



Friday, 18 October 2024

Weekly Banking Law Review

Selected from our Daily
Bulletins covering Banking

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Executive Summary (One Minute Read)

Automotive Invest Pty Limited v Commissioner of Taxation (HCA) - car dealer which attracted customers by styling its premises as a classic car museum nevertheless held the cars as trading stock for the purposes of the luxury car tax and GST

SkyCity Adelaide Pty Ltd v Treasurer of South Australia (HCA) - customers spending credits obtained from loyalty points gave rise to an amount received by a Casino in consideration for gambling - the general law of penalties did not apply to a statutorily authorised agreement between the Casino and the SA Treasurer

Cui v Salas-Photiadis (NSWSC) - order withdrawing caveat refused after parties let settlement go through in PEXA while the caveat was in place

HABEAS CANEM

Peace



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Summaries With Link (Five Minute Read)

Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36

High Court of Australia

Gageler CJ, Edelman, Steward, Gleeson, & Jagot JJ

Taxation - the appellant traded under the name "Gosford Classic Car Museum" - the cars in the premises were for sale, and most of the money made by the appellant was from selling the cars, although the appellant made some money from charging for admission to the museum - the Commissioner contended that the appellant was liable for luxury car tax and GST - the appellant appealed under Part IVC of the *Taxation Administration Act 1953* (Cth) - the appellant' case was that each car was used only for the purpose of holding it as trading stock and that the museum concept was no more than a unique and inventive means of selling stock - the primary judge held for the Commissioner - the Full Court of the Federal Court (by majority) dismissed an appeal (see Benchmark 15 August 2023) - the appellant was granted special leave to appeal - held (by majority, Gageler CJ and Jagot J dissenting): the *A New Tax System (Luxury Car Tax) Act 1999* (Cth) is drafted to speak directly to the public using ordinary language and communication - it was necessary to look "at the substance and reality of the matter" and apply a "commonsense and commercial approach" - the ordinary language of s9-5(1) of that Act showed that it is concerned with the purpose for which "you have the intention" of using the car, that is, the intended rather than actual purpose of use - there is a difference between "motive", "means" and "purpose", in that "purpose" is the end goal of conduct, whereas "motive" is the reason for seeking that end goal - at the appropriate level of generality, consistently with the legislative purpose of s9-5(1), the appellant's purpose in holding the cars was to hold them as trading stock - the museum was merely the means by which this purpose was achieved, not the ultimate goal itself - even though the museum operation was substantial, at no point did it become an end in itself - neither s9-5 nor s15-30(3) of the Act is concerned with the purpose of a reasonable person and the primary judge had been correct to accept the evidence of the guiding mind of the appellant as to what his purpose was - appeal allowed.

[Automotive Invest Pty Limited](#)

[From Benchmark Friday, 18 October 2024]

SkyCity Adelaide Pty Ltd v Treasurer of South Australia [2024] HCA 37

High Court of Australia

Gageler CJ, Gordon, Edelman, Gleeson, & Beech-Jones JJ

Taxation - SkyCity operates the SkyCity Casino pursuant to a licence granted under the *Casino Act 1997* (SA) - s16 of the *Casino Act* provides for an Approved Licensing Agreement between the licensee and the Minister - s51 imposes liability on SkyCity, as licensee, to pay casino duty - duty is calculated under a Casino Duty Agreement ("CDA") that exists pursuant to s17 - there was a dispute as to the correct interpretation of the current CDA and the duty payable in accordance with it, and the parties agreed that SkyCity would commence proceedings in the Supreme Court - the Court of Appeal answered three questions of law, (1) "Converted Credits" arising from the conversion of loyalty points by the casino's customers, when played by

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customers, constituted an "amount received" by SkyCity "for or in respect of consideration for gambling in the Casino premises" within the meaning of the CDA; (2) loyalty points received by customers for gambling using electronic gaming machines and automated table games do not constitute "monetary prizes" within the definition of "net gambling revenue" in the CDA; and (3) the common law or equitable principles concerning penalty clauses applied to the interest for late payment provisions in the CDA (see Benchmark 19 March 2024) - SkyCity was granted special leave to appeal to the High Court in respect of answer (1) - the treasurer sought special leave to cross-appeal in respect of answer (3) - held special leave to cross-appeal should be granted - SkyCity's approved cashless gaming system has always operated as "a system that enables the storage of monetary value for use in operating a gaming machine" - each time a customer uses SkyCity's cashless gaming system to bet, monetary value has been received by SkyCity as consideration for its acceptance of that bet, in the form of a reduction in SkyCity's indebtedness to the customer - the origin of the electronic gaming credits is irrelevant - SkyCity's appeal dismissed - the Court of Appeal's reasoning on penalties inverted the scheme of *the Casino Act* - the CDA was an agreement that was authorised and required by statute to govern the imposition of a tax - the imposition of a tax is inherently and exclusively statutory - the provisions in the *Casino Act* that authorised the CDA did not imply that the CDA must be independently capable of enforcement at common law or in equity - on the contrary, they made enforceable an agreement that would not be enforceable at common law or in equity - the Treasurer's cross appeal allowed.

[SkyCity Adelaide Pty Ltd](#)

[From Benchmark Friday, 18 October 2024]

Cui v Salas-Photiadis [2024] NSWSC 1280

Supreme Court of New South Wales

Hmelnitsky J

Caveats - the plaintiff entered into a contract to purchase a home from the second defendant, borrowing funds from a bank who was to be the incoming mortgagee - the first defendant lodged a caveat over the property, relying on an interest under a "charge" granted under a loan agreement relating to building work done by the first defendant - no participant in the PEXA workspace noticed that the first defendant's caveat had been lodged - on settlement in PEXA, documents were lodged with Land Registry Services, and the funds were disbursed in accordance with the financial settlement schedule - the following day, the bank received a requisition from Land Registry Services informing it that the transfer and mortgage could not be registered because of the first defendant's caveat - the plaintiff sought an order that the caveat be withdrawn under s74MA of the *Real Property Act 1900* (NSW) - held: an equitable charge may or may not take the form of an equitable mortgage - the caveator's reference to a "charge" in the caveat did not necessarily invoke the definition of "Charge" in the *Real Property Act* - the caveat therefore did not fail sufficiently to specify the first defendant's claimed interest merely because it described a claimed equitable mortgage as a charge - under s7D of the *Home Building Act 1989* (NSW), an agreement which purports to grant security for the payment of the consideration payable under a contract to do residential building work is an "other agreement"



within the meaning of that provision - the loan agreement here was therefore within the scope of s7D to the extent it purported to secure payment for residential building work - however, s7D left the balance of the loan agreement intact - the mere failure of the caveat to specify the amount secured is not a sufficient reason to set the caveat aside - the first defendant had demonstrated that it had a good arguable case that the caveat had substance - the balance of convenience favoured the continuation of the caveat until such time as the rights of the parties can be dealt with on a final basis, which would inevitably include a contest as to the parties' competing priorities - order under s74MA refused and matter listed for directions on the Real Property List.

[View Decision](#)

[From Benchmark Wednesday, 16 October 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Aquino v Bondfield Construction Co (SCC) - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

Summaries With Link (Five Minute Read)

Aquino v Bondfield Construction Co 2024 SCC 31

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)



Poem for Friday

In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art
Exercised in the still night
When only the moon rages
And the lovers lie abed
With all their griefs in their arms,
I labour by singing light
Not for ambition or bread
Or the strut and trade of charms
On the ivory stages
But for the common wages
Of their most secret heart.
Not for the proud man apart
From the raging moon I write
On these spindrift pages
Nor for the towering dead
With their nightingales and psalms
But for the lovers, their arms
Round the griefs of the ages,
Who pay no praise or wages
Nor heed my craft or art.

Dylan Marlais Thomas, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

Dylan Thomas reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: https://en.wikipedia.org/wiki/Patricia_Conolly and <https://trove.nla.gov.au/newspaper/article/47250992>.

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