

Monday, 22 February 2016

Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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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)

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)

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