appeal of New South Wales

Meagher JA

Corporations - applicant sought leave under s444E(3) *Corporations Act 2001* (Cth) to appeal from decision of primary judge in *Re Ryde Ex-Services Memorial & Community Club Limited* [2015] NSWSC 226 - whether leave should be granted to enable applicant to proceed with its appeal so that if it was successful and obtained further grant of leave, it may then proceed to enforce alleged agreement it had with Club - held: no utility in granting leave to prosecute appeal unless Court satisfied there was sufficiently serious question to be tried in relation to applicant's underlying claim - Court not satisfied there a serious question to be tried - notice of motion dismissed.

[TheGateway](#) (B)

Ransley v Chubb Insurance Company of Australia Ltd [2015] NSWSC 854

Supreme Court of New South Wales

Ball J

Contract - insurance - plaintiff was former director of company required to give evidence at public inquiry by ICAC into grant to company of licence coal mining tenement - plaintiff sought declaration that insurer was liable to indemnify him for legal costs incurred under Directors and Officers Liability policy issued to company - insurer did not dispute it was liable to indemnify director but claimed that its maximum aggregate liability for all claims for costs under Policy was \$2,000,000 of which it had already paid \$1,248,377.83 leaving \$751,622.17 to meet all

outstanding claims, including director's - determination of separate questions - insurer's maximum liability under Policy in respect of each claim made by Insured under Insuring Clause 1D of Policy? - maximum aggregate liability under Policy in respect of claims made by Insureds under Insuring Clause 1D of Policy - held: insurer's maximum liability depended on extent to which Limit of Liability specified in Schedule had been eroded by claims for Legal Representation Expenses already paid by insurer - insurer's liability did not exceed \$1 million in aggregate - separate questions answered.

[Ransley](#) (I B)

Scrivener v Raffles Medical Group Ltd [2015] NSWSC 874

Supreme Court of New South Wales

Button J

Clearly inappropriate forum - plaintiff claimed in negligence and for breach of contract against defendant in Singapore - defendant sought to set aside statement of claim - defendant claimed Supreme Court of New South Wales was clearly inappropriate forum for determination of dispute between - defendant also claimed plaintiff was incapable of demonstrating proceedings complied with r11.2 & Sch 6 *Uniform Civil Procedure Rules 2005* with result plaintiff not entitled to serve statement of claim on defendant in Singapore - defendant also contended claim doomed to failure and should be struck out because plaintiff incapable of demonstrating defendant was vicariously liable according to law of Singapore for allegedly wrongful actions of various doctors - s56 *Civil Procedure Act 2005* ,), s24A(2) *Limitation Act (Cap 163, 1996 Rev Ed)* - Sch 6, rr11.2 & 12.11(1) *Uniform Civil Procedure Rules 2005* - held: defendant established Supreme Court of New South Wales was clearly inappropriate forum for determination of dispute - even if Court wrong about inappropriate forum Court would reject claim as it currently stood because claim in breach of contract did not fall within causes of action that could be subject of service outside Australia - statement of claim set aside.

[Scrivener](#) (I)

Ciavarella v Hargraves Secured Investments Ltd ACN 089 001 267 [2015] NSWSC 865

Supreme Court of New South Wales

Kunc J

Injunction - plaintiffs sought to restrain defendant from exercising its mortgagee's power of sale by selling properties at auction - validity of notice given under s57(2)(b) *Real Property Act 1900* - held: Court not satisfied plaintiffs' complaints gave rise to a serious question to be tried - even if assumed serious question to be tried, application dismissed on balance of convenience and as matter of discretion - plaintiffs had not acted in timely fashion - no adequate or proper reason for dilatory conduct - no evidence of any possibility of plaintiffs obtaining refinancing - plaintiffs had already had benefit of significant forbearance by defendant under settlement agreement which they had breached - serious risk that amount of the plaintiffs' debts would exceed value of properties securing indebtedness - application dismissed.

[Ciavarella](#) (B)

Hallett v City of Port Phillip [2015] VSC 313

Supreme Court of Victoria

Ginnane J

Public health - nuisance caused by noise - two appeals from Magistrate's decision affirming improvement notices issued by Council in respect of excessive noise coming from old house - whether Council could issue improvement notices only if it believed appellants had contravened s61 *Public Health and Wellbeing Act 2008* and it was likely contravention was continuing and would reoccur - service of notices - natural justice - held: appellants established Magistrate erred in law by finding Act did not oblige Council to inform them of nuisance allegations and give them opportunity to respond to them before issuing improvement notices - Magistrate also erred in deciding appeal created by s208 did not entitle Magistrates' Court to take into account matters occurring after issue of improvement notices such as Victorian Civil and Administrative Tribunal orders - Court to hear parties about appropriate form of orders.

[Hallet](#) (B C)

Mantonella Pty Ltd v Grancroft Pty Ltd [2015] QSC 191

Supreme Court of Queensland

Henry J

Security for costs - plaintiff sought relief under r643 *Uniform Civil Procedure Rules 1999* with respect to ownership of shares in unit trust - defendants sought order that plaintiff provide security for costs of proceedings - impecuniosity and means - merits and prospects - prejudice - ss27 & 38 *Limitation of Actions Act 1974* - rr671 & 672 *Uniform Civil Procedure Rules 1999* - held: Court concluded it was appropriate case in which to order security for costs - plaintiff required to give security for costs up to close of pleading and disclosure - if matter continued past close of pleading and disclosure, or there was significant exceeding of amount in interim, applicants ought to have liberty to apply so as to seek further security - proceeding stayed pending provision of costs.

[Mantonella](#) (I B)

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