

# Benchmark

Thursday, 22 February 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)

**First Abu Dhabi Bank PJSC (formerly National Bank of Abu Dhabi PJSC) v BP Oil International Ltd** (EWCA) - contract - receivables financing contract - no prohibition, by underlying agreement, on disposal of Receivable or Discount Percentage of Receivable by agreement pursuant to Purchase Letter - no breach of warranty - appeal allowed

**Cathro, in the matter of Custom Bus Australia Pty Ltd (administrators appointed)** (FCA) - corporations - application for extension of convening period for second meeting of creditors granted

**Kallin Pty Ltd v ACN 107 851 847 Pty Ltd** (NSWSC) - contract - consumer law - sale agreement - claims of misleading or deceptive conduct and breach of warranty failed - proceedings dismissed

**Woodhouse v Thalis (No. 2)** (NSWSC) - costs - conduct - refusal of extension of time to appeal against decision of NSW Civil and Administrative Tribunal - costs to follow event - no order for indemnity costs

**Amos v Brisbane City Council** (QCA) - limitation of actions - real property - claims for recovery of rates and interest - certain of Council's claims time-barred - appeal allowed

**Nairn v Metro Central Joint Development Assessment Panel** (WASCA) - judicial review - town planning - erroneous approval by Panel of development application - appeal allowed

**Montague Holdings (Int) Pty Ltd v Worth** (WASC) - property law - easements -

# Benchmark

extinguishment would not injure defendants - right of carriageway was obsolete - right of carriageway over land extinguished

## Summaries With Link (Five Minute Read)

### [First Abu Dhabi Bank PJSC \(formerly National Bank of Abu Dhabi PJSC\) v BP Oil International Ltd \[2018\] EWCA Civ 14](#)

Court of Appeal of England and Wales

Lady Justice Gloster, Lord Justice Patten & Lord Briggs of Westbourne

Contract - receivables financing contract - pursuant to agreement by Purchase Letter, claimant/respondent (NBAD) purchased Discount Percent (95%) of the Receivable' from defendant/appellant (BP Oil) ' - Receivable represented obligation which Société Anonyme Marocaine de L'Industrie de Raffinage (SAMIR) owed to pay BP Oil concerning crude oil delivery - NBAD sought 'compensation for breach of warranty and representation', alleging 'underlying contract' between BP Oil and SAMIR limiting parties' ability to assign rights and obligations had effect that BP Oil's representation and warranty in Purchase Letter was false - NBAD contended it was entitled to sum from BP Oil - judge determined construction issues in NBAD's favour and ordered BP Oil to pay sum to NBAD - BP Oil appealed - construction of contract - identification of what BPOI was 'contractually prohibited from doing' under section of terms and conditions - effect of restriction on BPOI's 'ability to dispose of the Receivable' - 'no assignments' clause - held: no prohibition on disposal of Receivable or Discount Percentage of Receivable - no breach of warranty - appeal allowed.

[First Abu Dhabi Bank](#)

### [Cathro, in the matter of Custom Bus Australia Pty Ltd \(administrators appointed\) \[2018\] FCA 113](#)

Federal Court of Australia

Farrell J

Corporations - companies' administrators sought extension of time to convene second meeting of creditors - extension sought on basis that sale of business could result in 'most favourable return to creditors', but sale could not be completed in convening period - best interest of creditors - prejudice - whether creditors notified - whether objection by creditors - sufficiency of time for administrators to properly carry out work - s439A(6) *Corporations Act 2001* (Cth) - held: Court satisfied to grant application.

[Cathro](#)

### [Kallin Pty Ltd v ACN 107 851 847 Pty Ltd \[2018\] NSWSC 124](#)

Supreme Court of New South Wales

Hammerschlag J

Contract - consumer law - sale agreement - first defendant was company which owned liquor store - second defendant was shareholder of company - plaintiff contended it was induced in

# Benchmark

entering sale agreement due to defendants' misleading or deceptive conduct in giving it misinformation concerning wholesale sales - plaintiff sought that sale agreement be rescinded or set aside and ancillary orders - plaintiff also sought damages against defendants under *Competition and Consumer Act 2010* (Cth) suffered due to misleading conduct, or damages for breach of warranty under sale agreement - held: plaintiff's claims failed - proceedings dismissed.

[View Decision](#)

## **Woodhouse v Thalis (No. 2) [2018] NSWSC 110**

Supreme Court of New South Wales

Bellew J

Costs - Court refused plaintiff's application for extension of time to appeal against decision of NSW Civil and Administrative Tribunal - determination of costs - conduct - r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - s98 *Civil Procedure Act 2005* (NSW) - conduct - held: proceedings' 'practical result' was that plaintiff had been unsuccessful - costs to follow event - Court not persuaded that plaintiff's costs justified order for indemnity costs.

[View Decision](#)

## **Amos v Brisbane City Council [2018] QCA 11**

Court of Appeal of Queensland

Fraser & Philippides JJA; Dalton J

Limitation of actions - real property - respondent Council sought to recover rates levied on appellant's land - two questions on appeal - whether erroneous finding by primary judge that 12 year limitation period in s26(1) *Limitation of Actions Act 1974* (Qld) applied to exclude six year limitation period in s10(1)(d) or, in relation to interest claim, s26(5)'s six year limitation period - whether erroneous finding appellant was liable for utility charges Council levied on land appellant owned - statutory construction - held: certain of Council's claims were time-barred - appeal allowed - trial division judgment set aside - parties to bring in judgment minute.

[Amos](#)

## **Nairn v Metro Central Joint Development Assessment Panel [2018] WASCA 18**

Court of Appeal of Western Australia

Buss P; Murphy & Beech JJA

Judicial review - town planning - first and second applicants sought review of town planning decision by first respondent Panel and related decision by second respondent Tribunal) - Panel gave conditional approval to development application by company (Edge Visionary) - planning approval required under City of South Perth Town Planning Scheme - Tribunal deleted two conditions and substituted new condition - 'predominantly non-residential uses' - bias - procedural fairness - *Planning and Development Act 2005* (WA) - *Planning and Development (Development and Assessment Panels) Regulations 2011* (WA) - proper construction of Development Requirement - held: Panel proceeded on irrelevant consideration, exceeding its jurisdiction - Panel 'misapprehended or disregarded the nature or limits of its functions or

# Benchmark

powers' under certain Development Requirement - jurisdictional error established - appeal allowed.

[Nairn](#)

## **Montague Holdings (Int) Pty Ltd v Worth [2018] WASC 56**

Supreme Court of Western Australia

Master Sanderson

Property law - easements - plaintiff was registered proprietor of land subject to right of carriageway - plaintiff sought to have right of way extinguished pursuant to s129C(1) *Transfer of Land Act 1893* (WA) - plaintiff contended right of carriageway obsolete - whether extinguishment 'will not substantially injure the persons entitled to the easement' - held: Court satisfied that there was no evidence extinguishment would injure defendants - right of carriageway was 'clearly obsolete' - order granted to extinguish right of carriageway.

[Montague](#)

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