

Friday, 7 June 2019

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)

Israel Discount Bank Limited v ACN 078 272 867 Pty Ltd (in liq) (formerly Advance Finances Pty Ltd) (FCAFC) - service - service out of jurisdiction - corporations - conveyancing - Court granted respondents leave to serve documents on applicants in Israel - leave to appeal refused - application dismissed

Hells Angels Motorcycle Corporation (Australia) Pty Limited v Redbubble Limited (FCA) - trade mark - copyright - determination of declarations and orders arising from judgment in principal proceeding

Verguier Pty Ltd v Ramelius Resources Limited (FCA) - corporations - plaintiffs sought relief in relation to defendant's failure to register share transfer - plaintiffs entitled to relief

RebelMH Neutral Bay Pty Limited v North Sydney Council (NSWCA) - environment and planning - refusal of development consent in respect of proposed building - appeal dismissed

Officeworks Ltd v Christopher (No 2) (NSWCA) - costs - negligence - dispute concerning first instance costs - appellant granted indemnity costs order on basis of offer of compromise - orders made

Moggridge v The Benevolent Society (NSWSC) - negligence - plaintiff claimed damages against defendant 'Benevolent Society' for injuries in fall while in 'respite care' at cottage - no breach of duty of care by carer - judgment for defendant

In the matter of 77738930144 Pty Limited (in liquidation) (ACN 103 983 777) (formerly

known as Commercial Indemnity Pty Limited) (NSWSC) - security costs - claims by 'special purpose liquidator' - security for costs refused

Pyman v Whitefriars College Inc (VSC) - stay - psychiatric injury - defendant sought stay of proceedings on basis of litigation guardian's refusal to comply with request for plaintiff's attendance at medico-legal examination - stay refused

Queensland Phosphate Pty Ltd v Korda (VSCA) - stay - corporations - winding up - application for lifting of stay on basis order and undertaking not complied with - stay varied

Maryborough Solar Pty Ltd v The State of Queensland (QSC) - judicial review - s73A *Electrical Safety Regulation 2013* (Qld) was invalid - parties to make submissions on declaratory relief's form

Summaries With Link (Five Minute Read)

Israel Discount Bank Limited v ACN 078 272 867 Pty Ltd (in liq) (formerly Advance Finances Pty Ltd) [2019] FCAFC 90

Full Court of the Federal Court of Australia

Yates, Beach & Moshinsky JJ

Service - service out of jurisdiction - corporations - conveyancing - 'voidable transactions' - directors' duties - 'involvement in contraventions' - Court granted respondents leave to serve documents on applicants in Israel - applicants, by interlocutory application, sought discharge of orders or that documents' service be set aside - primary judge dismissed application - applicants sought to appeal - whether respondents had 'prima facie case' for claimed relief - whether discretionary reasons to discharge orders - s37A *Conveyancing Act 1919* (NSW) (Conveyancing Act) - ss79, 181(2) & 182(2) *Corporations Act 2001* (Cth) (Corporations Act) - held: no error in primary judge's conclusion that respondents had prima facie case in respect of claim under Corporations Act - unnecessary to consider challenge to conclusion on claim under Conveyancing Act - leave to appeal refused - application dismissed.

[Israel Discount](#)

[From Benchmark Friday, 7 June 2019]

Hells Angels Motorcycle Corporation (Australia) Pty Limited v Redbubble Limited [2019] FCA 815

Federal Court of Australia

Greenwood J

Trade mark - copyright - applicant, in principal proceeding, succeeded concerning 'particular examples' of infringement by first respondent of 'particular trade marks' which applicant owned - applicant did not succeed on 'copyright claims' - determination of declarations and orders to be

made - whether utility in making declarations concerning copyright claims - whether to 'qualify restraint' on first respondent - consideration of first respondent's 'selfregulation protocol' - absence of undertaking by first respondent - held: declarations and orders made.

[Hells Angels](#)

[From Benchmark Friday, 7 June 2019]

Verguier Pty Ltd v Ramelius Resources Limited [2019] FCA 796

Federal Court of Australia

White J

Corporations - plaintiffs sought declarations concerning 'lawfulness of the failure' by defendant to register 'share transfer' - first plaintiff, pursuant to s1071F(2) *Corporations Act 2001* (Cth), sought that Court require defendant to register share transfer - second, third and fourth plaintiffs sought that Court enforce 'statutory contract' contained in defendant's constitution by requiring defendant to register share transfer - s21 *Federal Court of Australia Act 1976* (Cth) - whether breach of statutory contract - whether defendant had 'refused or failed' to register share transfer 'without just cause' - held: plaintiffs entitled to relief.

[Verguier](#)

[From Benchmark Friday, 7 June 2019]

RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130

Court of Appeal of New South Wales

Gleeson & Payne JJA; Preston CJ of LEC

Environment and planning - appellant sought development consent in respect of proposed building - respondent refused application - appellant revised plans and submitted 'revised request' - Land and Environment Court refused revised request and dismissed appeal - appellant contended primary judge misconstrued and misapplied cl 4.6(3) & (4)(a)(i) North Sydney Local Environmental Plan 2013, misconstrued and misapplied objectives of 'height development standard', misconstrued and misapplied 'objective (f)' of 'height development standard' and denied appellant procedural fairness by 'not affording' "amber light approach" to appellant - held: grounds of appeal not established - appeal dismissed.

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[From Benchmark Friday, 7 June 2019]

Officeworks Ltd v Christopher (No 2) [2019] NSWCA 131

Court of Appeal of New South Wales

Meagher, Gleeson & Leeming JJA

Costs - negligence - Court allowed appeal in proceedings - 'common ground' respondent should pay appellant's costs of appeal and that respondent should be granted certificate under *Suitors' Fund Act 1951* (NSW) - dispute concerned 'costs at first instance' - appellant sought indemnity costs order in reliance on offer of compromise, contending judgment in respondent's favour was "no more favourable to the plaintiff than the terms of the offer" - rr20.26(5), 42.13A(2) & 42.15(2) *Uniform Civil Procedure Rules 2005* (NSW) - held: appellant

granted indemnity costs order - costs orders made.

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[From Benchmark Friday, 7 June 2019]

Moggridge v The Benevolent Society [2019] NSWSC 638

Supreme Court of New South Wales

Harrison AsJ

Negligence - plaintiff claimed damages against defendant 'Benevolent Society' for injuries in fall while in 'respite care' at cottage - fall occurred during transfer between chairs - defendant was cottage's owner/occupier with 'care, control and management' of cottage - whether breach of duty of care by carer - s5B *Civil Liability Act 2005* (NSW) - assessment of damages - held: no breach of duty of care - judgment for defendant.

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[From Benchmark Friday, 7 June 2019]

In the matter of 77738930144 Pty Limited (in liquidation) (ACN 103 983 777) (formerly known as Commercial Indemnity Pty Limited) [2019] NSWSC 626

Supreme Court of New South Wales

Rees J

Security for costs - second plaintiff was 'special purpose liquidator' - first plaintiff was company in liquidation - second plaintiff brought proceedings against first plaintiff's 'former director' (first defendant), shareholder of first plaintiff (second defendant) and another company (third defendant) - first plaintiff sought 'compensation and other relief' against first defendant for breach of duty, against second defendant for 'accessorial liability' and against third defendant for loan's recovery - defendants sought security for costs - strength of plaintiffs' case - 'matter of public importance' - litigation funding's existence - impecuniosity's cause - held: security for costs refused.

[View Decision](#)

[From Benchmark Friday, 7 June 2019]

Pyman v Whitefriars College Inc [2019] VSC 361

Supreme Court of Victoria

Forbes J

Stay - plaintiff, by litigation guardian, sought damages for psychiatric injury while a student at defendant college, alleging he was bullied, harassed, assaulted and sexually assaulted - plaintiff was represented by litigation due to 'fragile mental state' - defendant, pursuant to r33.04(2) *Supreme Court (General Civil Procedure) Rules 2015* (Vic), sought stay of proceeding on basis of litigation guardian's instruction that plaintiff would not attend 'updated medico-legal appointment' with psychiatrist - whether litigation guardian's refusal was 'without reasonable grounds' - whether request for attendance was reasonable - balance of parties' competing interests - held: stay refused.

[Pyman](#)

[From Benchmark Friday, 7 June 2019]

Queensland Phosphate Pty Ltd v Korda [2019] VSCA 119

Court of Appeal of Victoria

McLeish & Hargrave JJA

Stay - winding up - corporations - applicants were two companies ('Paradise' and 'Queensland Phosphate') - Paradise held 'mining tenements and associated exploration authorities' - applicants entered arrangement by which Queensland Phosphate 'purported to acquire' shares in Paradise from second respondent - Randall AsJ found 'relevant agreements' 'void and unenforceable', ordered that Paradise 'be wound up in insolvency' and ordered first respondent's appointment as liquidators - Randall AsJ stayed orders to permit application for leave to appeal - stay extended by Hargrave JA - respondents sought lifting of stay on basis of Paradise's failure to comply with order and breach of undertaking by applicants - whether orders and undertaking complied with - held: stay varied.

[Queensland](#)

[From Benchmark Friday, 7 June 2019]

Maryrorough Solar Pty Ltd v The State of Queensland [2019] QSC 135

Supreme Court of Queensland

Bradley J

Judicial review - applicant, pursuant to s43(2) *Judicial Review Act 1991* (Qld) or in court's inherent jurisdiction, sought declaration that s73A *Electrical Safety Regulation 2013* (Qld) was invalid - applicant contended that s73A exceeded 'regulation-making power' which s210 *Electrical Safety Act 2002* (Qld) (*Electrical Safety Act*) conferred, and s73A was inconsistent with *Electrical Safety Act* - s22 *Statutory Instruments Act 1992* (Qld) - ss4 & 5 *Electrical Safety Act* - held: s73A invalid - parties to make submissions on declaratory relief's form.

[Maryrorough](#)

[From Benchmark Friday, 7 June 2019]

Benchmark

To a Locomotive in Winter

By: Walt Whitman

Thee for my recitative,
Thee in the driving storm even as now, the snow, the winter-
day declining,
Thee in thy panoply, thy measur'd dual throbbing and thy
beat convulsive,
Thy black cylindric body, golden brass, and silvery steel,
Thy ponderous side-bars, parallel and connecting rods,
gyrating, shuttling at thy sides,
Thy metrical, now swelling pant and roar, now tapering in
the distance,
Thy great protruding head-light fix'd in front,
Thy long, pale, floating vapor-pennants, tinged with delicate
purple,
The dense and murky clouds out-belching from thy smoke-
stack,
Thy knitted frame, thy springs and valves, the tremulous
twinkle of thy wheels,
Thy train of cars behind, obedient, merrily following,
Through gale or calm, now swift, now slack, yet steadily
careering;
Type of the modern—emblem of motion and power—pulse of
the continent,
For once come serve the Muse and merge in verse, even
as here I see thee,
With storm and buffeting gusts of wind and falling
snow,
By day thy warning ringing bell to sound its notes,
By night thy silent signal lamps to swing.

Fierce-throated beauty!
Roll through my chant with all thy lawless music, thy
swinging lamps at night,
Thy madly-whistled laughter, echoing, rumbling like an
earthquake, rousing all,
Law of thyself complete, thine own track firmly holding,
(No sweetness debonair of tearful harp or glib piano thine,)
Thy trills of shrieks by rocks and hills return'd,
Launch'd o'er the prairies wide, across the lakes,
To the free skies unpent and glad and strong.



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

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