

Friday, 19 February 2016

Weekly Banking Law Review Selected from our Daily Bulletins covering Banking

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Executive Summary (1 minute read)

CGU Insurance Ltd v Blakeley (HCA) - joinder - Supreme Court of Victoria had authority to join insurer and grant relief sought - appeal dismissed

Mbuzi v Griffith University (FCAFC) - consumer law - contract - termination of doctoral candidature - appeal dismissed

Australian Competition and Consumer Commission v Australian Egg Corporation Ltd (FCA) - consumer law - allegations of cartel conduct against egg producers - one egg producer admitted conduct - allegations against other producers not made out

Roads and Maritime Services v Allandale Blue Metal Pty Ltd (NSWCA) - environment and planning - compensation to owner of acquired land - appeal against award upheld in part - award reduced

South Sydney Junior Rugby League Club Ltd v Gazis (NSWCA) - negligence - workplace injury - security guard injured at work when moving trolleys - club and employer not liable - appeals allowed

Hamed v Eddin (NSWCA) - real property - possession - respondent entitled to exclusive possession of property - leave to appeal refused

Forge Group Power Pty Ltd (in liq)(receivers and managers appointed) v General Electric International Inc (NSWSC) - personal property securities (PPS) law - lease was a PPS lease - defendants' interests in turbines vested in plaintiff before appointment of administrators -

plaintiffs interest superior - declarations

Tzaneros Investments Pty Ltd v Walker Group Constructions Pty Ltd (NSWSC) - building contract - negligence - plaintiff entitled to damages in relation to defective concrete paving at container terminal

Sheehan v Brett-Young (No. 3) (VSC) - pleadings - misfeasance in public office - malicious prosecution - plaintiff's claims not assigned to trustee in bankruptcy and could be maintained in proceedings against State and regulatory defendants

Bradshaw v Griffiths (QCA) - real property - easements - road not "reasonably necessary in the interests of the effective use" of respondent's property - appeal allowed

Shogunn Investments Pty Ltd v Public Transport Authority of Western Australia (WASC) - private nuisance - determination of preliminary issue concerning 'substantial interference' element of tort of private nuisance

Summaries With Link (Five Minute Read)

CGU Insurance Ltd v Blakeley [2016] HCA 2

High Court of Australia

French, Kiefel, Bell & Keane JJ

Joinder - corporations - insurance - claim under s588M *Corporations Act 2001* (Cth) in which plaintiffs were liquidators and company in liquidation who alleged company's directors breached s588G by failing to prevent company from incurring debts when it was insolvent - defendants' insurer sought leave to appeal against order joining it as a defendant - Court of Appeal of Victoria dismissed appeal - insurer appealed - whether Supreme Court of Victoria authorised to entertain claim for declaration that defendant's insurer liable to indemnify defendant - held: Supreme Court of Victoria had federal jurisdiction authorising it to entertain claim - Supreme Court of Victoria had power to grant relief sought in respect of insurance contract between directors and insurer - appeal dismissed.

[CGU Insurance](#)

[From Benchmark Friday, 12 February 2016]

Mbuzi v Griffith University [2016] FCAFC 10

Full Court of the Federal Court of Australia

Logan, Griffiths & Pagone JJ

Consumer law - contract - self-represented litigant - respondent terminated appellant's doctoral candidature - primary judge rejected appellant's causes of action against respondent and found appellant to be vexatious litigant - primary judge found termination of candidature did not contravene implied freedom of political communication and "due process" rights, did not

constitute unconscionable conduct or involve misleading or deceptive conduct contrary to Australian Consumer Law, and did not breach of alleged contract between parties - ss18, 20, 21, 22 *Australian Consumer Law* - ss37AM, 37 AO, 37AO(1)(a), 37AO(2)(a), 37AO(2)(b), 37AO(3)(c), 37AO(3)(d), 37AO(6) & 51 *Federal Court of Australia Act 1976* (Cth) - held: appellant failed to make out any grounds of appeal - appeal dismissed.

[Mbuzi](#)

[From Benchmark Monday, 15 February 2016]

Australian Competition and Consumer Commission v Australian Egg Corporation Ltd [2016] FCA 69

Federal Court of Australia

White J

Consumer law - cartel conduct - ACCC alleged six respondents attempted to induce 19 egg producers in competition with at least one other, to limit egg supply in contravention of s44ZZRJ *Competition and Consumer Act 2010* (Cth) - ACCC alleged conduct called for coordinated and consolidated action to reduce egg supply and sought relief including declarations, penalties and injunctions - fourth respondent admitted he made attempt of kind alleged - crown immunity - actual or apparent authority - conduct on body corporate's behalf - held: ACCC failed to establish allegations - claims dismissed.

[ACCC](#)

[From Benchmark Monday, 15 February 2016]

Roads and Maritime Services v Allandale Blue Metal Pty Ltd [2016] NSWCA 7

Court of Appeal of New South Wales

Basten & Ward JJA; Sackville AJA

Environment and planning - predecessor to appellant acquired land - respondent (ABM) owned acquired land which it leased to quarrying company (QPN) - ABM and QPN claimed compensation - appellant appealed against judgment in which primary judge ordered payment of \$3,387,796 to ABM - s88E *Conveyancing Act 1919* (NSW) - s115B *Environmental Planning and Assessment Act 1979* (NSW) - ss4, 55, 56, 57, 58, 59 & 61 *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) - ss19, 24, 57 *Land and Environment Court Act 1979* (NSW) - s117 *Public Works Act 1900* (NSW) - ss10, 46, 49 *Roads Act 1993* (NSW) - held: appeal upheld against award for reduction in value of timbered land - amount awarded to ABM reduced to \$3,115,171 - appeal allowed in part.

[Roads and Maritime Services](#)

[From Benchmark Thursday, 11 February 2016]

South Sydney Junior Rugby League Club Ltd v Gazis [2016] NSWCA 8

Court of Appeal of New South Wales

Basten, Macfarlan & Simpson JJA

Negligence - workplace injury - appellant club contracted with company (Sermacs) to provide security - Sermacs obtained services of respondent from company (MPS) to work as security guard - respondent injured while working at club when moving trolleys - respondent sued

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Sermacs and club in negligence and later sued employer (MPS) for workplace injury under *Workers Compensation Act 1987* (NSW) - claim against Sermacs settled - club and MPS cross-claimed against Sermacs for contribution - MPS in liquidation - proceedings continued against Workers Compensation Nominal Insurer - Sermacs changed name and went into liquidation - proceedings continued against insurer (HCC) - primary judge found for respondent against club and employer - Sermacs found not liable for contribution - club and MPS appealed - held: club owed duty of care to respondent as occupier - exercise of reasonable care did not require direction to desist from moving trolleys - club not negligent - MPS owed non-delegable duty of care to its employee - MPS breached duty of care by not investigating respondent's work environment but breach did not cause harm - MPS not liable - judgment against Workers Compensation Nominal Insurer set aside - appeals allowed.

[South Sydney Junior Rugby League Club Ltd](#)

[From Benchmark Thursday, 11 February 2016]

Hamed v Eiddin [2016] NSWCA 9

Court of Appeal of New South Wales

Meagher & Gleeson JJA; Sackville AJA

Real property - possession - primary Judge declared respondent entitled to exclusive possession of premises - primary judge granted respondent leave to issue writ of possession - applicant and husband vacated premises after applying unsuccessfully for a stay - applicant's husband was undischarged bankrupt - applicant sought leave to appeal - whether applicant had interest in premises to exclusion of husband and bankruptcy trustees - ss58(1)(b), 60(1)(b) & 60(3)(b) *Bankruptcy Act 1966* (Cth) - ss56(1 & 56(2) *Civil Procedure Act 2005* (NSW) - ss63 & 101(2)(r) *Supreme Court Act 1970* (NSW) - held: applicant and husband had contended that each of them contributed to purchase price of premises, but there was no evidence that applicant independently contributed to purchase price - absence of evidence fatal to success of application - leave to appeal refused.

[Hamed](#)

[From Benchmark Tuesday, 16 February 2016]

Forge Group Power Pty Ltd (in liq)(receivers and managers appointed) v General Electric International Inc [2016] NSWSC 52

Supreme Court of New South Wales

Hammerschlag J

Personal property securities law - dispute arising from installation of turbine generator sets (turbines) - plaintiff entered lease with first defendant for rent of turbines for fixed term, and for provisions of services to plaintiff in relation to turbines - plaintiff went into voluntary liquidation after installation of turbines - plaintiff sought declaration pursuant to s267(2) *Personal Property Securities Act 2009* (Cth) (PPSA) that defendants' interests in turbines vested in plaintiff before administrators' appointment and that its interest in turbines was superior to defendants' - whether PPSA engaged - whether lease a PPS lease - held: lease was PPS lease - defendants' interests in turbines vested in plaintiff immediately before administrators' appointment - plaintiff's interest superior to defendants' - declarations granted.

[Forge](#)

[From Benchmark Monday, 15 February 2016]

Tzaneros Investments Pty Ltd v Walker Group Constructions Pty Ltd [2016] NSWSC 50

Supreme Court of New South Wales

Ball J

Building contract - negligence - plaintiff sued defendants for defective concrete paving at container terminal - first defendant cross claimed against second defendant for same damage - contractual warranties - assignment - apportionment - estoppel - estoppel by convention - ascertainment of parties to contract - damages - *Competition and Consumer Act 2010* (Cth) - *Civil Liability Act 2002* (NSW) - *Home Building Act 1989* (NSW) - *Trade Practices Act 1974* (Cth) - held: plaintiff entitled to damages from first defendant for costs in relation to replacement of pavement - second defendant liable to pay to first defendant amount which first defendant was liable to pay to plaintiff.

[Tzaneros](#)

[From Benchmark Tuesday, 16 February 2016]

Sheehan v Brett-Young (No. 3) [2016] VSC 39

Supreme Court of Victoria

John Dixon J

Pleadings - misfeasance in public office - malicious prosecution - plaintiff sought to file substitute proposed statement of claim - plaintiff claimed misfeasance in public office against regulatory defendants and malicious prosecution against State - plaintiff claimed damages and loss - regulatory and State defendants contested application - State contended proposed malicious prosecution claim had 'no real prospect of success' and should not be permitted - effect of plaintiff's bankruptcy on claims - whether maintainable claims - ss58, 60(4), 116(1), 116(2)(c) & 116(2)(g) *Bankruptcy Act 1966* (Cth) - held: claims not assigned to plaintiff's trustee in bankruptcy by ss58 & 116 - claims may be maintained by plaintiff subject to issues yet to be determined as to form of pleading.

[Sheehan](#)

[From Benchmark Friday, 12 February 2016]

Bradshaw v Griffiths [2016] QCA 20

Court of Appeal of Queensland

Fraser, Gotterson & Morrison JJA

Real property - easements - respondent owned property which he subdivided into two properties - appellant purchased one of the properties - respondent continued to use road (Road A) leading from his property through appellant's property by informal agreement - by informal agreement respondent constructed another road (Road D) which crossed appellant's property - appellant denied respondent permission to cross her property - respondent granted statutory right of user for Road A and Road D pursuant to s180 *Property Law Act 1974* (Qld) - appellant sought to appeal - held: in the circumstances Road D was not "reasonably necessary in the interests of the effective use" of respondent's property - preference for Road D did not meet

test under s180 - appeal in allowed in relation to easement over Road D allowed.

[Bradshaw](#)

[From Benchmark Tuesday, 16 February 2016]

Shogunn Investments Pty Ltd v Public Transport Authority of Western Australia [2016]
WASC 42

Supreme Court of Western Australia

K Martin J

Private nuisance - action in private nuisance brought by plaintiff company, which operated car parking business, against defendant Public Transport Authority - plaintiff sought to restrain defendant from removing traffic turn scenario - determination of preliminary issue concerning plaintiff's commercial car parking location and 'substantial interference' element of private nuisance - *East Perth Redevelopment Act 1991 (WA) (Repealed)* - *Land Administration Act 1997 (WA)* - *Metropolitan Redevelopment Authority Act 2011 (WA)* - *Public Transport Authority Act 2003 (WA)* - held: preliminary issue answered in favour of defendant - permanent removal of right hand turning lane not capable of interfering with plaintiff's use and enjoyment of leasehold interest or rights over premises sufficiently to form basis for private nuisance action.

[Shogunn](#)

[From Benchmark Wednesday, 17 February 2016]



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Songs for the People

BY FRANCES ELLEN WATKINS HARPER

Let me make the songs for the people,
Songs for the old and young;
Songs to stir like a battle-cry
Wherever they are sung.

Not for the clashing of sabres,
For carnage nor for strife;
But songs to thrill the hearts of men
With more abundant life.

Let me make the songs for the weary,
Amid life's fever and fret,
Till hearts shall relax their tension,
And careworn brows forget.

Let me sing for little children,
Before their footsteps stray,
Sweet anthems of love and duty,
To float o'er life's highway.

I would sing for the poor and aged,
When shadows dim their sight;
Of the bright and restful mansions,
Where there shall be no night.

Our world, so worn and weary,
Needs music, pure and strong,
To hush the jangle and discords
Of sorrow, pain, and wrong.

Music to soothe all its sorrow,
Till war and crime shall cease;
And the hearts of men grown tender
Girdle the world with peace.

[FRANCES ELLEN WATKINS HARPER](#)

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