

Friday, 12 October 2018

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

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Executive Summary (1 minute read)

Australian Securities and Investments Commission v One Tech Media Limited (No 4) (FCA) - contempt - agreement reached between ASIC and defendants concerning contempt application - determination of penalties and costs

Morris v McConaghy Australia Pty Ltd (No 4) (FCA) - service - application for deemed service on second respondent under r10.48 *Federal Court Rules 2011* (Cth) - application declined

Hill v Forteng Pty Ltd (FCA) - corporations - contract - director's claims of oppression and breach of contract dismissed - expert's determination concerning valuation dispute contained "manifest errors" - valuation report remitted

Sandalwood Properties Ltd (Subject to a Deed of Company Arrangement) v Huntley Management Ltd (FCA) - corporations - managed investment scheme - resolutions passed at meeting of scheme members were invalid - declaratory relief granted

Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund (NSWCA) - trusts and trustees - judicial advice - dust diseases - claim was a "Proven Claim" in Final Funding Agreement - respondent obliged to pay judgment debt - appeal allowed

Skyworks NSW Pty Ltd (in liq) v 32 Drummoyne Pty Ltd (formerly Q.Y & Lynn Pty Ltd) (NSWSC) - security for costs - application to vary arrangements for security for costs refused - application dismissed

Bendigo and Adelaide Bank v Gannon (NSWSC) - cross-vesting - loans - proceedings arising from investment scheme in which defendant invested money - transfer of proceedings to Supreme Court of Victoria granted

KTC v Singh & Ors (NSWSC) - freezing orders - application for freezing orders against four respondents - application dismissed

Port Phillip Scallops Pty Ltd v Minister for Agriculture (VSC) - administrative law - statutory interpretation - revocation of Initial Quota Orders - imposition of cap on amount of scallops which could be taken per year under licence - plaintiff's challenges failed - proceedings dismissed

Re Wesfarmers Ltd; Ex Parte Wesfarmers Ltd (WASC) - corporations - application for orders concerning proposed scheme of arrangement under s411 *Corporations Act 2001* (Cth) - proposed demerger - application granted

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v One Tech Media Limited (No 4) [2018] FCA 1533

Federal Court of Australia

Moshinsky J

Contempt - Australian Securities and Investments Commission (ASIC) and five defendants reached agreement concerning contempt application - 'Eustace', 'Transcomm' and 'Cameron' admitted guilt for contempt of court on a number of charges - ASIC withdrew charges against 'Allianz' and 'Bianco' - statements of agreed facts prepared and annexed to 'Liability Reasons' - in Liability Reasons Court was satisfied to make declarations and orders substantially in proposed terms - determination of penalties and costs - held: Court satisfied that penalties which Eustace, Transcomm and Cameron proposed were appropriate - orders made.

[ASIC](#)

[From Benchmark Friday, 12 October 2018]

Morris v McConaghy Australia Pty Ltd (No 4) [2018] FCA 1516

Federal Court of Australia

Perram J

Service - application for deemed service on second respondent incorporated in Cayman Islands under r10.48 *Federal Court Rules 2011* (Cth) - whether not practicable to serve document under Hague Convention - whether documents had been brought to second respondent's attention - *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or*

Commercial Matters - held: Court not satisfied to grant application for deemed service - application dismissed.

[Morris](#)

[From Benchmark Friday, 12 October 2018]

Hill v Forteng Pty Ltd [2018] FCA 1501

Federal Court of Australia

O'Callaghan J

Corporations - contract - oppression - plaintiff director, pursuant to s232(e) *Corporations Act 2001* (Cth), sought declaration defendants engaged in oppressive conduct and relief - plaintiff also claimed breach of contract giving rise to oppression - two disputes - in one dispute plaintiff claimed entitlement to salary arrears and superannuation arrears, and also claimed *Hungerfords* damages - other dispute concerned whether expert had made two "manifest errors" under shareholders agreement in valuation report (valuation dispute) - held: manifest errors established - expert's determination concerning valuation dispute not binding for shareholders deed's purposes - valuation report remitted to expert - claims otherwise dismissed.

[Hill](#)

[From Benchmark Friday, 12 October 2018]

Sandalwood Properties Ltd (Subject to a Deed of Company Arrangement) v Huntley Management Ltd [2018] FCA 1502

Federal Court of Australia

Colvin J

Corporations - plaintiff was responsible entity of managed investment scheme and manager of Project - it was claimed that at meeting of scheme members Mr Graeme Scott was appointed as chair and declared three resolutions were passed - first resolution was to remove plaintiff as responsible entity - second resolution was to appoint Huntley Management Ltd as new responsible entity - third resolution was to appoint Sandalwood Growers Coop Ltd (SGCL) as Project's manager - plaintiff contended resolutions were invalid - whether company could be selected as responsible entity without holding Australian financial services licence - whether Mr Graeme Scott was invalidly appointed - held: Court satisfied that each of the three resolutions was invalid - declaratory relief granted.

[Sandalwood Properties](#)

[From Benchmark Friday, 12 October 2018]

Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund [2018] NSWCA 227

Court of Appeal of New South Wales

Beazley P; Sackville & Emmett AJJA

Trusts and trustees - judicial advice - Mr Francis Talifero (Mr Talifero) sued Amaca Pty Ltd (Amaca) for damages for injuries he due to exposure to asbestos and obtained judgment in

Dust Diseases Tribunal - respondent Asbestos Injuries Compensation Fund Limited as Trustee of Asbestos Injuries Compensation Fund (Trustee) sought 'advice and direction' under s55 *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005* (NSW) - question was whether Trustee justified 'in not paying so much of the damages awarded in favour of Mr Talifero in the proceedings in the Tribunal as reflects the extent to which Mr Talifero's exposure to asbestos or asbestos products occurred outside Australia' - primary judge granted advice - appellant contended primary judge erroneously failed to find that whole claim was a 'Proven Claim' that Trustee was obliged to pay under Final Funding Agreement - construction of Asbestos Injuries Compensation Fund Trust Deed and Final Funding Agreement - held: claim was a "Proven Claim" in Final Funding Agreement, notwithstanding Mr Talifero's overseas exposure to asbestos - respondent obliged to pay judgment debt - appeal allowed.

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[From Benchmark Friday, 12 October 2018]

Skyworks NSW Pty Ltd (in liq) v 32 Drummoyne Pty Ltd (formerly Q.Y & Lynn Pty Ltd) [2018] NSWSC 1521

Supreme Court of New South Wales

Stevenson J

Security for costs - plaintiff in liquidation built development on first defendant's behalf - plaintiff sought damages for 'delay costs' from first second and third defendants - first defendant cross-claimed against plaintiff - defendants, by notice of motion, sought that plaintiff provide security for costs - plaintiff and 'two related companies' (Roc Build and Decode Group) gave undertaking to Court - notice of motion settlement - defendants sought variation of security regime - defendant sought that plaintiff, Roc Build and alternative company (Decode Sydney) pay amount into Court as security - application made on basis that Decode Group not capable of satisfying undertaking - Decode Sydney had given undertaking in same terms as Decode Group - held: Court not satisfied to vary arrangements for security for costs - application dismissed.

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[From Benchmark Friday, 12 October 2018]

Bendigo and Adelaide Bank v Gannon [2018] NSWSC 1520

Supreme Court of New South Wales

Davies J

Cross-vesting - loans - proceedings arising from 'failed investment scheme' which defendant had invested money in - defendant obtained loans in order to invest the money - plaintiff contended loans had been assigned to it - plaintiff sought transfer of proceedings from District Court to Supreme Court under s140(1) *Civil Procedure Act 2005* (NSW) and subsequent transfer of proceedings to Supreme of Victoria under s5 (2) *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) - held: Court satisfied it was in interests of justice for proceedings to be heard in Supreme Court of Victoria - transfer of proceedings granted.

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[From Benchmark Friday, 12 October 2018]

KTC v Singh & Ors [2018] NSWSC 1510

Supreme Court of New South Wales

White J

Freezing orders - applicant, pursuant to r25.11 *Uniform Civil Procedure Rules 2005* (NSW), sought freezing orders against four respondents - applicants contended that it could be inferred from two respondents' conduct that, if not restrained, respondents would dissipate assets - whether prima facie case for final relief shown - whether evidence of or risk that first respondent would try to put assets beyond applicant's reach - delay - whether applicant had funds to meet undertaking as to damages which it had offered - held: application dismissed.

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[From Benchmark Friday, 12 October 2018]

Port Phillip Scallops Pty Ltd v Minister for Agriculture [2018] VSC 589

Supreme Court of Victoria

Cavanough J

Administrative law - statutory interpretation - proceedings arising from governmental measures to render Scallop Dive (Port Phillip Bay) Fishery (Fishery) 'no longer a quota-managed fishery' - Minister revoked Initial Quota Orders (IQOs) - regulations made under *Fisheries Act 1995* (Vic) to impose condition on class of licence which plaintiff held - condition imposed a cap on amount of tonnes of scallops which could be taken per year - plaintiff contended there was no power under Act or statutory instruments to revoke IQO, that IQO's purported revocation invalid on other grounds of administrative law, that if IQO remained in force there was no statutory power to impose cap, and that regulations imposing cap were invalid on grounds of administrative law - plaintiff also challenged an Further Quota Order for Fishery which Minister's delegate made - held: plaintiff's challenges failed - application dismissed.

[Port Phillip Scallops](#)

[From Benchmark Friday, 12 October 2018]

Re Wesfarmers Ltd; Ex Parte Wesfarmers Ltd [2018] WASC 308

Supreme Court of Western Australia

Vaughan J

Corporations - plaintiff sought orders concerning proposed scheme of arrangement under s411 *Corporations Act 2001* (Cth) - proposed scheme of arrangement provided for Coles Group, which Wesfarmers wholly owned, to be separated and demerged - whether 'substantial and procedural requirements' of s411(1) satisfied - whether scheme 'fit for consideration by Wesfarmers' members' - whether 'sensible business people' might consider scheme of benefit to Wesfarmers' members - whether any reason Court should not approve proposed demerger - held: application granted.

[Wesfarmers](#)

[From Benchmark Friday, 12 October 2018]



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Evening Song

By: Sherwood Anderson

MY song will rest while I rest. I struggle along. I'll get back to the corn and the open fields. Don't fret, love, I'll come out all right.

Back of Chicago the open fields. Were you ever there—trains coming toward you out of the West—streaks of light on the long gray plains? Many a song—aching to sing.

I've got a gray and ragged brother in my breast—that's a fact. Back of Chicago the open fields—long trains go west too—in the silence. Don't fret, love. I'll come out all right.

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

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