

Friday, 29 March 2024

Weekly Banking Law Review

Selected from our Daily
Bulletins covering Banking

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Executive Summary (One Minute Read)

Ramadan v ACN 098 408 176 Pty Ltd & Anor (No 3) (SASCA) - trial judge had erred in reducing damages by half due to a failure of the appellant to seek contribution from her husband

HABEAS CANEM

The scent on the breeze





Summaries With Link (Five Minute Read)

Ramadan v ACN 098 408 176 Pty Ltd & Anor [2023] SASCA 91

Court of Appeal of South Australia

Livesey P, Doyle, & Bleby JJ

Civil procedure - the appellant had commenced proceedings in equity and under the *Australian Securities and Investments Commission Act 2001* (Cth), alleging the respondents had engaged in unconscionable conduct in connection her entry into a loan with her husband in 2007 for \$300,000 - the appellant was 67 years old, and could not understand English, and was illiterate even in her native Arabic - the applicant was successful at first instance, but was only awarded half of the repayments she had made, on the basis that she had unreasonably failed to seek equitable contribution from her husband - the primary judge also held that the appellant sustained no loss of her claimed survivorship interest in the family home, as the transfer of the property from the appellant to her grandson was not at arm's-length, and she continued to reside in the property rent free following the sale - the appellant appealed - held: the respondents' pleadings did not raise a failure to mitigate, let alone a failure to seek to enforce a right to equitable contribution - the trial proceeded on the basis that the appellant was not put on notice of any contention that her damages might be reduced as a consequence of her failure to bring a claim against her husband - the reduction in the appellant's award of damages on a basis not argued by the parties contravened the fundamental principle that no one ought to be put to loss without having a proper opportunity of meeting the case against him or her, which requires that pleadings should state with sufficient clearness the case of the party whose averments they are - it had not been open to the trial judge to entertain this issue as a basis to reduce the award, whether on the basis that it represented a failure to mitigate or otherwise - the appellant succeeded on this ground - however, the appellant's claim for the loss of the full value of the property failed - this claim ignored her own conduct in selling the proprietary interest in the property for less than its market value before her husband died - while the respondents may have been responsible for the appellant incurring debts, and ultimately the need to sell the property, they were not responsible for the appellant's decision to sell for less than market value - this ground of appeal dismissed - appeal allowed, and damages increased to the full value of the repayments the appellant had made.

[Ramadan](#)

[From Benchmark Tuesday, 26 March 2024]



INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Lifestyle Equities v Amazon UK Services Ltd (UKSC) - In a cross-border sale of merchandise where the same trade mark was owned by different entities in USA and UK, Amazon was liable for trade mark infringement where UK customers were targeted by Amazon's US website

Summaries With Link (Five Minute Read)

Lifestyle Equities v Amazon UK Services Ltd [2024] UKSC 8,

Supreme Court of the United Kingdom

Lord Hodge, Lord Briggs, Lord Hamblen, Lord Burrows, & Lord Kitchin

The trade mark at issue was the 'Beverly Hills Polo Club' brand. The holder of the mark in the EU/UK was Lifestyle Equities which is unrelated to the brand owner in the USA. A UK resident ordered US sourced goods bearing the trade mark through Amazon's US website. The owner of the EU trade mark contended that Amazon was liable for trade mark infringement because it targeted consumers in the UK/EU. This matter concerned conduct that occurred before Brexit. Applying EU law, the Supreme Court said that Amazon could only be liable for trade mark infringement in a cross-border sale if it in fact targeted consumers in the UK. The mere fact that a foreign website is accessible to a UK resident is insufficient to establish targeting of a UK consumer. The question for the court was whether an average consumer within the UK, who is reasonably well-informed and observant, would consider the website targeted at that consumer. The Court found that targeting had occurred because Amazon offered to deliver to the UK, in a dialog box Amazon specified which goods could be shipped to the UK, and specified UK delivery times and featured the option to pay in British currency. The Supreme Court also stated that Amazon's subjective intent was not the key issue. Rather, the question was one of objective fact taken from the perspective of the average consumer. Intent may, however, be taken into account to the extent it is relevant to the objective assessment made by the court.

[Lifestyle Equities](#)

Poem for Friday

The Nightingale

By: Sara Coleridge (1802-1852)

In April comes the Nightingale,
That sings when day's departed;
The poets call her Philomel,
And vow she's broken-hearted.

To them her soft, sweet, ling'ring note
Is like the sound of sorrow;
But some aver, no need hath she
The voice of grief to borrow.

No, 'tis the merry Nightingale,
Her pipe is clear and thrilling;
No anxious care, no keen regret,
Her little breast is filling.

She grieves when boys have robb'd her nest,
But so would Stork or Starling;
What mother would not weep and cry
To lose her precious darling?

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