

Friday, 4 March 2016

Weekly Banking Law Review Selected from our Daily Bulletins covering Banking

 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)

Chubb Insurance Company of Australia Ltd v Robinson (FCAFC) - insurance - Directors and Officer's policy - separate question - professional services exclusion did not apply to claim for indemnity - appeal dismissed

Mesa Minerals Ltd v Mighty River International Ltd (FCAFC) - corporations - permission granted to inspect and make copies of appellant's books - appeal dismissed

Cassimatis v Australian Securities and Investments Commission (FCA) - costs - pleadings - constitutional law - not all applicants' costs were "thrown away" - matter remitted to Registrar

Stevens v Wintawari Guruma Aboriginal Corporation RNTBC (FCA) - corporations - members of corporations denied procedural fairness in expulsion as members - expulsion was oppressive - members entitled to be reinstated

Mateljan v HTT Huntley Heritage Pty Ltd (NSWCA) - equity - assignment - appellant's application to be substituted for company in appeal proceedings dismissed

A1 Chemicals Pty Ltd v Loremo Pty Ltd (NSWCA) - contract - breach of deed of settlement and release - appeal allowed in relation to mistake in calculation of damages - appeal otherwise dismissed

J Hutchinson Pty Ltd v Glavcom Pty Ltd (NSWSC) - security of payments - plaintiff owed sum to first defendant pursuant to subcontract - no irrational conclusion, inadequate reasons or denial of natural justice - proceedings dismissed

Coles v Dormer (No 2) (QSC) - damages - breach of copyright in house plans - determination of balance of relief following remedial works - additional and compensatory damages ordered - damages assessed at \$70 000

Mayfair Property Holdings Pty Ltd v Southland Packers Pty Ltd (QSC) - contract for sale and purchase of land - separate questions - contract not terminated by operation of special condition - defendant breached contract

Financial Ombudsman Services Ltd v Utopia Financial Services Pty Ltd (WASC) - contract - breach of contract for payment of compensation pursuant to Panel's determination - defendant ordered to specifically perform contract - judgment for plaintiff

Summaries With Link (Five Minute Read)

Chubb Insurance Company of Australia Ltd v Robinson [2016] FCAFC 17

Full Court of the Federal Court of Australia

Foster, Robertson & Davies JJ

Insurance - Directors and Officer's policy - separate question - professional services exclusion clause - "[W]hether the cross-claimant's statutory declaration made on 12 December 2011 was an actual or alleged act or omission "in the rendering of, or actual or alleged failure to render any professional services to a third party", within the meaning of exclusion IV(A)(v) of the Directors' and Officers' Liability Coverage Section of the Policy of Insurance referred to in the statement of cross-claim as policy of insurance number 93301062" - primary judge answered question in the negative - issue on appeal was whether professional services exclusion applied to respondent's claim for indemnity - true construction of exclusion clause - *Building and Construction Industry Security of Payment Act 2002 (Vic)* - s9 *Corporations Act 2001 (Cth)* - s8 *Domestic Building Contracts Act 1995 (Vic)* - s144 *Evidence Act 1995 (Cth)* - rr15.13(a), 30.01 & 30.02 *Federal Court Rules 2011 (Cth)* - held: Court's interpretation of clause was consistent with primary judge's interpretation - no impermissible application of *contra proferentem* rule or 'circumscription of cover' principle - exclusion did not apply in present case - appeal dismissed.

[Chubb](#)

[From Benchmark Tuesday, 1 March 2016]

Mesa Minerals Ltd v Mighty River International Ltd [2016] FCAFC 16

Full Court of the Federal Court of Australia

Siopis, Gilmour & Katzmann JJ

Corporations - discovery - respondent sought to inspect appellant's company books under s247A *Corporations Act 2001 (Cth)* - primary judge was satisfied in all circumstances that respondent was acting in good faith and that inspection was to be for proper purpose - Court permitted access to documents - appellant contended statutory preconditions not established

for exercise of Court's discretion - ss232 & 461 - held: no deficiency judge's reasoning process or findings against the evidence - no error in exercise of discretion or scope of order - appeal dismissed.

[Mesa](#)

[From Benchmark Tuesday, 1 March 2016]

Cassimatis v Australian Securities and Investments Commission [2016] FCA 131

Federal Court of Australia

Edelman J

Costs - pleadings - constitutional law - dispute arose from order of Full Court that ASIC amend pleadings and pay applicants' costs including costs thrown away - applicants sought review of Registrar's taxation of costs under r40.34(1) *Federal Court Rules 2011* (Cth) - Registrar had found costs incurred by applicants in relation to ASIC's removal of paragraphs concerning 31 "Investors" were not costs "thrown away" - power to review costs - Ch III Constitution - r40.34 *Federal Court Rules 1979* (Cth) - "de novo review" - held: Court concluded there was some costs thrown away due to applicants' work in perusing Investor files - however not all costs of perusal were thrown away - impossible assess extent of costs thrown away when files were not before Court - matter remitted to Registrar.

[Cassimatis](#)

[From Benchmark Friday, 26 February 2016]

Stevens v Wintawari Guruma Aboriginal Corporation RNTBC [2016] FCA 149

Federal Court of Australia

Barker J

Corporations - appellants expelled as members of corporation by special resolution of fellow members passed at Annual General Meeting - appellants claimed special resolution oppressive by denial of procedural fairness and sought to be reinstated under s166-1 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) - primary issue was whether appellants entitled to reinstatement as members of Aboriginal Corporation - held: appellants were denied advance notice of expulsion and thus unable to meet accusations, were not afforded opportunity to present arguments, and were deprived of a right - appellants were denied procedural fairness - cancellation of memberships was oppressive - appellants entitled to declaration cancellation of memberships invalid and orders directing corporation to restore them to the register of members.

[Stevens](#)

[From Benchmark Tuesday, 1 March 2016]

Mateljan v HTT Huntley Heritage Pty Ltd [2016] NSWCA 20

Court of Appeal of New South Wales

Gleeson & Leeming JJA; Emmett AJA

Equity - assignment - appellant sought to be substituted for Land Enviro Corp Pty Ltd (LEC) as appellant in appeal proceedings in relation to orders made by judge of Equity Division - appellant claimed entitlement by way of assignment from LEC, to benefit of causes of action in

appeal proceedings - respondents contended purported assignment ineffective - purported assignment's mechanism - insolvencies - substitution motions - ss5, 27, 58, 115, 116, 178 & 179 *Bankruptcy Act 1966* (Cth) - s77 *The Commonwealth Constitution* - s420 *Corporations Act 2001* (Cth) - ss3, 4 & 6 *Jurisdiction of Courts (Cross Vesting) Act 1987* (Cth) - s87 *Trade Practices Act 1974* (Cth) - held: substitution motion dismissed.

[Mateljan](#)

[From Benchmark Thursday, 25 February 2016]

A1 Chemicals Pty Ltd v Loremo Pty Ltd [2016] NSWCA 19

Court of Appeal of New South Wales

Leeming & Simpson JJA; Sackville AJA

Contract - Deed of Settlement and Release - respondent contended appellant breached Deed of Settlement and release by engaging company as distributor without its consent - primary judge found in respondent's favour - factual findings - restraint of trade - finding that company party to distribution agreement - argument presented for first time on appeal - damages - quantum - s101 *Civil Procedure Act 2005* (NSW) - held: appeal allowed in relation to mistake in calculation of damages - appeal otherwise dismissed.

[A1 Chemicals](#)

[From Benchmark Friday, 26 February 2016]

J Hutchinson Pty Ltd v Glavcom Pty Ltd [2016] NSWSC 126

Supreme Court of New South Wales

Ball J

Security of payments - plaintiff sought to set aside adjudication determination made under *Building and Construction Industry Security of Payment Act 1999* (NSW) in which adjudicator determined plaintiff owed sum to first defendant for payment claim in respect of subcontract - set-off - fraud - *Jones v Dunkel* - ss8, 9, 10 & 34 - held: no irrational conclusion, inadequate reasons or denial of natural justice - proceedings dismissed.

[Hutchison](#)

[From Benchmark Monday, 29 February 2016]

Coles v Dormer (No 2) [2016] QSC 28

Supreme Court of Queensland

Henry J

Damages - copyright - Court found defendants infringed plaintiff's copyright in house plans - Court gave judgment for plaintiff and granted injunction requiring defendants to conduct remedial works to remove visible indicia of the replication of plaintiff's house, from the house they had constructed - remedial works now completed - determination of balance of relief to be ordered - whether compensatory and/or additional damages appropriate - ss115(2) & 115(4) *Copyright Act 1968* (Cth) - held: compensatory and additional damages awarded - damages assessed at \$70 000.

[Coles](#)

[From Benchmark Wednesday, 2 March 2016]

Mayfair Property Holdings Pty Ltd v Southland Packers Pty Ltd [2016] QSC 27

Supreme Court of Queensland

Bond J

Contract for sale of land - leases and tenancies - defendant vendor and plaintiff purchaser contracted for sale and purchase of land (property) - property was service station subject of registered lease between defendant as lessor and BP Australia as lessee - contract for sale contained special condition acknowledging lease contained pre-emptive right of purchase of property in lessee's favour and providing that if lessee availed itself of right then contract terminated - defendant contended contract terminated pursuant to term and settled sale contract on basis lessee exercise pre-emptive right - plaintiff contended defendant breached contract and sued for breach - determination of separate questions whether contract had come to end pursuant to term and whether defendant in breach of contract - construction of contract - held: contract did not come to an end pursuant to term - defendant was in breach of contract.

[Mayfair](#)

[From Benchmark Wednesday, 2 March 2016]

Financial Ombudsman Services Ltd v Utopia Financial Services Pty Ltd [2016] WASC 55

Supreme Court of Western Australia

Le Miere J

Contracts - plaintiff sought specific performance of contract with defendant for payment of compensation to second defendant or to account in superannuation fund in accordance with Panel's determinations - defendant contended plaintiff had not made a determination within meaning of implied term of contract - *Wednesbury* unreasonableness - *Corporations Act 2001* (Cth) - s109 *Superannuation Industry (Supervision) Act 1993* (Cth) - held: defendant breached contract with plaintiff by failing to pay second defendant compensation as ordered pursuant to determinations - defendant ordered to specifically perform contract - judgment for plaintiff - counterclaim dismissed.

[Financial Ombudsman Services Ltd](#)

[From Benchmark Friday, 26 February 2016]



Benchmark

Not for That City

BY CHARLOTTE MEW

Not for that city of the level sun,
Its golden streets and glittering gates ablaze—
The shadeless, sleepless city of white days,
White nights, or nights and days that are as one—
We weary, when all is said , all thought, all done.
We strain our eyes beyond this dusk to see
What, from the threshold of eternity
We shall step into. No, I think we shun
The splendour of that everlasting glare,
The clamour of that never-ending song.
And if for anything we greatly long,
It is for some remote and quiet stair
Which winds to silence and a space for sleep
Too sound for waking and for dreams too deep.

BY [CHARLOTTE MEW](#)

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