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LAWYERS

Benchmark

Friday, 9 May 2025

Weekly Business Law

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

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Executive Summary (One Minute Read)

Sui v Jiang (No 2) (NSWCA) - Court upheld finding that purchaser of shares had not exercised right to later sell the shares and claim the shortfall from the vendor within time

Metal Manufactures Pty Limited t/as TLE Electrical v WesTrac Pty Limited (NSWCA) - Court upheld judgment of primary judge under the *Personal Property Securities Act 2009* (Cth)

LDT O'Brien Property Group Pty Ltd v Trustworthy Nominees Pty Ltd (No 2) (NSWSC) - company director failed to show that he and his company had entered into a settlement agreement under duress

Long Spring Pty Ltd v RD Beechworth Pty Ltd (NSWSC) - Court construed oral contract for loan to special purpose vehicle to fund property development to require repayment on sale of the developed property, rather than after fixed period of time

CE Hyde Park Pty Ltd v The Returned and Services League (New South Wales Branch) (NSWSC) - Court resolved a number of issues of construction of call and put option agreement and subsequent contract for sale of land

Stephenson and Anor v Dental Corporation Pty Ltd (QSC) - Court dismissed claims by dentist against company that had bought his practice and terminated the contractual arrangements after the dentist was no longer able to work due to mental health deterioration

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HABEAS CANEM

New puppy - 2018

Summaries With Link (Five Minute Read)

Sui v Jiang (No 2) [2025] NSWCA 86
Court of Appeal of New South Wales
Payne, Stern, & McHugh JJA
Contracts - in 2017, Jiang agreed to transfer to Sui 40% of the shares in a company that was to hold Crown Leases in undeveloped land in the Northern Territory for $1.5million - clause in contract provided for Mr Sui to choose at that point among three different scenarios after four years - one scenario was that Sui could sell his shares at market price and Jiang would make up the difference if the price were less than $1.5 million - another clause provided the contract was 'valid from the date of signature to December 31, 2020' - Sui sold his shares for $1,000 in 2023 and claimed the balance of $1,499,000 from Jiang - primary judge dismissed claim on basis Sui had not exercised his option within the option window - Sui appealed - held: the clause outlining the three scenarios conferred rights on Sui, and did not impose obligations on him - it was therefore open to Sui not to choose any of the three scenarios and rather take no affirmative step, at which point his rights would be those of a 40% shareholder - the agreement had come to an end on 31 December 2020 and the period during which Sui could exercise his rights to elect between the three scenarios terminated at that date - what steps it was necessary for Sui to take to exercise his election rights was, in the first instance, a question of construction of the agreement - common law doctrine of election is not engaged in every case involving the mere existence of inconsistent right - doctrine of election is concerned with situations in which a party confronts a mandatory choice between inconsistent rights - the terms and nature of the agreement meant that the words or conduct by which Sui communicated his choice had to be clearly and unequivocally referable to the particular scenario - appeal dismissed.
View Decision
[From Benchmark Tuesday, 6 May 2025]

Metal Manufactures Pty Limited t/as TLE Electrical v WesTrac Pty Limited [2025] NSWCA 97
Court of Appeal of New South Wales
Gleeson & Mitchelmore JJA, & Basten AJA
Security interests - WesTrac contracted Verdia to design, supply, and install a solar photovoltaic system - Verdia subcontracted SES in respect of all or part of that project - MM sold solar panels to SES - terms included retention of title until payment of purchase price and restriction on selling or disposing of the panels except in the ordinary course of business - SES contracted to supply the panels to Verdia at the site, subject to retention of title until payment of the invoice relevant to the panels - Verdia failed to ay SES and SES failed to pay MM - common ground that panels subject to a security interest under the *Personal Property Securities Act 2009* (Cth) (PPSA) and that MM's purchase money security interest had been perfected by registration of a financing statement on the PPS Register - MM sought declaration that any interest held by WesTrac was subject to its first ranking security interest and either delivery up of the panels or damages - primary judge rejected MM's claim - MM appealed - held: SES's right to repayment

under its contract with Verdia was a chose in action and therefore personal property, and SES had an 'interest' in that chose of action within the meaning of s31(3)(a)(i) of the PPSA - 'dealing' in s31(1)(a) means an exchange of collateral for other property, and so SES acquiring the chose in action against Verdia in exchange for the supply of the panels was a dealing - s32(1)(a) therefore effectively extinguished MM's security interest, as MM had expressly authorised the disposal of the panels by SES - no error by primary judge in finding that the payment made by WesTrac to Verdia was traceable personal property that was derived directly or indirectly from a dealing with panels to which s32 applied - s46 is not restricted to circumstances where there is a sale of goods - s46 also applied here, so that Verdia had taken free of MM's security interest over the panels in the hands of SES - appeal dismissed.
View Decision
[From Benchmark Friday, 9 May 2025]

LDT O'Brien Property Group Pty Ltd v Trustworthy Nominees Pty Ltd (No 2) [2024] NSWSC 1688
Supreme Court of New South Wales
Peden J
Duress - LDT owned a parcel of land containing a number of buildings including the original Ettamogah Pub - Trustworthy lent LDT a total amount of about $1.5million secured by mortgage - LDT's director guaranteed the loans - LDT defaulted - Trustworthy entered into an agreement with a manager to operate the hotel business pending sale - LDT and its director sued Trustworthy and the manager - Trustworthy cross-claimed - parties entered into deed of settlement - LDT's director now claimed the deed was procured by 'duress and bullying', mainly the appointment of a manager with whom he had personal difficulties - held: proper approach to duress given by McHugh JA in *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40 - Court should ask whether any applied pressure induced the victim to enter into the contract and then ask whether that pressure went beyond what the law is prepared to countenance as legitimate - pressure will be illegitimate if it consists of unlawful threats or amounts to unconscionable conduct - even overwhelming pressure, not amounting to unconscionable conduct, will not necessarily constitute duress - final settlement was result of negotiations over many months through parties' lawyers - Court did not accept director's oral assertions from the Bar table he told his solicitors he did not want to pay Trustworthy any money - Court did not accept unsubstantiated criticisms of any lawyers involved in the negotiations that could lead to a conclusion they acted without instructions or contrary to their clients' interests or that there was some form of collusion between the parties' lawyers - Court did not accept director did not understand the nature of the agreement in the deed - director not entitled to have the deed declared void for duress.
View Decision
[From Benchmark Monday, 5 May 2025]

Long Spring Pty Ltd v RD Beechworth Pty Ltd [2025] NSWSC 437
Supreme Court of New South Wales

Peden J
Contracts - plaintiff companies loaned $2.5 million to defendant company after oral conversations between principals of companies, to assist defendant to purchase and develop two properties - on completion of the development, the plaintiffs were to each receive 20% of any net profits through their shareholding in the defendant - plaintiffs contended loans repayable within 18 months from the date on which the funds were advanced - defendant contended loans repayable on the sale of properties, together with the net profit percentages - development had stalled due to litigation with Council about the proposed subdivision (and also this litigation) - held: where a contract is entirely or partly oral, court must consider all relevant circumstances when determining terms of the agreement, including pre-contractual and post-contractual conduct as a matter of fact - objective evidence and the logic of events were important in determining the time for repayment under the oral agreement - likely commercial reality and the conduct of the parties supported finding that principals orally agreed that the loans were repayable at the conclusion of the project - recording of the advances as loans in the defendant's books, together with the shareholdings in the defendant as special purpose vehicle, were consistent with an agreement that the distribution of profit, repayment of loans, and discharge of mortgages would take place when the properties were sole and the defendant had fulfilled its purpose - if the loans were for 18 months, the plaintiffs would receive 40% interest in the defendant, with no further liability to contribute, but where significant further funds were needed to complete the development with 40% of the shareholding divested - further, more probable that the occurrence of an event would trigger the obligation to repay, rather than a particular period elapsing - if repayment based on elapse of period, unclear when that period would start to run, as advances were made intermittently on direction - repayment obligation triggered on the sale of the development.
View Decision
[From Benchmark Friday, 9 May 2025]

CE Hyde Park Pty Ltd v The Returned and Services League (New South Wales Branch) [2025] NSWSC 416
Supreme Court of New South Wales
Williams J
Contracts - RSL and CEHP entered into call and put option for RSL to sell property to CEHP - CEHP exercised call option and contract for sale came into existence - parties disputed date for completion under the contract, about process for determining price, about whether CEHP had to consent to registration of lease granted by RSL over part of the property, and about whether CEHP had to reimburse RSL for certain valuation costs - held: properly construed, relevant clause entitling CEHP to nominate completion date applied only where no development consent had been granted and approved by RSL at the time contract entered into - development consent had been granted and approved by RSL before that date, so nomination was of no effect - completion date was therefore 20 business days after contract date pursuant to other clauses - a this date had passed, RSL entitled to issue a notice to complete - purchaser's valuer notice sent by CEHP's solicitors to RSL's solicitors was given within the time stipulated in the

relevant clause and was valid and effective to notify to RSL the appointment of a particular valuer - on the proper construction of the relevant clause of the option deed, CEHP had not consented to the grant of the lease without a redevelopment clause and was not required to consent to the registration of the lease omitting that clause - CEHP liable on completion to reimburse cost of RSL obtaining the margin scheme approved, but cost of RSL obtaining valuation.
View Decision
[From Benchmark Friday, 9 May 2025]

Stephenson and Anor v Dental Corporation Pty Ltd [2025] QSC 82
Supreme Court of Queensland
Treston J
Contracts - dentist incorporated a company and entered into services agreement with that company for provision of dental services - Dental Corporation later purchased the practice - the dentist continued working at the practice for about five years, but then took leave due to mental health decline - Dental Corporation purported to terminate its contractual arrangements with the dentist and his company - dentist and his company sued - held: whether a contract has come into existence is to be determined by reference to the intention of the parties disclosed by the language the parties have employed - by the time the dentist ceased working, there was a concluded agreement in relation to the termination of the services agreement - evidence did not support the conclusion that dentist was stepping back temporarily, or proposing to make only temporary changes to his arrangements with Dental Corporation - the fact that a new draft employee contract was never settled proved only that the terms of the new contract were not established, but did not prove that the terms of the old contract were not terminated - no *Jones v Dunkel* inference arose in respect of Dental Corporation to call several witnesses - this was primarily because the dentist's own evidence in his affidavits made their evidence unnecessary - Dental Corporation did not plead, nor particularise, any reliance on the evidence of any of the persons whom the plaintiffs alleged ought to have been called - had it been necessary to decide, Court could have concluded, in the alternative, that Dental Corporation was entitled to treat the dentist's conduct as a repudiation of the contract and to accept that repudiation - claims dismissed.
Stephenson and Anor
[From Benchmark Monday, 5 May 2025]

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect (EUCJ1C) - The practice of the French national railway SNCF of requiring online ticket purchasers to indicate their title as either Monsieur (Mr) or Madame (Ms) was in violation of the*European Union General Data Protection Regulation* (GDPR) because the collection of this information was not necessary for the performance of the contract for passenger travel and violated the principle of minimisation of data collection

Summaries With Link (Five Minute Read)

Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect, Case C-394/23
European Court of Justice
Lenaerts P, von Danwitz VP, Arastey Sahún, Kumin, & Ziemele JJ
When purchasing a ticket online, patrons of the French national rail, the SNCF, were required to tick a box designating gender identity: either Monsieur or Madame. Arguing that this practice violated the *European Union General Data Protection Regulation* (GDPR), Mousse, an association, filed a complaint with the French data protection authority - the Commission Nationale de L'Informatique et des Libertes (CNIL). After the CNIL rejected the claim, Mousse brought an action before the highest administrative body in France, the Council of State, to have the CNIL determination annulled. In response, the Council of State referred the matter to the European Court of Justice for a preliminary ruling. Under the GDPR, data collection must be limited to what is necessary for the performance of a contract and the legitimate interests of the party collecting the data (the data controller). Here, the SNCF argued that it collected the data because it facilitated personal communication with ticket purchasers. The European Court disagreed with the SNCF, and stated that the collection of personal data must be objectively indispensable in order to enable the proper performance of the contract or necessary for the legitimate interests of the data collector. The Court found that personalisation of commercial communications based on gender as indicated in a purchaser's title did not appear to be objectively indispensable to enable the proper performance of rail transportation. Nor was the data strictly necessary for the legitimate interests of the SNCF. The Court found that the SNCF could instead communicate with patrons by means of generic expressions that have no correlation with gender identity. Under EU law, the matter now reverts to the French Council of State to dispose of the matter in accord with the decision made by the European Court of Justice.
Mousse

Poem for Friday

Warm Summer Sun

By Mark Twain (1835-1910)

Warm summer sun,
Shine kindly here,
Warm southern wind,
Blow softly here.
Green sod above,
Lie light, lie light.
Good night, dear heart,
Good night, good night.

Mark Twain, was the pen name of American writer and essayist Samuel Langhorne Clemens. Clemens was born in Florida, Missouri, on 30 November 1835, the sixth of seven children, only four of whom survived into adulthood. His father was a lawyer. Clemens was raised in Hannibal, Missouri. His father, by then a Judge, died when Clemens was 11 years old. After leaving school at age 11 he was an apprentice typesetter to a printer, writing articles, and educating himself in the evening in the public libraries in the cities he lived in. He was later a riverboat pilot, and then a miner for Orion in Nevada. Through his wife Olivia Langdon, Twain became friends with Frederick Douglass, Harriet Beecher Stowe, and William Dean Howells. He part-owned the Buffalo Express. He had a love of science, but lost substantial sums investing in new inventions. Mark Twain's famous novels included the Adventures of Tom Sawyer and the Adventures of Huckleberry Finn. Ernest Hemingway wrote that "*All modern American literature comes from one book by Mark Twain called Huckleberry Finn".* Mark Twain suffered a deep depression after his son Langdon died at 19 months, in 1872, and then his daughter Susy died in 1896, wife Olivia died in 1904, daughter Jean died on Christmas Eve 1909, and his good friend Henry Rogers died on 20 May 1909. Mark Twain died at the age of 74, on 21 April 1910 of a heart attack. Halley's Comet had passed the earth in the year of his birth in 1835, and passed the earth again in the year of his death in 1910. Mark Twain has been called "*The father of American Literature*".

Mark Twain's very quotable observations include:
"Only two things we'll regret on deathbed – that we are a little loved and little travelled."
"Twenty years from now you will be more disappointed by the things you didn't do than by the ones that you did do"
"Man is the only animal that blushes. Or Needs to."
"A full belly is little worth where the mind is starved."

“Travel is fatal to prejudice”
"The secret of getting ahead is getting started"
"Always do right, it will gratify some people and astonish the rest,"
"Kindness is the language which the deaf can hear and the blind can see"

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