

Monday, 22 February 2016

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)

Commonwealth Bank of Australia v Prentice (Trustee), in the matter of Shannon (Bankrupt) (FCA) - bankruptcy - bank granted leave to take fresh steps and continue with Supreme Court of NSW proceeding (B)

Lowden v Elliott Harvey Securities Ltd (FCA) - discovery - corporations - directors' duties - informal applications to inspect documents held by non- parties refused (I B)

Bendigo and Adelaide Bank Ltd v Clout (FCA) - bankruptcy - compositions of debts made under s73 *Bankruptcy Act 1996* (Cth) set aside (B)

T & T Investments Australia Pty Ltd v CGU Insurance Ltd (NSWCA) - adjournment - costs - vacation of hearing granted - appellant to pay respondent's costs thrown away - further security ordered - appeal stayed pending provision of security (I B)

AFP v Dong Hua International (VSCA) - proceeds of crime - refusal to vacate trial date or make examination order sought - leave to appeal refused (I B)

Martin v Andrews (QSC) - damages - plaintiff injured in motor vehicle accident - liability admitted - damages assessed at \$1,282,572.10 (I)

Sean Rose Holdings Pty Ltd v LWP Technologies Ltd (QSC) - injunction - environmental nuisance - noise emissions from machinery on plant - interlocutory injunction refused (I B C)

Benchmark

Summaries With Link (Five Minute Read)

Commonwealth Bank of Australia v Prentice (Trustee), in the matter of Shannon (Bankrupt) [2016] FCA 53

Federal Court of Australia

Gleeson J

Bankruptcy - Mr Shannon was a bankrupt pursuant to orders of Court - applicant bank sought pursuant to s58(3)(b) *Bankruptcy Act 1966* (Cth) to take fresh steps and continue with proceeding in Supreme Court of New South Wales - Mr Shannon claimed application for leave was abuse of process - whether Supreme Court proceeding "in respect of provable debt" - standing - s229 - held: leave to proceed granted on basis there was unresolved issue concerning whether judgment of Davies J was in respect of provable debts - granting leave would promote determination whether judgment creditor owed debts which provable in bankruptcy of Mr Shannon - leave to proceed granted.

[Commonwealth Bank](#) (B)

Lowden v Elliott Harvey Securities Ltd [2016] FCA 18

Federal Court of Australia

Edelman J

Discovery - corporations - directors' duties - applicants applied informally for permission to inspect books and records or discovery of documents from non-parties - ss9, 486 & 511(1)(b) *Corporations Act 2001* (Cth) - rr5.22, 5.23, 5.23(2) & 20.23(1) *Federal Court Rules 2011* (Cth) - held: Court could not resolve applications - it would not be just to decide informal application against party not present - application had been brought without sufficient notice - springing order granted - applications refused.

[Lowden](#) (I B)

Bendigo and Adelaide Bank Ltd v Clout [2016] FCA 119

Federal Court of Australia

White J

Bankruptcy - applicant sought that compositions of debts of second and third respondents' and their joint bankrupt estate made under s73 *Bankruptcy Act 1996* (Cth) be set aside - ss5, 64D, 64ZA, 73, 74, 76B, 81, 120, 125, 178, 222 & 263 - whether terms of composition calculated to benefit creditors - whether composition proposal's terms were unreasonable - held: Court satisfied applicant showed compositions should be set aside and new trustee appointed to respondents' bankrupt estates - application granted - compositions set aside.

[Bendigo](#) (B)

T & T Investments Australia Pty Ltd v CGU Insurance Ltd [2016] NSWCA 16

Court of Appeal of New South Wales

Beazley P, Meagher JA & Sackville AJA

Adjournment - costs - corporations - appellant sought that hearing of appeal be adjourned so it

could obtain legal representation - appellant's previous solicitors had filed notice of ceasing to act - respondent sought that matter proceed - if Court granted adjournment respondent sought costs thrown away by adjournment on indemnity basis - respondent also sought lump sum order - respondent sought that costs be paid forthwith and provision for further security for costs - held: Court granted adjournment sought - appellant ordered to pay respondent's costs thrown away on ordinary basis - appellant directed to pay further security for costs into Court - appeal stayed pending provision of security.

[T & T](#) (I B)

AFP v Dong Hua International [2016] VSCA 15

Court of Appeal of Victoria

Redlich, Priest & Beach JJA

Proceeds of crime - applicant Commissioner sought examination orders in respect of proposed examinees and vacation of trial date to allow examinations to be conducted - trial judge ordered examination of one examinee and refused order in respect of other proposed examinees - trial judge refused to vacate trial date - Commissioner appealed - ss5, 49, 180, 180A, 180B & 180E *Proceeds of Crime Act 2002* (Cth) - held: no basis to interfere with exercise of discretion by trial judge to refuse to vacate trial date or examination order - leave to appeal refused.

[AFP](#) (I B)

Martin v Andrews [2016] QSC 20

Supreme Court of Queensland

McMeekin J

Damages - plaintiff injured in motor vehicle accident - liability admitted - assessment of damages - *Civil Liability Act 2003* (Qld) - *Civil Liability Regulation 2003* (Qld) - level of plaintiff's pain - economic loss - pain and suffering - level of pain - special damages - held: damages assessed at \$1,282,572.10.

[Martin](#) (I)

Sean Rose Holdings Pty Ltd v LWP Technologies Ltd [2016] QSC 16

Supreme Court of Queensland

A Lyons J

Interlocutory injunction - nuisance - equity - parties were occupiers of adjoining properties - respondent built plant on its leased premises - applicant sought interlocutory injunction restraining respondent from causing environmental nuisance from noise emissions - whether damages would be adequate remedy - value of applicant's undertaking - held: on consideration of acoustics reports and affidavits Court satisfied applicant had prima facie case - however Court not satisfied balance of convenience favoured injunction - application refused.

[Sean Rose Holdings](#) (I B C)

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