

Friday, 12 April 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)

Cando Management and Maintenance Pty Ltd v Cumberland Council (NSWCA) - environment and planning - erroneous finding that development consent had lapsed - appeal allowed in part

Midland Metals Overseas Pte Ltd v Powercor Network Services Pty Ltd (VSCA) - corporations - statutory demand - contract - three statutory demands set aside - genuine dispute - leave to appeal refused

Trampoline Enterprises Pty Ltd & Ors v Fresh Retailing Pty Ltd & Anor (VSCA) - contract - purchase of 'franchise business' - appeal against rejection of claim for adjustment for 'accrued leave entitlements' upheld

Traspunt No 4 Pty Ltd v Moreton Bay Regional Council (QCA) - environment and planning - development permit - clearing of vegetation - whether work 'assessable development' - respondent's appeal allowed - applicant's appeal dismissed

Arcturus Downs Limited v Peta Stilgoe (Member of the Land Court of Queensland) & Ors (QSC) - administrative law - recommendation of grant of mining leases and issue of 'environmental authority' - applicant sought statutory review - amended application dismissed

Thomson v State of Queensland & Anor (QSC) - damages - negligence - plaintiff employed by second defendant contracted Q Fever while working on farm operated by first defendant - liability admitted - assessment of damages

Robert Michael Kirman and William James Harris as joint and several liquidators of GH1 Pty Ltd (Receivers and Managers Appointed) (in liq) (WASC) - corporations - examination summons - privilege - plaintiffs sought disclosure of 'further documents' by solicitor - application dismissed

Re Doray Minerals Ltd; ex parte Doray Minerals Ltd (WASC) - corporations - schemes of arrangement - application for orders concerning proposed schemes of arrangement - orders granted

Travis Royce Smith as trustee of the Smith Investment Trust v Sandalwood Properties Ltd (WASC) - corporations - plaintiffs not bound by deed of company arrangement purportedly extinguishing and releasing their 'deferral rights' - declaratory relief

Summaries With Link (Five Minute Read)

Cando Management and Maintenance Pty Ltd v Cumberland Council [2019] NSWCA 26

Court of Appeal of New South Wales

Beazley P; Meagher & White JJA

Environment and planning - respondent sought declaration appellant, in breach of s4.3 *Environmental Planning and Assessment Act 1979* (EPA), 'carried out prohibited development for which no development consent was in force' - respondent also sought declaration appellant breached ss81A(2)(a) & s81A(2)(b) EPA - no dispute appellant breached ss81A(2)(a) & 81A(2)(b) - respondent also sought injunction to restrain appellant from use of premises - appeal concerned two issues - whether primary judge erred in finding lapse of development consent - whether Land and Environment Court could and should have ordered breaches of EPA 'should be sanctioned and authorised' if certain 'rectification works' performed - held: development consent had not lapsed - injunction against property's 'use and occupation' to continue until appellant obtained construction certificate, appointed 'principal certifying authority' and obtained occupation certificate - appeal allowed in part.

[View Decision](#)

[From Benchmark Thursday, 11 April 2019]

Midland Metals Overseas Pte Ltd v Powercor Network Services Pty Ltd [2019] VSCA 76

Court of Appeal of Victoria

Tate & Whelan JJA; Almond AJA

Corporations - statutory demand - contract - parties entered contract for electrical cables' supply - applicant sought payment of invoices in relation to orders for cables - applicant served three statutory demands on respondent - respondent sought to set aside demands on basis there was genuine dispute in relation to debts underlying them - associate judge found existence of genuine disputes concerning compliance of cables with specification under contract - associate judge set demands aside - applicant sought to appeal - construction of contract -

whether erroneous finding of genuine dispute - whether associate judge decided or purported to decide 'any ultimate question' on construction issue - ss459G & 459H *Corporations Act 2001* (Cth) - held: leave to appeal refused.

[Midland](#)

[From Benchmark Thursday, 11 April 2019]

Trampoline Enterprises Pty Ltd & Ors v Fresh Retailing Pty Ltd & Anor [2019] VSCA 74

Court of Appeal of Victoria

Kaye, McLeish & Hargrave JJA

Contract - first applicant and first respondent entered agreement for purchase of first respondent's 'franchise business' - first applicant claimed against respondents in relation to agreement - first respondent counterclaimed against first applicant and second applicant - trial judge dismissed all by one of first applicant's claims - trial judge upheld first respondent's cross-claims - first applicant sought to appeal against rejection of its claim for 'adjustment in respect of the accrued annual leave entitlements' of 'excluded employees', and against decision to uphold cross-claim for 'Earn Out fee' under 'Earn Out Deed' - whether 'manifest error' in Independent Accountant's determination concerning 'employee entitlements' - held: claim for adjustment for accrued leave entitlements upheld - appeal allowed.

[Trampoline](#)

[From Benchmark Friday, 12 April 2019]

Traspunt No 4 Pty Ltd v Moreton Bay Regional Council [2019] QCA 51

Court of Appeal of Queensland

Gotterson and McMurdo JJA; David J

Environment and planning - applicant owned land within area of respondent - applicant sought development permit for clearing of vegetation - respondent refused permit - Planning and Environment Court found applicant entitled 'to clear firebreaks' along two boundaries (northern and eastern boundaries) - applicant was refused permission to clear firebreaks along two boundaries (southern and western boundaries) - appeal allowed to extent of declaration that firebreaks' clearing along northern and eastern boundaries was 'not an assessable development' - parties each sought to appeal - respondent's position changed - respondent did not oppose work on northern and eastern boundaries but contended it should be 'pursuant to a different order' than that which judge made - whether erroneous finding that work was not assessable development - *Sustainable Planning Act 2009* (Qld) - held: respondent's appeal allowed - primary judge erred in finding work was not assessable development - order set aside - matter remitted - respondent's appeal otherwise dismissed - applicant's appeal dismissed.

[Traspunt](#)

[From Benchmark Friday, 12 April 2019]

Arcturus Downs Limited v Peta Stilgoe (Member of the Land Court of Queensland) & Ors [2019] QSC 84

Supreme Court of Queensland

Lyons SJA

Administrative law - first respondent sought mining leases and submitted 'draft environmental authorities' - Department issued 'complementary' draft environmental authorities' - applicant objected to 'draft environmental authorities' which third respondent Chief Executive of Department issued under *Environmental Protection Act 1994* (Qld) - applicant also objected to grant of mining leases - Land Court dismissed applicant's application - Land Court recommended grant of mining leases and that 'environmental authority' be issued - third respondent's delegate granted environmental authorities - applicant sought statutory review - held: amended application dismissed.

[Arcturus](#)

[From Benchmark Thursday, 11 April 2019]

Thomson v State of Queensland & Anor [2019] QSC 95

Supreme Court of Queensland

Applegarth J

Damages - negligence - plaintiff employed by second defendant - plaintiff contracted Q Fever on farm in course of employment and Q Fever Debility Syndrome as a result of Q fever - plaintiff subsequently developed depressive disorder and adjustment disorder - plaintiff sued first defendant operator of farm second defendant employer - liability admitted by both defendants - defendants agreed first defendant was 80 per cent responsible and second defendant is 20 per cent responsible - assessment of damages - general damages - 'likely employment and income' if plaintiff had not contracted Q Fever - special damages - 'future medical and other expenses' - 'past and future care' - held: damages assessed - judgment against first defendant in sum of \$1,179,872 - judgment against second defendant in sum of \$240,975.

[Thomson](#)

[From Benchmark Friday, 12 April 2019]

Robert Michael Kirman and William James Harris as joint and several liquidators of GH1 Pty Ltd (Receivers and Managers Appointed) (in liq) [2019] WASC 103

Supreme Court of Western Australia

Master Sanderson

Corporations - privilege - 'summons for examination' - plaintiffs were liquidators of corporations - plaintiffs obtained orders that solicitor be examined concerning corporations' affairs - plaintiffs also obtained orders that solicitor 'produce certain books and records' - solicitor had acted for corporations and officers of the corporations - plaintiffs contended solicitor had not produced all required documents and sought that solicitor produce 'further documents' - whether evidence disclosed that solicitor had 'carefully examined' which documents he was required to produce and had produced the documents - whether solicitor had satisfied himself documents not produced were subject to privilege - whether orders to produce further documents might force disclosure of privileged documents - ss596D & 597(9) *Corporations Act 2001* (Cth) - held: interlocutory process dismissed.

[Robert Michael Kirman](#)

[From Benchmark Friday, 12 April 2019]

Re Doray Minerals Ltd; ex parte Doray Minerals Ltd [2019] WASC 57

Supreme Court of Western Australia

Vaughan J

Corporations - schemes of arrangement - plaintiff, pursuant to s411(1) *Corporations Act 2001* (Cth), sought orders concerning 'proposed schemes of arrangement' - whether satisfaction of 'formal matters' - whether schemes 'unlawful' or improperly proposed - whether there would be 'proper disclosure' concerning proposed schemes - whether scheme booklet contained 'prescribed information' - 'performance risk' - 'exclusivity provisions' - 'break fee' - whether schemes 'fit for consideration' by plaintiff's members - held: Court satisfied to grant orders to convene meetings for consideration of, and voting on, proposed schemes.

[Re Doray](#)

[From Benchmark Friday, 12 April 2019]

Travis Royce Smith as trustee of the Smith Investment Trust v Sandalwood Properties Ltd [2019] WASC 109

Supreme Court of Western Australia

Vaughan J

Corporations - plaintiffs invested in managed investment schemes which certain defendants promoted - some defendants executed deed of company arrangement (DOCA) purportedly extinguishing and releasing plaintiffs' 'deferral rights' - plaintiffs contended DOCA ineffective in extinguishing and releasing the deferral rights - statutory construction - s444D *Corporations Act 2001* (Cth) - whether deferral rights were, or concerned, plaintiffs' claims as creditors under 444D(1) of the Act - held: plaintiffs not bound by deferral rights' 'purported extinguishment and release' - plaintiffs granted declaratory relief.

[Travis](#)

[From Benchmark Friday, 12 April 2019]

Benchmark

A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]

By: William Shakespeare, 1564 - 1616

A wood near Athens. A Fairy speaks.

Over hill, over dale,
Thorough bush, thorough brier,
Over park, over pale,
Thorough flood, thorough fire,
I do wander every where,
Swifter than the moon's sphere;
And I serve the fairy queen,
To dew her orbs upon the green:
The cowslips tall her pensioners be;
In their gold coats spots you see;
Those be rubies, fairy favours,
In those freckles live their savours:
I must go seek some dew-drops here
And hang a pearl in every cowslip's ear.
Farewell, thou lob of spirits: I'll be gone;
Our queen and all her elves come here anon.

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

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