

Thursday, 14 June 2018

## Daily Construction 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)

**F. Hoffman-La Roche AG v Sandoz Pty Ltd** (FCA) - patent - interlocutory application to restrain competitor from launching medicine on basis it would infringe patents - relief granted

**Australian Competition and Consumer Commission v Geowash Pty Ltd (Subject to a Deed of Company Arrangement) (No 2)** (FCA) - discovery - claim of legal professional privilege over documents failed - leave to inspect documents granted

**Chinatex (Australia) Pty Limited v Bindaree Beef Pty Limited** (NSWCA) - contract - service kill agreement - claims for breach of agreement for 'failure to pay' - appeal dismissed

**Birketu Pty Ltd v Westpac Banking Corporation** (NSWSC) - judgments and orders - application for order restraining ninth defendant from communicating with certain persons concerning proceedings - order refused

**Australia Yinmore Holding Pty Ltd & Ors v Liu (No 2)** (QSC) - costs - indemnity costs - offer of settlement - respondent to pay successful applicant's costs on indemnity basis

**Huntingdale Village Pty Ltd (ACN 085 048 531) (Receivers & Managers appointed) v Corrs Chambers Westgarth** (WASCA) - contract - solicitors costs - appellant companies not entitled to use provisions of *Legal Practice Act 2003* (WA) to require law firm to provide detailed bills of costs - appeal dismissed

# Benchmark

## Summaries With Link (Five Minute Read)

### **F. Hoffman-La Roche AG v Sandoz Pty Ltd [2018] FCA 874**

Federal Court of Australia

Burley J

Patent - interlocutory application - applicant sought to restrain competitor from launching medicine on basis it would infringe claims of four patents - respondent contended claims invalid due to want of inventive step - respondent also opposed injunction on basis of balance of convenience and justice - ss7, 18, 40 & 117 *Patents Act 1990* (Cth) - held: applicant established prima facie case for patents' infringement with 'probability of success' - serious question to be tried established - balance favoured granting of interlocutory relief - Court granted interlocutory injunction in more limited form than applicant sought.

[F. Hoffman-La Roche AG](#)

### **Australian Competition and Consumer Commission v Geowash Pty Ltd (Subject to a Deed of Company Arrangement) (No 2) [2018] FCA 879**

Federal Court of Australia

Colvin J

Discovery - legal professional privilege - applicant commenced proceedings against first respondent franchisor and second respondent director of franchisor - subpoena issued at second respondent's request to law firm representing some franchisees - documents produced - claim of legal professional privilege made in respect of documents - whether legal professional privilege applied to documents - whether documents brought into existence for dominant purpose of provision of legal advice to franchisees - whether documents provided legal advice to franchisees - whether documents brought into existence for dominant purpose of providing professional legal services concerning proceedings in respect of which franchisees were, or were to be, parties to - ss118 & 119 *Evidence Act 1995* (Cth) - held: legal professional privilege claim over documents failed - leave to inspect documents granted.

[Australian Competition and Consumer Commission](#)

### **Chinatex (Australia) Pty Limited v Bindaree Beef Pty Limited [2018] NSWCA 126**

Court of Appeal of New South Wales

McColl & White JJA; Barrett AJA

Contract - appeal arising from contract between parties known as 'Service Kill Agreement' - primary judge upheld respondent's claims against appellant for breach of agreement for failure to pay 'Total Product Fee' for non-performance periods - appellant contended primary judge erred in finding that respondent had performed obligations under contract in non-performance periods, and erroneously rejected its defence of frustration of contract - appellant contended respondent, due to its 'complete failure' to perform contract, was not entitled to terminate contract or recover damages - whether respondent 'ready, willing and able' to perform obligations under contract - validity of respondent's termination of contract - whether proper characterisation of claim as unliquidated damages claim for breach of contract - whether

# Benchmark

appellant's breach caused respondent's loss - held: grounds of appeal failed - appeal dismissed.

[View Decision](#)

## **Birketu Pty Ltd v Westpac Banking Corporation [2018] NSWSC 879**

Supreme Court of New South Wales

McDougall J

Judgments and orders - plaintiffs sought order under s 61(1) *Civil Procedure Act 2005* (NSW) (Civil Procedure Act) or r2.1 *Uniform Civil Procedure Rules 2005* (NSW) (Uniform Civil Procedure Rules) that ninth defendant 'not communicate directly' concerning proceedings with certain persons who were plaintiffs' principals or employees - plaintiffs contended correspondence would 'tend to undermine' plaintiffs' confidence in their lawyers and weaken their 'resolve to proceed' - plaintiffs also submitted correspondence could delay hearing and increase costs - whether basis for application of s61(1) Civil Procedure Act or r2.1 Uniform Civil Procedure Rules - held: Court not satisfied to make order sought.

[View Decision](#)

## **Australia Yinmore Holding Pty Ltd & Ors v Liu (No 2) [2018] QSC 136**

Supreme Court of Queensland

Mullins J

Costs - applicants succeeded in proceedings - applicants sought indemnity costs in reliance on offer of settlement which was rejected by respondent - orders made no less favourable to applicant than offer - r360(1) *Uniform Civil Procedure Rules 1999* (Qld) - offer's timing - evidence - whether genuine offer of compromise - risks which respondent assumed in rejecting offer - whether respondent established that order other than an indemnity costs order should be made - held: Court satisfied to grant indemnity costs order in applicant's favour.

[Australia Yinmore](#)

## **Huntingdale Village Pty Ltd (ACN 085 048 531) (Receivers & Managers appointed) v Corrs Chambers Westgarth [2018] WASCA 90**

Court of Appeal of Western Australia

Martin CJ; Mitchell & Beech JJA

Contract - solicitors' costs - appellants were companies in receivership and their director - first respondent law firm provided legal services in respect of appellant companies while in receivership - primary judge found appellant companies not entitled to use provisions of *Legal Practice Act 2003* (WA) (LPA Act) to require first respondent to serve detailed bills of costs on them - 'proper construction and effect' of agreements (2006 agreements) between receivers and first respondent concerning legal services' provision - efficacy of agreements (2015 agreements) between receivers and first respondent concerning legal services first respondent provided, including services it provided previously - whether LPA Act applied to services law firm provided under 2006 agreements or 2015 agreements - whether proper law of retainer agreements was Western Australia or New South Wales - held: grounds of appeal failed -

appeal dismissed.  
[Huntingdale](#)

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