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## Insurance, Banking, Construction & Government

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

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#### Executive Summary (1 minute read)

**Lift Shop Pty Ltd v Easy Living Home Elevators Pty Ltd (FCAFC)** - trade mark - no infringement of trademark by use of words on website - appeal dismissed (I B)

**Young, Jr, in the matter of Buccaneer Energy Limited v Buccaneer Energy Ltd (FCA)** - private international law - bankruptcy - United States proceeding recognised as *foreign main proceeding* (B)

**Saravinovski v Fairfax Media Publications Pty Ltd (NSWSC)** - defamation - pleadings - specificity - imputations struck out - leave to replead (I C)

**Parker v City of Bankstown RSL Community Club Ltd (No. 2) (NSWSC)** - costs - unreasonable rejection of Calderbank offers - indemnity costs (I)

**In the matter of CB Constructions (NSW) Pty Ltd (NSWSC)** - corporations - winding up - provisional liquidator's application for remuneration dismissed (B C)

**In the matter of Carbon and Energy Reductions Pty Ltd (NSWSC)** - corporations - winding up - ineffective service of statutory demand - demand set aside (B C)



**Ngarluma Aboriginal Corporation RNTBC v The Attorney General of Western Australia** (WASC) - trusts and trustees - application for removal of trustee of two trusts and appointment of new trustee - orders made in respect of one trust (B G)

## Summaries with links (5 minute read)

### **Lift Shop Pty Ltd v Easy Living Home Elevators Pty Ltd [2014] FCAFC 75**

Full Court of the Federal Court of Australia

Besanko, Yates & Mortimer JJ

Trademarks - parties were competitors in supply of customised elevators/lifts and disability platform elevators - primary judge dismissed appellant's claim for trademark infringement arising from steps taken by respondent to modify its web site to enhance its rankings in search results - appellant contended primary judge erred in concluding it had not discharged onus of showing respondent used term *Lift Shop* as trade mark in title of its web page - s120(2)(b) *Trade Marks Act 1995* (Cth) - held: use of *Lift Shop* did not function to distinguish respondent's goods or services from those of others - use of words was to designate that business was of same or similar character as other businesses grouped and operating as *lift shops* - such use was antithesis of trade mark use - appeal failed.

[Lift Shop Pty Ltd](#) (I B)

### **Young, Jr, in the matter of Buccaneer Energy Limited v Buccaneer Energy Ltd [2014] FCA 711**

Federal Court of Australia

Jagot J

Private international law - insolvency - plaintiffs sought order under Art 17 *Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law* recognising proceedings in United States Bankruptcy Court southern district of Texas as a foreign main proceeding - proceeding concerned voluntary petition in respect of insolvency of an Australian public company with wholly owned subsidiaries incorporated in United States - unsecured creditor opposed application on basis it was not a foreign main proceeding - State where debtor had centre of main interests - whether presumption in Art 16(3) that place of registered office was centre of main interests rebutted - held: centre of main interest must be identified by objective criteria ascertainable by third parties - evidence showed debtor's head office was in Houston Texas from which it administered its interests on regular basis - Court satisfied centre of main interests United States - plaintiffs entitled to have United States proceeding recognised as a foreign main proceeding - order made.

[Young, Jr, in the matter of Buccaneer Energy Limited](#) (B)

**Saravinovski v Fairfax Media Publications Pty Ltd [2014] NSWSC 919**

Supreme Court of New South Wales

McCallum J

Defamation - pleadings - actions arising from publication of article in online version of newspaper concerning allegations of corruption against former mayor - defendant objected to all but two imputations relied on - requirement of specificity - scope for confusion - held: meaning of *corruptly arranged, corrupt relationship, in a compromised position, wrongly and compromised his independence and honesty* were unclear - imputations struck out with leave to replead.

[Saravinovski](#) (I C)**Parker v City of Bankstown RSL Community Club Ltd (No. 2) [2014] NSWSC 921**

Supreme Court of New South Wales

Adamson J

Costs - defendants successful in proceedings sought costs on indemnity basis in reliance on offers of compromise which, had they been accepted, would have given plaintiff better result - first defendant Club made two Calderbank offers on different dates - second and third defendants (Yees) made a Calderbank offer and offer of compromise on same date - rr20.26 & 42.15A *Uniform Civil Procedure Rules 2005* (NSW) - held: at time of Club's first offer proceedings had only been on foot short time - offer only slightly short of request for capitulation - at time of Club's second offer parties had already prepared for hearing - second offer involved substantial compromise - unreasonable of plaintiff not to accept second offer - Yees' offers involved genuine and significant compromise - plaintiff to pay Club's costs on indemnity basis from date of second offer and Yees' costs on indemnity basis from date of their offers.

[Parker](#) (I)**In the matter of CB Constructions (NSW) Pty Ltd [2014] NSWSC 913**

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiff provisional liquidator of company sought orders that his remuneration for period of appointment be determined by Court - ss473, 473(10) & 1322 *Corporations Act 2001* (Cth) - r9.3 *Supreme Court (Corporations) Rules 1999* (NSW) - held: plaintiff had done work which would in ordinary course warrant claim for remuneration however Court not satisfied plaintiff established entitlement - Court presented with inconsistent claims unexplained by evidence - Court not satisfied it should approve either remuneration initially claimed or larger amount now claimed - application dismissed.

[In the matter of CB Constructions \(NSW\) Pty Ltd \[2014\] NSWSC 913](#) (B C)**In the matter of Carbon and Energy Reductions Pty Ltd [2014] NSWSC 923**

Supreme Court of New South Wales

Bergin CJ in Eq



Service - corporations - winding up - company sought to set aside statutory demand on basis it was not served in accordance with s109X(1)(a) *Corporations Act 2001* (Cth) - held: Court not satisfied statutory demand left *at the registered office* of company - although solicitor's letter explained he left statutory demand in mailbox *near the entrance of the property* there was no evidence whether this referred to entrance of unit which was company's registered office or entrance to residential complex of which registered office was part - Court satisfied service not validly effected under s 109X(1)(a) - statutory demand set aside.

[In the matter of Carbon and Energy Reductions Pty Ltd](#) (B C)

**Ngarluma Aboriginal Corporation RNTBC v The Attorney General of Western Australia [2014] WASC 245**

Supreme Court of Western Australia

Allanson J

Trusts and trustees - company was sole trustee of two trusts which held and administered funds paid under Indigenous Land Use Agreement - terms of office for company's directors expired - no replacement directors appointed - plaintiff sought orders appointing trustee in substitution for company to enable trusts to continue to operate until company could resume - held: In relation to direct benefits trust, Court prepared to make orders under s77 *Trustees Act 1962* (WA) - however in relation to charitable purposes trust Attorney-General was proper person to bring proceedings - proceedings adjourned to enable Attorney-General to consider position.

[Ngarluma Aboriginal Corporation RNTBC](#) (B G)

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