

Friday, 8 February 2019

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

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Executive Summary (1 minute read)

Work Health Authority v Outback Ballooning Pty Ltd (HCA) - constitutional law - *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) was not inconsistent with 'Commonwealth aviation law' - appeal allowed

Lacson v Australian Postal Corporation (FCA) - industrial law - statutory construction - work performed at different locations - operation of enterprise agreements - "particular employment" - s52(2) *Fair Work Act 2009* (Cth) - appeal dismissed

Via Sanantonio Pty Ltd v Commonwealth Bank of Australia (FCA) - bankruptcy - pdf of copy judgment was "attached" to pdf of bankruptcy notice in email - two applications to set aside bankruptcy notices dismissed

Ku-ring-gai Council v Ichor Constructions Pty Ltd (NSWCA) - commercial arbitration - dismissal of proceedings seeking declaration that arbitrator's mandate was not terminated and injunction to restrain respondent - application for leave to appeal dismissed for incompetency

Kai Ling (Australia) Pty Ltd v Rosengreen (NSWCA) - contract - dismissal of claim of interest in land arising from alleged novation of contract between respondent and company - appeal dismissed

Toyota Finance Australia Limited v AJI Enterprise Group Pty Ltd (NSWSC) - contempt - Court 'not satisfied beyond reasonable doubt' second defendant had committed contempt - motion dismissed

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd (SASC) - restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs prima facie entitled to recover superannuation payments in respect of 'exempt employees'

SP Hay Pty Ltd ACN 093 703 765 v David Gray & Co Pty Ltd ACN 008 671 127 (SASC) - corporations - statutory demand - statutory demand valid - failure to comply with requirement for service - defendant enjoined from relying on plaintiff's non-compliance with demand - injunction to be granted

Warrington Management Pty Ltd v Kingslane Property Investments Pty Ltd (WASC) - restitution - contract - equity - loan - fiduciary duties - claim dismissed - counterclaim allowed in part

Summaries With Link (Five Minute Read)

Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - appellant, under s32 *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) ('NT WHS Act'), alleged first respondent failed to comply with duty in s19(2) NT WHS Act 'to eliminate or minimise risks to embarking passengers that arose from the use of a fan to inflate' hot air balloon - Northern Territory Court of Summary Jurisdiction dismissed appellant's claim as invalid, finding complaint's subject matter covered by 'Commonwealth regulatory scheme' concerning aviation (scheme) - Magistrate found scheme extended to 'pre-flight operations affecting' passengers' safety on ground - Supreme Court of Northern Territory found Magistrate erred in finding lack of jurisdiction - Court of Appeal upheld appeal, finding 'Commonwealth aviation law' was a 'complete statement' of 'relevant law' and that there was 'indirect inconsistency' between law of Northern Territory and Commonwealth aviation law - "prescription and enforcement of the standards of safety in the conduct of air navigation or air operations" - whether inconsistency between NT WHS Act and Commonwealth aviation law - held: appeal allowed.

[Work Health Authority](#)

[From Benchmark Friday, 8 February 2019]

Lacson v Australian Postal Corporation [2019] FCA 51

Federal Court of Australia

Mortimer J

Industrial law - appeal concerning construction of s52(2) *Fair Work Act 2009* (Cth) - appellant performed work for respondent at 'two different locations, at two different times, and in the performance of two different sets of duties' - question was whether the work, for purposes of enterprise agreements, was 'one "particular employment"' - whether Federal Circuit Court

erred in finding that the work should not be seen as one “particular employment” - whether appellant had ‘two different jobs’ with respondent - operation of enterprise agreements on contracts of employment - held: no error in Federal Court’s decision - appeal dismissed.

[Lacson](#)

[From Benchmark Friday, 8 February 2019]

Via Sanantonio Pty Ltd v Commonwealth Bank of Australia [2019] FCA 58

Federal Court of Australia

Griffiths J

Bankruptcy - two applications to set aside bankruptcy notices which Official Receiver issued at respondent’s request against applicants - applicants contended bankruptcy notices were ‘a nullity’ - applicants contended that judgments were not “attached”, as required by s41(2) *Bankruptcy Act 1966* (Cth) and reg 4.02 *Bankruptcy Regulations 1996* (Cth), at time of issue of the notices - whether pdf of copy judgment ‘could be treated as “attached” to the pdf of the bankruptcy notice’, both pdfs having been attached to email - whether *Curtis v Singtel Optus Pty Ltd* [2014] FCAFC 144 distinguishable - held: Court satisfied the pdfs were attached to each other - applications dismissed.

[Via Sanantonio](#)

[From Benchmark Friday, 8 February 2019]

Ku-ring-gai Council v Ichor Constructions Pty Ltd [2019] NSWCA 2

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Ward CJ in Eq

Commercial arbitration - arbitrator appointed to arbitrate dispute between parties - applicant sought declaration that arbitrator’s mandate was not terminated and injunction to restrain respondent from ‘purporting to terminate’ it - primary judge dismissed proceedings, finding arbitrator had acted as mediator engaging s27D *Commercial Arbitration Act 2010* (NSW), that parties had not given ‘written consents’ before resumption of arbitration’s conduct, that respondent had not waived right to object to resumption of arbitration’s conduct, and that respondent was not estopped from asserting requirements of s27D(4) of the Act not met - applicant sought leave to appeal - whether source of Court’s power to determine proceedings was s14(2) of the Act or s17(1) of the Act - whether appeal precluded by s14(3) of the Act - held: application for leave to appeal dismissed on basis of incompetency.

[View Decision](#)

[From Benchmark Friday, 8 February 2019]

Kai Ling (Australia) Pty Ltd v Rosengreen [2019] NSWCA 3

Court of Appeal of New South Wales

Basten JA; Sackville & Barrett AJJA

Contract - proceedings concerned whether appellant had interest in land owned by respondent - appellant claimed interest based on option to purchase land granted, by deed of option, by respondent to company (Saadie Group) - appellant claimed contract between respondent and

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Saadie Group was novated - appellant claimed that, by novation, the 'contractual rights and obligations' between respondent and Saadie Group had become rights and obligations between appellant and respondent - primary judge found there was no novation and that appellant had no interest in respondent's land - appellant appealed - s38 *Conveyancing Act 1919* (NSW) - held: no error in finding that there had been no novation - respondent and Saadie Group had 'acted on a clear footing' that they remained parties to option agreement - appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 8 February 2019]

Toyota Finance Australia Limited v AJI Enterprise Group Pty Ltd [2019] NSWSC 33

Supreme Court of New South Wales

Ward CJ in Eq

Contempt - plaintiff sought that second defendant 'be dealt with for contempt' - plaintiff contended second defendant had breached McDougall J's orders restraining second defendant from disposing or dealing with 'identified vehicles' - plaintiff also contended second defendant had breached Ward CJ in Eq's orders in relation to delivery up of vehicles to plaintiff and provision of notices of vehicles' whereabouts to plaintiff - held: Court 'not satisfied beyond reasonable doubt' that second defendant had committed contempt - motion dismissed.

[View Decision](#)

[From Benchmark Friday, 8 February 2019]

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd [2019] SASC 5

Supreme Court of South Australia

Blue J

Restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs sought to recover in restitution from defendants payments 'in respect of exempt employees', contending payments made by 'operative mistake' - determination of preliminary issue - whether plaintiffs had 'prima facie entitlement to recover the payments in restitution, subject to any defences and assessment of quantum' - whether payroll manager's knowledge that plaintiffs were making the payments to exempt employees negated operative mistake finding in respect of the payments - held: plaintiffs were prima facie - entitled to recover superannuation payments in respect of exempt employees subject to 'defences' and assessment of quantum - preliminary issue determined.

[North Adelaide Service Partnership](#)

[From Benchmark Friday, 8 February 2019]

SP Hay Pty Ltd ACN 093 703 765 v David Gray & Co Pty Ltd ACN 008 671 127 [2019] SASC 6

Supreme Court of South Australia

Judge Dart

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Corporations - statutory demand - service - application to set aside statutory demand - whether demand invalid due to defendant's failure to provide address for service in South Australia - if demand valid, whether to grant injunction to prevent defendant from bringing winding up proceedings - whether it would be 'unconscientious' for defendant to bring winding up proceedings - whether injustice to plaintiff due to denial of opportunity to have application to set aside demand heard - held: demand valid - defendant had failed to comply with requirement to provide address for service in 'correct State' - Court, to avoid 'obvious injustice', enjoined defendant from relying on plaintiff's failure to comply with the demand - appropriate to grant injunction.

[SP Hay](#)

[From Benchmark Friday, 8 February 2019]

Warrington Management Pty Ltd v Kingslane Property Investments Pty Ltd [2019] WASC 2

Supreme Court of Western Australia

Vaughan J

Restitution - contract - equity - defendant and plaintiff by counterclaim (KPI) was company - plaintiff was company associated with first defendant by counterclaim (Mr Weaver) - plaintiff was also second defendant by counterclaim - plaintiff sought restitution for services' provision to KPI - KPI sought to recover loan amount from Mr Weaver - KPI also alleged Mr Weaver breached fiduciary duties owed to KPI and that plaintiff was also liable for breaches due to knowing receipt of money as consequence of breaches - whether plaintiff proved 'remuneration agreement' - whether loan was 'repayable on demand' - whether KPI had treated certain amount as already satisfied - determination of amount payable to KPI by Mr Weaver - whether breach by Mr Weaver as director and, if so whether loss or damage suffered by KPI due to breach - whether 'knowing receipt claim' established - whether of 'trust property' on plaintiff's part - claim dismissed - counterclaim allowed in part.

[Warrington](#)

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Fishmonger

By: Marsden Hartley

I have taken scales from off

The cheeks of the moon.

I have made fins from bluejays' wings,

I have made eyes from damsons in the shadow.

I have taken flushes from the peachlips in the sun.

From all these I have made a fish of heaven for you,

Set it swimming on a young October sky.

I sit on the bank of the stream and watch

The grasses in amazement

As they turn to ashy gold.

Are the fishes from the rainbow

Still beautiful to you,

For whom they are made,

For whom I have set them,

Swimming?

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

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