

Monday, 13 August 2018

## Daily Civil Law 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)

**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. (I B C G)

**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 (I B C G)

**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 (B C I G)

**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 (B C I G)

**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 (B C I G)

**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 (B C I G)**

**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 (I B C G)**

## 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](#) (I B C G)

### **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](#) (I B C G)

### **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.

[View Decision](#) (B C I G)

**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.

[View Decision](#) (B C I G)

**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.

[View Decision](#) (B C I G)

**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.



[View Decision](#) (B C I G)

**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](#) (I B C G)

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