



Thursday, 24 December 2015

BENCHMARK SPECIAL EDITION

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Executive Summary (1 minute read)

Firebird Global Master Fund II Ltd v Republic of Nauru [No 2] [2015] (HCA) - costs - success on appeal not contestable by reference to determination of separate issues - no reason to depart from usual rule - appellant to pay respondents' costs of appeal (I B C G)

Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liquidation); Commissioner of Taxation v Muller and Dunn as Liquidators of Australian Building Systems Pty Ltd (In Liq) (HCA) - income tax - retention obligation in s254(1)(d) *Income Tax Assessment Act 1936* (Cth) - retention obligation only arose after assessment or deemed assessment - appeals dismissed (I B C G)

Harjai v Fraser (NSWCA) - interlocutory injunction - declaration that stock and fit-out belonged to first and second defendants - injunction pending appeal refused (I B)

McGinn v Cranbrook School (No 2) (NSWCA) - judgments and orders - judgment not entered irregularly, illegally or against good faith - judgment not set aside - notice of motion dismissed (I)

Western Sydney Local Health District v Chan (NSWSC) - judicial review - workplace injury - whole person impairment - no error in decision of Appeal Panel - summons dismissed (I G)

O'Neill v Robertson-Staton (NSWSC) - possession - trusts - dispute concerning respective interests in property - judgment for possession in favour of owner - stay of execution (B)



Gambaro Pty Ltd as Trustee for the Gambaro Holdings Trust v Rohrig (Qld) Pty Ltd; Rohrig (Qld) Pty Ltd v Gambaro Pty Ltd (QCA) - summary judgment - pleadings - restitution - statement of claim struck out - appeal against refusal of summary judgment dismissed (I B C)

Summaries With Link (Five Minute Read)

Firebird Global Master Fund II Ltd v Republic of Nauru [No 2] [2015] HCA 53

High Court of Australia

French CJ; Kiefel, Nettle & Gordon JJ

Costs - Court upheld decision of the Court of Appeal of the Supreme Court of New South Wales from which appellant had appealed, except in one respect which was a variation made to order made by Court of Appeal which had effect that appellant retained its registration of foreign judgment against first respondent - on appeal, appellant's success had been limited to certain issues - appellant unsuccessful on other issues - determination of costs - held: not a case where it could be said success was contestable by reference to determination of separate issues - no special circumstances to warrant a departure from general rule - appellant to pay respondents' costs of appeal

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

Commissioner of Taxation v Australian Building Systems Pty Ltd (In Liquidation); Commissioner of Taxation v Muller and Dunn as Liquidators of Australian Building Systems Pty Ltd (In Liq) [2015] HCA 48

High Court of Australia

French CJ; Kiefel, Gageler, Keane & Gordon JJ

Income tax - liquidators of Australian Building Systems (ABS) caused it to sell property during year ended 30 June 2012 - ABS made capital gain on sale which entered into calculation of ABS' assessable income of that year - common ground that assessment of taxable income calculated by reference to such capital gain would, in fullness of time, be issued to ABS, not to liquidators - Commissioner found that s254(1)(d) *Income Tax Assessment Act 1936* (Cth) obliged liquidators to retain from proceeds of sale an amount sufficient to pay tax to be assessed in respect of sale of the property in the period prior to the issue of an assessment - primary judge held obligation to retain only arose after the issue of an assessment - Full Court of Federal Court found primary judge was correct to find s254(1)(d) only imposed obligation of retention once a relevant assessment had issued - held: retention obligation in s254(1)(d) only arose after assessment or deemed assessment - appeals dismissed

[Commissioner of Taxation](#) (I B C G)

Harjai v Fraser [2015] NSWCA 415

Court of Appeal of New South Wales

Beazley P

Interlocutory injunction - third defendant sought to appeal against order that stock and fit-out at



shops at factory outlet centre belonged to first and second defendants - third defendant sought to stay order pending appeal - prospects of success - held: appropriate form of relief would be injunction restraining removal of goods or preserving them pending appeal, however third defendant failed to establish basis on which he ought to be granted relief - injunction refused.

[Harjai](#) (I B)

McGinn v Cranbrook School (No 2) [2015] NSWCA 419

Court of Appeal of New South Wales

Leeming JA

Judgments and orders - Court dismissed appeal purportedly brought by appellant as of right from orders dismissing proceedings brought by appellant pursuant to r13.4(1) *Uniform Civil Procedure Rules 2005* (NSW) - appellant sought to set aside judgment on basis it was entered irregularly ss46 & 101 *Supreme Court Act 1970* (NSW) - rr13.4, 36.15, 51.61 - held: Court not persuaded there was any error in decision let alone judgment given irregularly, illegally or against good faith - notice of motion dismissed.

[McGinn](#) (I)

Western Sydney Local Health District v Chan [2015] NSWSC 1968

Supreme Court of New South Wales

Adams J

Judicial review - workplace injury - plaintiff sought to set aside decision of Appeal Panel - plaintiff claimed Panel erred in finding approved medical specialist took into account revised assessment of worker's whole person impairment in rejecting employer's grounds of review - ss319, 322, 325, 327, 328 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: Appeal Panel's conclusion not "irrational, illogical and not based on findings or inferences of fact supported by logical grounds" - Panel's decision plainly open and entirely reasonable - summons dismissed.

[Western](#) (I G)

O'Neill v Robertson-Staton [2015] NSWSC 1949

Supreme Court of New South Wales

McCallum J

Possession - trusts - dispute between plaintiff mother and defendant daughter as to respective interests in property - property owned by mother and occupied by defendant daughter with defendant husband and two children - mother sought to evict daughter and family - daughter claimed equitable interest in half the estate - held: no joint relationship or endeavour - constructive trust not established - arrangement properly characterised as rental arrangement - judgment for possession granted in mother's favour - property was home of defendants and their two children - defendants had no legal title to land but it was appropriate to stay execution of the order to permit orderly departure from property

[O'Neill](#) (B)

Gambaro Pty Ltd as Trustee for the Gambaro Holdings Trust v Rohrig (Qld) Pty Ltd;



Rohrig (Qld) Pty Ltd v Gambaro Pty Ltd [2015] QCA 288

Court of Appeal of Queensland

Fraser & Morrison JJA; Boddice J

Summary judgment - pleadings - restitution - Gambaro and Rohrig were parties to construction contract which required Rohrig to carry out construction work for Gambaro - Rohrig made payment claim under *Building and Construction Industry Payments Act 2004* (Qld) (BCIPA) - Gambaro paid payment claim in part - Gambaro sought declaration it was not liable for amount it paid and order that Rohrig make restitution of amount - Gambaro sought summary judgment - Rohrig sought to strike out statement of claim - primary judge dismissed both applications - held: Gambaro's statement of claim was untenable - statement of claim struck out with leave to file an amended statement of claim - Gambaro's appeal against refusal of summary judgment dismissed on basis application was based on incorrect construction of BCIPA.

[Gambaro](#) (I B C)



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L A W Y E R S

Trumpet-man

David Conolly

Walked our streets, he did.
and breathed our air.

No - more than that,

he took our breath
and sent it flying back
into the world,
transformed.

So strong, so pure that sound:

blues for the broken,
rhythm to set feet tapping.

Crowds, as usual,
still hurry past.
What do they care that
it's his birthday?

But some stop -
the homeless,
the misfits -
and smile, and dance.

They recognise the tune.

Happy Birthday, trumpet-man.
Thanks for the melody.

David Conolly

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