

Thursday, 17 May 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)

Dryden and others (Appellants) v Johnson Matthey Plc (Respondent) (UKSC) - negligence - platinum salt sensitisation was an 'actionable personal injury' on basis of which workers could claim against employer - appeal allowed (I B C G)

The Commissioner of the Australian Federal Police v Steffan Treptower (NSWSC) - proceeds of crime - judgments and orders - orders sought for examination of respondent - Court not satisfied to hear matter ex parte - matter stood over (B C I G)

Reozone Pty Ltd v Rene Santoro & Ors (NSWSC) - funds in court - loans and mortgages - determination of competing claims to funds in court - orders made and stayed pending attempts to locate mortgagor (B C I G)

Akuna Capital LLC (Delaware) v Ainsley (NSWSC) - judgments and orders - interlocutory injunction - confidentiality - application for removal of material from defendant's application in Fair Work proceedings - application dismissed (B C I G)

Dickens v State of New South Wales (No 4) (NSWSC) - costs - defendant successful in proceedings - plaintiff sought that costs be reserved on basis of his proposed appeal - Court not satisfied to reserve costs - defendant granted gross sum costs order (B C I G)

Elwick 9 v Freeman (VSC) - administrative law - statutory interpretation - Tribunal's order restricting Gym's hours of operation limited right under *Planning and Environment Act 1987*

(Vic) contrary to s140 *Owners Corporation Act 2006* (Vic) - appeal allowed - orders set aside (B C I G)

Lien & Anor v Clontarf Residential Pty Ltd & Anor (QSC) - contract - joint venture agreement - implied terms - breach of contract established - repudiation established - termination of contract effective - plaintiffs granted declaration - counterclaim dismissed (I B C G)

Summaries With Link (Five Minute Read)

Dryden and others (Appellants) v Johnson Matthey Plc (Respondent) [2018] UKSC 18

Supreme Court of the United Kingdom

Lady Hale, President; Lord Wilson Lord Reed Lady Black & Lord Lloyd-Jones

Negligence - appellants worked for respondent company - respondent breached duty by failing ensure factories in which claimants worked were cleaned properly - appellants resultantly exposed to platinum salts which led to them to develop 'platinum salt sensitisation' - platinum salt sensitisation was asymptomatic but entailed that further exposure to platinum salts likely to cause allergic reaction - appellants no longer allowed to work in areas where they might be exposed to platinum salts - two appellants' employment terminated - other appellant took up other role which he claimed had a reduced payment rate - appeal's central issue was whether platinum salt sensitisation was an 'actionable personal injury' on basis of which appellants could claim against respondent for negligence and/or breach of statutory duty - whether, if platinum salt sensitisation not an actionable personal injury, appellants could claim for economic loss under implied term of contract and/or in negligence - held: concept of actionable personal injury broad enough to included damage which appellants had suffered - appeal allowed.

[Dryden](#) (I B C G W WI WB WC WG) (I B C G)

The Commissioner of the Australian Federal Police v Steffan Treptower [2018] NSWSC 677

Supreme Court of New South Wales

Button J

Proceeds of crime - judgments and orders - threshold question - applicant sought, pursuant to s180 or 180B *Proceeds of Crime Act 2002* (Cth), examination of respondent 'introducer' concerning affairs of 'principal' and other person - threshold question was whether appropriate to hear application ex parte - affected party's right to be heard - orders seeking derogation of citizen's right to silence - whether 'compelling reasons' to make orders ex parte without affected person being heard - complexity and controversial nature of topic - whether matter required both sides to be heard - held: Court not satisfied to hear matter ex parte - orders refused - matter stood over.

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

Reozone Pty Ltd v Rene Santoro & Ors [2018] NSWSC 650

Supreme Court of New South Wales

Slattery J>

Funds in court - loans and mortgages - proceedings concerned determination of parties' competing claims to funds in court - funds consisted of net proceeds of judicial sale of property - funds paid into Court under s95 *Trustee Act 1925* (NSW) and r55 *Uniform Civil Procedure Rules 2005* (NSW) - not in dispute first defendant former registered proprietor and mortgagor had equitable interest - other parties claimed interests as unsecured creditors of first defendant - held: orders made concerning competing claims - orders stayed pending final attempts to locate mortgagor.

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

Akuna Capital LLC (Delaware) v Ainsley [2018] NSWSC 680

Supreme Court of New South Wales

McDougall J

Judgments and orders - interlocutory injunction - confidentiality - defendant was employed by third plaintiff - defendant and third plaintiff entered employment agreement (Letter of Engagement) and 'Restrictive Covenant and Employee Intellectual Property Agreement' - defendant's employment ended - defendant commenced Fair Work Commission proceedings - plaintiffs sought to remove certain material, which they contended to be their property and confidential information, from defendant's application in proceedings - whether material confidential - whether agreements only operated between third plaintiff and defendant - held: basis not established for Court to grant interlocutory relief - application dismissed.

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

Dickens v State of New South Wales (No 4) [2018] NSWSC 666

Supreme Court New South Wales

Adamson J

Costs - Court dismissed proceedings - Court held that plaintiff should pay defendant's costs, subject to application for other costs order - plaintiff sought that costs be reserved on basis of proposed appeal - defendant sought gross sum order in respect of costs under s98(4) *Civil Procedure Act 2005* (NSW) - held: Court not prepared to reserve costs on basis of proposed appeal - it was in interests of justice for Court to deal with outstanding issues before considering an appeal - defendant had been successful - costs should follow event - gross sum costs order granted.

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

Elwick 9 v Freeman [2018] VSC 234

Supreme Court of Victoria

Quigley J

Administrative law - statutory interpretation - applicant operated business (Gym) on ground floor of apartment building - first respondent owned apartment above Gym - rules of Owners Corporation for Plan of Subdivision applied to parties - Victorian Civil and Administrative

Tribunal ordered compliance with Rules and restricted Gym's hours of operation - restriction on hours of operation inconsistent with opening hours which planning permit authorised - applicant sought to appeal - held: Court satisfied Tribunal's order restricting Gym's hours of operation was inconsistent with, and limited, a right under *Planning and Environment Act 1987* (Vic) contrary to s140 *Owners Corporation Act 2006* (Vic) - appeal allowed - orders set aside.

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

Lien & Anor v Clontarf Residential Pty Ltd & Anor [2018] QSC 94

Supreme Court of Queensland

Jackson J

Contract - joint venture - plaintiffs and first defendant made joint venture agreement concerning development of land which plaintiffs owned - plaintiffs sought declaration that they had terminated contract following first defendants' breaches or repudiation of contract - plaintiff also sought relief including damages - first defendant sought declaration that contract was on foot, and relief including specific performance and damages - whether breach of implied terms - whether contract contained implied term of good faith - whether plaintiffs' termination effective - whether breaches of contract by first defendant - whether repudiation by first defendant - held: breaches of contract by first defendant established - first defendant had repudiated contract by evincing intention to fulfil it 'only in a manner substantially inconsistent with the first defendant's obligations' - plaintiffs' termination was effective - declaration granted - counterclaim dismissed.

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

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