



Friday, 14 September 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.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

EZY Accounting 123 Pty Ltd v Fair Work Ombudsman (FCAFC) - industrial law - appellant "involved in" contraventions of *Fair Work Act 2009* (Cth) - declaration of contravention in respect of 'meal breaks' and 'rest breaks' set aside - penalty varied - appeal otherwise dismissed (B I G)

Construction, Forestry, Mining and Energy Union v De Martin & Gasparini Pty Limited (No 3) (FCA) - industrial law - penalties - contravention of s340 *Fair Work Act 2009* (Cth) - declaration made - first respondent to pay \$30,000 pecuniary penalty to applicant (I B)

Hanna v Raoul (NSWCA) - contract - transfer of property from respondent to appellant was not binding - deed and transfer unconscionable and unjust - appeal dismissed (B C I G)

In the matter of Precise Training Pty Limited (NSWSC) - corporations - winding up - application to set aside statutory demand dismissed (B C I G)

Greenwood Futures v DSD Builders (NSWSC) - security of payments - challenges to adjudication determination failed - amended summons dismissed (B C I G)

Mackellar Mining Equipment Pty Ltd & Ors v Thornton & Ors (No 2) (QSC) - judgments and orders - stay - anti-suit injunction - stay pending appeal refused - interlocutory injunction dissolved (I B C G)

Austand Edunburgh Elevators Pty Ltd v Marveggio & Anor (SASC) - summary judgment - possession - real property - defendants had “credible case” in opposing application - summary judgment refused (I B C G)

Summaries With Link (Five Minute Read)

EZY Accounting 123 Pty Ltd v Fair Work Ombudsman [2018] FCAFC 134

Full Court of the Federal Court of Australia

Flick, Bromberg & O’Callaghan JJ

Industrial law - appellant was firm of accountants - respondent identified contraventions of *Fair Work Act 2009* (Cth) by company (Blue Impression) - Blue Impression sought assistance from appellant to rectify contraventions - further contraventions occurred - employee of Blue Impression sought respondent’s assistance - respondent commenced proceedings against Blue Impression and appellant - Blue Impression admitted contraventions - appellant denied liability - Federal Circuit Court found appellant was “involved in” contraventions of s45 of the Act and therefore had itself made the contraventions under s550 of the Act - respondent conceded primary judge had not given reasons for finding contraventions in respect of ‘meal breaks’ and ‘rest breaks’ - appellant contended there was no basis for finding it “involved in” the contraventions - held: no error in factual findings - no error in finding that appellant was “involved in” contraventions - appeal dismissed except to extent that declaration of contravention in respect of meal breaks and rest breaks set aside and penalty varied.

[EZY](#) (B I G)

Construction, Forestry, Mining and Energy Union v De Martin & Gasparini Pty Limited (No 3) [2018] FCA 1395

Federal Court of Australia

Wigney J

Industrial law - pecuniary penalties - Court found first respondent, by ‘words and conduct’ of second and third respondent, contravened s340 *Fair Work Act 2009* (Cth) - determination of relief - applicant sought declaration and order for pecuniary penalty’s payment - ‘no real dispute’ declaration should be made - dispute concerned amount of pecuniary penalty - held: declaration made - first respondent to pay \$30,000 pecuniary penalty to applicant.

[Construction](#) (I B)

Hanna v Raoul [2018] NSWCA 201

Court of Appeal of New South Wales

Beazley P; Macfarlan & White JJA

Contract - respondent was registered proprietor of property subject to a mortgage in third party financier’s favour - respondent resided in house on property - respondent and appellant executed deed of arrangement providing appellant would discharge mortgage and respondent

would transfer property to appellant subject to life estate in respondent's favour - appellant discharged mortgage - transfer executed and registered under *Real Property Act 1900* (NSW) - primary judge found transfer not binding, and that respondent was beneficially entitled to property, subject to compensation to appellant for money paid in discharging mortgage - whether respondent had capacity to enter deed and transfer - whether deed and transfer could be set aside because they were unconscionable - whether deed and transfer unjust - held: deed and transfer were unconscionable and unjust - appeal dismissed.

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

In the matter of Precise Training Pty Limited [2018] NSWSC 1383

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiff, under s459H *Corporations Act 2001* (Cth) sought to set aside creditor's statutory demand which Chief Commissioner of State Revenue served on it - alternatively plaintiff sought to set demand aside under s459J of the Act - alternatively plaintiff sought order that demand was 'null and void' - whether genuine dispute established - whether 'some other reason' to set aside demand - held: proceedings dismissed.

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

Greenwood Futures v DSD Builders [2018] NSWSC 1407

Supreme Court of New South Wales

McDougall J

Security of payments - first defendant agreed to construct townhouses for plaintiff under construction contract for purposes of *Building and Construction Industry Security of Payment Act 1999* (NSW) - first defendant contended it was entitled to 'milestone payment' - first defendant served documents 'purporting to be payment claims' under s13 of the Act - payment claims generated four applications, three of which were withdrawn - in fourth adjudication, adjudicator found first defendant entitled to milestone payment - plaintiff sought to quash determination - validity of payment claims - whether open to first defendant to "withdraw" application - whether adjudicator erroneously failed to value construction work in accordance with s10(1)(b) of the Act - held: challenges to adjudicator's determination failed - amended summons dismissed.

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

Mackellar Mining Equipment Pty Ltd & Ors v Thornton & Ors (No 2) [2018] QSC 208

Supreme Court of Queensland

Lyons SJA

Judgments and orders - stay - applicants made application for anti-suit injunction - applicants sought to extend operation of stay of decision effectively dismissing application - r761(2) *Uniform Civil Procedure Rules 1999* (Qld) - respondents sought that injunction be discharged - principles applicable to stay of execution of judgment pending appeal - prospects of success - whether orders made on appeal would be rendered nugatory if stay not granted - prejudice -



held: stay refused - interlocutory injunction dissolved.

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

Austand Edunburgh Elevators Pty Ltd v Marveggio & Anor [2018] SASC 128

Supreme Court of South Australia

Master Roder

Summary judgment - possession - real property - loans and mortgages - plaintiff sought possession of property - defendants were registered proprietors of property - plaintiff held registered mortgage securing repayment of money it advanced to company which first defendant controlled - whether defendants had 'credible case' in opposing application - misleading or deceptive conduct - unconscionable conduct - held: Court satisfied that defendants' arguments were "credible" - summary judgment refused.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

The Crocuses

By: Frances Ellen Watkins Harper
They heard the South wind sighing
 A murmur of the rain;
And they knew that Earth was longing
 To see them all again.

While the snow-drops still were sleeping
 Beneath the silent sod;
They felt their new life pulsing
 Within the dark, cold clod.

Not a daffodil nor daisy
 Had dared to raise its head;
Not a fairhaired dandelion
 Peeped timid from its bed;

Though a tremor of the winter
 Did shivering through them run;
Yet they lifted up their foreheads
 To greet the vernal sun.

And the sunbeams gave them welcome,
 As did the morning air—
And scattered o'er their simple robes
 Rich tints of beauty rare.

Soon a host of lovely flowers
 From vales and woodland burst;
But in all that fair procession
 The crocuses were first.

First to weave for Earth a chaplet
 To crown her dear old head;
And to beauty the pathway
 Where winter still did tread.

And their loved and white haired mother
 Smiled sweetly 'neath the touch,
When she knew her faithful children
 Were loving her so much.



https://en.wikipedia.org/wiki/Frances_Harper

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