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

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Executive Summary (1 minute read)

DHR International, Inc a company incorporated in Delaware in the United States of America v Challis (NSWSC) - injunction - interlocutory injunction restraining injurious falsehood refused (I)

Frewin v Adecco Industrial Pty Ltd (NSWSC) - contract - determination of cross-claim - third defendant did not establish entitlement to be indemnified in regard to plaintiff's claim pursuant to agreement with first defendant (I B C)

Danckert v Tonkin (NSWSC) - contract - no binding joint venture agreement established - plaintiffs' claims dismissed - second defendant succeeded on cross-claim for outstanding debt pursuant to loan agreement (I B)

Ngurampaa Ltd v Brewarrina Shire Council (NSWSC) - joinder - third party refused permission to be joined in Supreme Court proceedings - notice of motion dismissed (I B)

HWG Holdings Pty Ltd v Fairlie Court Pty Ltd (NSWSC) - corporations - buy-back agreement - common mistake - deed of acknowledgment - rectification of share register under s175(1) *Corporations Act 2001* (Cth) granted (I B C)

Ryan v Worthington (QCA) - building contract - administrative law - construction of clauses governing builder's entitlement to extension of time and right to terminate contract under s90 *Domestic Building Contracts Act 2000* (Qld) - appeal dismissed - matter remitted for determination (B C)

Corica v Smith (WASCA) - property (seizure and sale) order (PSSO) - no special circumstances to suspend enforcement of judgment - PSSO not set aside - appeal dismissed (I B C)

Summaries With Link (Five Minute Read)

DHR International, Inc a company incorporated in Delaware in the United States of America v Challis [2015] NSWSC 1567

Supreme Court of New South Wales

White J

Injunction - injurious falsehood - trade practices - plaintiff sought interlocutory injunction compelling defendant to take steps to prevent public access to blog and restraining defendant from publishing any false statements regarding plaintiff intended to cause, or would or were likely to cause, damage to plaintiff's business - elements of tort of injurious falsehood - principle of free speech - held: there was prima facie evidence defendant published allegedly false statements in blog which concerned plaintiff and were calculated to produce actual damage intentionally caused by defendant's publication - there was not a serious question to be tried from evidence adduced by plaintiff that statements in blog were materially false or misleading or deceptive - injunction restraining injurious falsehood refused.

[DHR](#) (I)

Frewin v Adecco Industrial Pty Ltd [2015] NSWSC 1568

Supreme Court of New South Wales

Adamson J

Contract - plaintiff sued first defendant in the Supreme Court of the Australian Capital Territory - proceedings transferred to Supreme Court of New South Wales - plaintiff joined second and third defendants - second and third defendants cross-claimed against first defendant claiming an indemnity pursuant to an agreement between third defendant and first defendant - plaintiff's claim settled - remaining matter for determination was cross-claim - whether contract of indemnity remained in force and binding on first defendant after expiry of agreement - construction of agreement - post-expiry conduct - whether new agreement executed - held: third defendant did not establish any entitlement on cross-claim against first defendant to be indemnified in respect of plaintiff's claim

[Frewin](#) (I B C)

Danckert v Tonkin [2015] NSWSC 1570

Supreme Court of New South Wales

Sackar J

Contract - equity - consumer law - plaintiffs claimed specific performance of joint venture agreement between parties or damages in lieu - plaintiff also claimed damages for misleading or

deceptive conduct against first defendant and made set of claims alleging breaches of implied terms of the agreement, breaches of a duty of good faith, and impairment of plaintiff's leasehold interest - plaintiffs also made estoppel claim - second defendant cross-claimed against third plaintiff alleging breach of loan agreement and seeking amount with interest and costs - whether binding joint venture entered into by parties - held: no binding agreement came into existence - in absence of binding agreement which would include release the debt claimed pursuant to cross-claim was outstanding - plaintiffs unsuccessful - second defendant succeeded on cross-claim.

[Danckert](#) (I B)

Ngurampaa Ltd v Brewarrina Shire Council [2015] NSWSC 1553

Supreme Court of New South Wales

Button J

Joinder - defendant council obtained judgment against plaintiff - proceedings in Supreme Court were in nature of plaintiff's appeal - applicant sought to be joined in proceedings in order to make submissions on matters of law and concerning provision of social justice to Aboriginal people - defendant submitted simple dispute between council and a company over unpaid rates on land not an appropriate forum for applicant - r6.24 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court accepted applicant had had connection with company and held his views deeply and sincerely - however there was danger in applicant's views being given inappropriate primacy over others - not appropriate that applicant become further involved in straightforward monetary dispute about small sum - notice of motion dismissed.

[Ngurampaa](#) (I B)

HWG Holdings Pty Ltd v Fairlie Court Pty Ltd [2015] VSC 519

Supreme Court of Victoria

Sifris J

Corporations - first and second plaintiffs sought order pursuant to s175(1) *Corporations Act 2001* (Cth) that share register of first plaintiff be rectified to restore shareholding of second plaintiff - no defendants to application - parties discovered they had entered into buy-back agreement under common mistake about assumption of law on which arrangement based - parties executed deed acknowledging they entered agreement under common mistake and declaring it void (deed of acknowledgment) - plaintiff sought to rectify first plaintiff's register of members to reflect that agreement was void by recording that second plaintiff had held additional number of shares in first plaintiff since time those shares first acquired by second plaintiff - held: register to be rectified to accord with clear intention expressed by parties in deed of acknowledgment - buy-back agreement was void ab initio - parties had made very serious mistake - no misrepresentation or misleading conduct - no-one at fault - plaintiffs entitled to relief sought.

[HWG](#) (I B C)

Ryan v Worthington [2015] QCA 201

Court of Appeal of Queensland

Morrison & Phillipides JJA; Flanagan J

Building contract - administrative law - respondent commenced proceedings against applicant in Queensland Civil and Administrative Tribunal to recover amount outstanding from final payment claim under building contract - QCAT found in respondent's favour - Appeal Tribunal allowed appeal and remitted matter for determination according to law - applicant challenged Appeal Tribunal's decision - s90 *Domestic Building Contracts Act 2000* (Qld) - ss146 & 150 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) - held: applicant succeeded in challenge to Appeal Tribunal's approach to construction of clause governing builder's entitlement to extension of time but failed in challenge to clause concerning owner's right to terminate contract under s90 and the relief granted by Appeal Tribunal - appropriate order was that made by the Appeal Tribunal - matter should be remitted to Member for determination according to law - appeal dismissed.

[Ryan](#) (B C)

Corica v Smith [2015] WASCA 209

Court of Appeal of Western Australia

Newnes & Murphy JJA

Property (seizure and sale) order (PSSO) - respondents obtained property (seizure and sale) order pursuant to s59 *Civil Judgments Enforcement Act 2004* (WA) to enforce costs judgment against appellants - appellants sought suspension of enforcement of costs judgment and for PSSO to be set aside - acting master found no 'special circumstances' within meaning of s15 made out for suspending enforcement of judgment and rejected argument that State did not have power to enact legislation - appellants appealed - appellants contended master had no jurisdiction to deal with appellants' application to transfer proceedings in Magistrates Court to Supreme Court and, that he was biased and denied appellants procedural fairness - held: grounds of appeal not made out - acting master's decision plainly correct - appeal dismissed.

[Corica](#) (I B C)

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