

Friday, 4 December 2020

Weekly Business Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Business Law

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Executive Summary (1 minute read)

Merck Sharp & Dohme Corp v Wyeth LLC (No 4) (FCA) - patent - determination of two disputed areas - injunction granted - costs determined

Waco Kwikform Ltd v Complete Access Scaffolding (NSW) Pty Ltd (NSWSC) - security of payments - challenge to adjudication determination under *Building and Construction Industry Security of Payment Act 1999* (NSW) - summons dismissed

In the matter of HPack Investments Pty Ltd (NSWSC) - corporations - superannuation - freezing orders - 'current freezing orders' extended

In the matter of MK Floors (NSW) Pty Ltd (in liq) and MK Floors (QLD) Pty Ltd (in liq) (NSWSC) - corporations - voidable transactions - determination of separate question

Re MHC Pathology Pty Ltd (VSC) - corporations - statutory demand - plaintiff sought to set aside statutory demand served on it by defendant - genuine dispute established - dispute set aside

Ivankovic v West Australian Planning Commission (WASC) - planning and development - arbitration - 'two applications' challenging award of arbitrator - applications dismissed

Summaries With Link (Five Minute Read)

Merck Sharp & Dohme Corp v Wyeth LLC (No 4) [2020] FCA 1719

Federal Court of Australia

Burley J

Patent - Court found 'Wyeth' established '013 patent claims' were valid and infringed by 'MSD' - Court also found 'MSD' established '844 patent claims' and 'container patent claims' were invalid - parties agreed on orders with exception of two disputed areas - whether to order injunctive relief against MSD - costs - held: injunction granted - costs determined.

[Merck](#)

[From Benchmark Friday, 4 December 2020]

Waco Kwikform Ltd v Complete Access Scaffolding (NSW) Pty Ltd [2020] NSWSC 1702

Supreme Court of New South Wales

Stevenson J

Security of payments - plaintiff challenged adjudication determination under *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payments Act) that plaintiff pay amount to defendant - plaintiff contended payment claim was "not a valid claim as there was no reference date" - whether construction contract between parties 'made "express provision" with respect to "the date on which a claim for a progress payment may be made"' for purpose of s8(2)(a) Security of Payments Act - held: summons dismissed.

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In the matter of HPack Investments Pty Ltd [2020] NSWSC 1638

Supreme Court of New South Wales

Black J

Freezing orders - corporations - superannuation - plaintiff sought to wind up "HPack" on basis it was 'actually insolvent, by reason of a substantial tax debt' - plaintiff granted freezing order against HPack and others - freezing 'continued by consent' - proceedings concerned delivery of judgment on merits - whether jurisdiction 'to make or continue the freezing order' - whether 'good arguable case' - whether danger of assets' disposal - whether plaintiff might not able to have judgment satisfied if successful - held: Court satisfied to extend 'current freezing orders'.

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In the matter of MK Floors (NSW) Pty Ltd (in liq) and MK Floors (QLD) Pty Ltd (in liq) [2020] NSWSC 1718

Supreme Court of New South Wales

Gleeson J

Corporations - separate question - liquidator of companies ('MK NSW' and 'MK QLD') sought, under s588FF *Corporations Act 2001* (Cth) (Corporations Act), orders for money's payment to MK NSW or MK QLD by certain defendants - liquidator contended each defendant was 'party to a transaction with MK NSW or MK QLD' involving receipt by defendant of which involved

receipt by defendant of "unfair preference" under s588FA Corporations Act and "insolvent transaction" under s588FC Corporations Act - liquidator contended transactions were voidable transactions under s588FE Corporations Act - determination of separate question - "Whether MK NSW Pty Ltd (in liq) and MK QLD Pty Ltd (in liq) were insolvent in the six months prior to those companies entering into external administration, or at some date in that period" - held: question answered.

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Re MHC Pathology Pty Ltd [2020] VSC 789

Supreme Court of Victoria

Hetyey AsJ

Corporations - statutory demand - defendant served statutory demand on plaintiff seeking payment for 'agistment fees and feed' allegedly owing under arrangement with plaintiff - plaintiff sought to set statutory demand on basis of genuine dispute concerning alleged debt's existence or amount - plaintiff also contended demand defective by erroneously requiring compliance by plaintiff 'within 21 days' and failure to refer to 'statutory period for compliance set by' *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) - plaintiff also contended demand should be set aside for failure to nominate 'address for service within the same State in which the demand was served' - held: genuine dispute established - demand set aside.

[Re MHC](#)

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Ivankovic v West Australian Planning Commission [2020] WASC 401

Supreme Court of Western Australia

Kenneth Martin J

Planning and development - arbitration - arbitration was conducted between applicants and respondent - proceedings concerned 'two applications' challenging award of arbitrator arbitration - s176(2) *Planning and Development Act 2005* (WA) - s34 *Commercial Arbitration Act 2012* (WA) - 'public or private arbitration' - 'compensation calculation' - 'limited scope of the arbitration exercise' - 'public policy' - held: applications dismissed.

[Ivankovic](#)

[From Benchmark Friday, 4 December 2020]



**A Stormy November Evening, Gradually Clearing up in
a Mountainous Country**

By: Anna Seward

CEASED is the rain, but heavy drops yet fall
From the drenched roof; yet murmurs the sunk wind
Round the dim hills; can yet a passage find
Whistling through yon cleft rock, and ruined wall.
Loud roar the angry torrents, and appall, 5
Though distant. A few stars, emerging kind,
With green rays tremble through their misty shrouds;
And the moon gleams between the sailing clouds
On half the darkened hill. Now blasts remove
The shadowing clouds, and on the mountain's brow,
10
Full-orbed she shines. Half sunk within its cove
Heaves the lone boat, with gulping sound:—and lo!
Bright rolls the settling lake, and brimming rove
The vale's blue rills, and glitter as they flow!

https://en.wikipedia.org/wiki/Anna_Seward

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