

Friday, 10 August 2018

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Rambaldi v Meletsis, in the matter of Karas (Bankrupt)** (FCA) - trusts and trustees - bankruptcy - three interlocutory applications - trustees empowered to acquire assigned causes of action - judicial advice granted - Deputy Commissioner of Taxation granted leave to intervene

**Burner v Sanctuary Homes Pty Ltd** (NSWCA) - judgments and orders - application for leave to appeal - operation of limitation defence - applicant's case was more than arguable - leave to appeal granted

**Isaac v Dargan Financial Pty Ltd ATF The Dargan Financial Discretionary Trust (ABN 68 702 047 521) (trading under the name of Home Loan Experts)** (NSWCA) - contract - restraint of trade - confidentiality - 'equitable duty of confidence' - termination of 'independent contractor relationship' - appeal allowed in part

**Rogers v The Independent Liquor and Gaming Authority (No 2)** (NSWSC) - administrative law - Authority's variation of hotel's authorisation was invalid due to failure to comply with requirements imposed by s51(13) *Liquor Act 2007* (NSW) - relief granted

**Eastern Goldfields Ltd v GR Engineering Services Ltd** (WASC) - commercial arbitration - arbitrator had jurisdiction to determine dispute concerning 'Partial Accord and Satisfaction Agreement'

### Summaries With Link (Five Minute Read)

**Rambaldi v Meletsis, in the matter of Karas (Bankrupt) [2018] FCA 791**

Federal Court of Australia

Davies J

Trusts and trustees - bankruptcy - three interlocutory applications - third and fourth defendants sought summary dismissal of "assigned claims" which plaintiffs had sued on, such claims being causes of action assigned by liquidator to plaintiffs as trustees of bankrupt's estate - trustees sought declaration and/or direction that they had power to acquire the assigned claims and that deed of assignment was 'valid and enforceable', and also sought judicial advice that they were justified to acquire assigned claims - Deputy Commissioner of Taxation (DCT) sought leave to intervene on 'limited basis' - 90-20(1)(a) *Insolvency Practice Schedule (Bankruptcy)*, Sch 2 *Bankruptcy Act 1966* (Cth) - s30 *Bankruptcy Act* - r9.12 *Federal Court Rules* - held: trustees had power to acquire the causes of action - judicial advice granted as sought - DCT granted leave to intervene.

[Rambaldi](#)

[From Benchmark Friday, 10 August 2018]

**Burner v Sanctuary Homes Pty Ltd [2018] NSWCA 165**

Court of Appeal of New South Wales

Basten JA & Sackville AJA

Judgments and orders - leave to appeal - applicant entered contract with second respondent to purchase unit - there was agreement with vendor through first respondent upon settlement that conveyancing firm, which was acting for applicant, would retain amount pending works' completion on premises - first respondent claimed works completed but applicant removed funds from trust account of agent and refused to pay purchase price's balance - respondents sought payment of amount - proceedings were out of time - applicant relied on s14 *Limitation Act 1969* (NSW) (Limitation Act) - trial judge found applicant's refusal to pay money was "actual fraud", and "continuing fraud" - trial judge also, pursuant to s55 *Limitation Act*, found limitation period did not commence until date on which proceedings brought by first respondent in Consumer, Trader and Tenancy Tribunal had concluded - applicant sought to appeal from judgment she pay amount to respondents - whether 'more than an arguable case' was established - whether applicant had 'good prospects of succeeding on the merits' - operation of s55 *Limitation Act* - held: Court satisfied to grant leave to appeal.

[View Decision](#)

[From Benchmark Friday, 10 August 2018]

**Isaac v Dargan Financial Pty Ltd ATF The Dargan Financial Discretionary Trust (ABN 68 702 047 521) (trading under the name of Home Loan Experts) [2018] NSWCA 163**

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Gleeson JA

Contract - restraint of trade - appellant was mortgage broker - respondent was 'mortgage broking service' - parties were in 'independent contractor relationship' which was terminated - primary judge found appellant breached confidentiality obligations, restraints and 'equitable

duty of confidence' - primary judge found respondent was entitled to damages and to injunctive relief - appellant challenged primary judge's finding that restraints imposed by clauses of agreement were not unreasonable, and finding that he breached restraint in clause of agreement - appellant also challenged primary judge's decision to grant injunctive relief in respect of 'Confidential Information' - *Australian Securities Commission Act 1989 (Cth)* - *Competition and Consumer Act 2010 (Cth)* - *Restraints of Trade Act 1976 (NSW)* - 'non-solicitation' covenant - 'non-interference' covenant - held: ground of appeal upheld that appellant did not breach non-interference covenant - ground of appeal upheld in part that primary judge misconstrued meaning of 'Confidential Information' in clause of agreement - ground of appeal upheld that primary judge erred in exercise of discretion to grant injunctive relief - respondent had tendered 'in open Court' the information in respect of which it sought injunctive relief - information had entered the public domain - there was no utility in granting injunction in respect of information which had entered the public domain - appeal allowed in part.

[View Decision](#)

[From Benchmark Friday, 10 August 2018]

## **Rogers v The Independent Liquor and Gaming Authority (No 2) [2018] NSWSC 1177**

Supreme Court of New South Wales

Schmidt J

Administrative law - defendant refused Commissioner of Police's application for revocation of 'extended trading authorisation' of hotel - defendant, however, acting on own initiative, varied authorisation to reduce trading hours of hotel - plaintiffs sought relief and to set aside defendant's decision - whether defendant's decision was invalid due to alleged failure to comply with requirements imposed by s51(13) *Liquor Act 2007 (NSW)* - procedural fairness - whether plaintiffs 'wrongly deprived' of merits review before New South Wales Civil and Administrative Tribunal - held: defendant failed to comply with 'mandatory prerequisites' imposed by s51(13) to the exercise of s51(9)(b) powers - disputed decision invalid - relief granted as sought.

[View Decision](#)

[From Benchmark Friday, 10 August 2018]

## **Eastern Goldfields Ltd v GR Engineering Services Ltd [2018] WASC 224**

Supreme Court of Western Australia

Tottle J

Commercial arbitration - plaintiff sought Court's determination whether arbitrator had jurisdiction to hear dispute concerning 'Partial Accord and Satisfaction Agreement' whether dispute had been stayed and, if not, whether it should be stayed and referred to arbitration - if dispute had been stayed, whether arbitrator had jurisdiction - ss8 & 16 *Commercial Arbitration Act 2012 (WA)* - held: Court satisfied that parties had been referred to arbitration for determination of all their disputes - arbitrator had jurisdiction to determine all disputes, including dispute concerning Partial Accord and Satisfaction Agreement.

[Eastern Goldfields](#)

[From Benchmark Friday, 10 August 2018]



# Benchmark

## **Sonnet 76**

**By:** William Shakespeare

Why is my verse so barren of new pride,  
So far from variation or quick change?  
Why with the time do I not glance aside  
To new-found methods and to compounds strange?  
Why write I still all one, ever the same,  
And keep invention in a noted weed,  
That every word doth almost tell my name,  
Showing their birth and where they did proceed?  
O, know, sweet love, I always write of you,  
And you and love are still my argument;  
So all my best is dressing old words new,  
Spending again what is already spent:  
For as the sun is daily new and old,  
So is my love still telling what is told.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

[Click Here to access our Benchmark Search Engine](#)