

Friday, 13 December 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)

PKT Technologies Pty Ltd (formerly known as Fairlight.Au Pty Ltd) v Peter Vogel Instruments Pty Ltd (FCAFC) - damages - contract - trade mark - copyright - appeal allowed in part - cross-appeal dismissed

Australian Securities and Investments Commission v Merlin Diamonds Limited (No 2) (FCA) - corporations - 'non-party shareholders/noteholders' in defendant sought to inspect copy of report which defendant's provision liquidators prepared - leave to inspect granted - 'limited suppression order' made

Fastbet Investments Pty Ltd v Deputy Commissioner of Taxation (No 5) (FCA) - administrative law - taxation - no error in respondent's decisions to issue notices to applicants under s 255-100, Sch 1 *Taxation Administration Act* 1953 (Cth) - applications dismissed

BAM Property Group Pty Ltd as trustee for BAM Property Trust v Imoda Group Holdings Pty Ltd (No 2) (FCA) - costs - indemnity costs - offer to compromise - conduct - defendants to pay successful plaintiffs' costs on indemnity basis

Prodata Solutions Pty Ltd v South Australian Fire and Emergency Services Commission (No 2) (FCA) - copyright - applicant sought division of issues in proceedings with result that trial proceed 'in three stages' - Court not satisfied that issues should be divided in manner proposed - Court proposed own division of issues - orders made

Furlong v Wise & Young Pty Ltd (NSWSC) - contempt - first plaintiff sought that respondent 'be found guilty of contempt of court for issuing a subpoena' to bank - amended notice of motion

dismissed

Bank of Queensland Limited v Star Trek Pty Ltd (NSWSC) - personal property - application for 'declarations and orders' to 'authorise and facilitate' enforcement of plaintiff's security interests' over personal property - application granted

In the Matter of Kornucopia Pty Ltd (No 2) (VSC) - bias - corporations - winding up - companies sought recusal of Sifris J for apprehended bias - recusal application dismissed

Milfoil Pty Ltd v Commonwealth Bank of Australia (No 2) (VSC) - costs - Court gave judgment in defendant's favour - determination of costs - defendant entitled to all its costs - indemnity costs order granted - counsels' fees in excess of scale not allowed

Bluewaters Power 1 Pty Ltd v The Griffin Coal Mining Company Pty Ltd (WASC) - corporations - personal property - plaintiffs sought fixing of 'later time' concerning security interest's registration - application granted

Summaries With Link (Five Minute Read)

PKT Technologies Pty Ltd (formerly known as Fairlight.Au Pty Ltd) v Peter Vogel Instruments Pty Ltd [2019] FCAFC 216

Full Court of the Federal Court of Australia

Besanko, Banks-Smith & Stewart JJ

Damages - contract - trade mark - copyright - proceedings concerned quantification of damages for breach of "Development and Licensing Agreement", determination concerning liability and damages with respect to copyright infringement claim, and determination concerning damages for trade mark infringement - 'expectation damages' - 'reliance damages' - 'mitigation costs' - 'trade mark infringement' damages - 'account of profits' - Copyright Act 1968 (Cth) - Trade Marks Act 1955 (Cth) Trade Marks Act 1995 (Cth) - held: appeal allowed in part - cross-appeal dismissed.

[PKT](#)

[From Benchmark Friday, 13 December 2019]

Australian Securities and Investments Commission v Merlin Diamonds Limited (No 2) [2019] FCA 2094

Federal Court of Australia

O'Bryan J

Corporations - 'non-party shareholders/noteholders' in defendant sought, pursuant to r2.32 *Federal Court Rules 2011* (Cth), to inspect copy of report which defendant's provision liquidators prepared - provisional liquidators, under s37AF *Federal Court of Australia Act 1976*

(Cth), sought that parts of report be suppressed - held: Court granted leave for non-party shareholders/noteholders' to inspect report' - Court made 'limited suppression order' concerning aspect of report.

[Australian Securities and Investments Commission](#)

[From Benchmark Friday, 13 December 2019]

Fastbet Investments Pty Ltd v Deputy Commissioner of Taxation (No 5) [2019] FCA 2073

Federal Court of Australia

Derrington J

Administrative law - taxation - two proceedings - respondent decided to issue notices under s255-100, Sch 1 *Taxation Administration Act 1953* (Cth) to applicants requiring that security be given to respondent for 'due payment of a "future tax-related liability"' - applicant in each proceeding sought relief concerning respondent's decision - applicants alleged failure by respondent to take relevant considerations into account - 'constitutional ground' was advanced but applicants acknowledged Court 'bound by' *Keris Pty Ltd v Deputy Commissioner of Taxation* (2017) 253 FCR 233 in which ground was rejected - one applicant (Fastbet) claimed for return of money respondent had received' - whether requirement that respondent have regard to relevant considerations related to exercise of discretion to issue notices - whether alleged relevant considerations were matters respondent required to consider - whether any failure to have regard to matters applicants identified was material - *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40 - held: no error in respondent's decision to issue notices - applications dismissed.

[Fastbet](#)

[From Benchmark Friday, 13 December 2019]

BAM Property Group Pty Ltd as trustee for BAM Property Trust v Imoda Group Holdings Pty Ltd (No 2) [2019] FCA 2072

Federal Court of Australia

Derrington J

Costs - indemnity costs - successful plaintiffs sought that defendants pay their costs - plaintiffs sought costs on indemnity basis for 'whole proceeding', or in reliance on offer to compromise to which defendants had not responded, or on basis of misconduct by defendants - Pt 25 *Federal Court Rules 2011* (Cth) - s43(2) *Federal Court of Australia Act 1976* (Cth) - held: defendants to pay plaintiffs' costs of proceedings on indemnity basis.

[BAM Property](#)

[From Benchmark Friday, 13 December 2019]

Prodata Solutions Pty Ltd v South Australian Fire and Emergency Services Commission (No 2) [2019] FCA 2051

Federal Court of Australia

Charlesworth J

Copyright - applicant sought division of issues in proceedings with result that trial proceed 'in

three stages' - whether Court satisfied that proposed 'trifurcation of issues' was 'necessary or appropriate' - r30.01 *Federal Court Rules 2011 (Cth)* - *Reading Australia Pty Ltd v Australian Mutual Provident Society* [1999] FCA 718 - held: Court not satisfied to divide issues in manner proposed by applicant - Court proposed own motion concerning division of issues and made orders accordingly.

[Prodata](#)

[From Benchmark Friday, 13 December 2019]

Furlong v Wise & Young Pty Ltd [2019] NSWSC 1718

Supreme Court of New South Wales

Ward CJ in Eq

Contempt - first plaintiff sought that respondent 'be found guilty of contempt of court for issuing a subpoena' to bank - respondent sought dismissal of first plaintiff's 'notice of motion and statement of charge' - *Mirus Australia Pty Ltd v Gage* [2017] NSWSC 1046 - *Toyota Finance Australia Limited v AJI Enterprise Group Pty Ltd* [2019] NSWSC 33 - *Evidence Act 1995 (NSW)* - 'distinction between civil and criminal contempt' - burden of proof - standard of proof - whether Court was 'persuaded beyond reasonable doubt' that respondent guilty of contempt of court - held: amended notice of motion dismissed.

[View Decision](#)

[From Benchmark Friday, 13 December 2019]

Bank of Queensland Limited v Star Trek Pty Ltd [2019] NSWSC 1712

Supreme Court of New South Wales

Adamson J

Personal property - first defendant owned 'commercial personal property' (property) - property located on land which had passed to second defendant trustee - plaintiff sought 'declarations and orders' to 'authorise and facilitate' enforcement of plaintiff's security interests' over property - whether plaintiff established declarations should be made that it held security interest pursuant to Master Asset Finance Agreement as recorded in 'PPS Register' - whether plaintiff established it was 'entitled to seize' 'Secured Property' - held: declarations and orders granted.

[View Decision](#)

[From Benchmark Friday, 13 December 2019]

In the Matter of Kornucopia Pty Ltd (No 2) [2019] VSC 802

Supreme Court of Victoria

Sifris J

Bias - corporations - winding up - Sifris J determined preliminary questions in proceedings - companies sought recusal of Sifris J for apprehended bias - claim of apprehended bias made on basis of Court's 'independent investigations', statements in Reasons and statements at directions hearing - whether denial of procedural fairness - test in *Bodycorp Repairers Pty Ltd v Maisano (Recusal Appln) (No 12)* [2017] VSC 676 - held: recusal application dismissed.

[In the Matter of Kornucopia](#)

[From Benchmark Friday, 13 December 2019]

Milfoil Pty Ltd v Commonwealth Bank of Australia (No 2) [2019] VSC 734

Supreme Court of Victoria

Lyons J

Costs - Court gave judgment in defendant's favour in proceedings - determination of costs - whether defendant entitled to all its costs - determination of basis on which to award costs - whether Court should allow 'counsel's' fees in excess of scale' - *Chen v Chen* [2009] VSCA 233 - rr26.08(4) & 63.34 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - whether unreasonable rejection of offer of compromise - conduct - held: defendant entitled to all its costs - indemnity costs order granted - granted counsel's fees in excess of scale not allowed.

[Milfoil](#)

[From Benchmark Friday, 13 December 2019]

Bluewaters Power 1 Pty Ltd v The Griffin Coal Mining Company Pty Ltd [2019] WASC 438

Supreme Court of Western Australia

Vaughan J

Corporations - personal property - plaintiffs, under s588FM *Corporations Act 2001*(Cth) (Corporations Act), sought fixing of 'later time under' s588FL(2)(b)(iv) Corporations Act concerning security interest's registration under *Personal Property Securities Act 2009* (Cth) - 'step-in rights' under 'two coal supply agreements' - whether security interest - whether 'failure to register' due to accident or inadvertence - whether appropriate to make extension order - held: application granted.

[Bluewaters](#)

[From Benchmark Friday, 13 December 2019]



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The Jumblies

By: Edward Lear

They went to sea in a Sieve, they did,
In a Sieve they went to sea:
In spite of all their friends could say,
On a winter's morn, on a stormy day,
In a Sieve they went to sea!
And when the Sieve turned round and round,
And every one cried, 'You'll all be drowned!'
They called aloud, 'Our Sieve ain't big,
But we don't care a button! we don't care a fig!
In a Sieve we'll go to sea!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

II

They sailed away in a Sieve, they did,
In a Sieve they sailed so fast,
With only a beautiful pea-green veil
Tied with a riband by way of a sail,
To a small tobacco-pipe mast;
And every one said, who saw them go,
'O won't they be soon upset, you know!
For the sky is dark, and the voyage is long,
And happen what may, it's extremely wrong
In a Sieve to sail so fast!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

III

The water it soon came in, it did,
The water it soon came in;
So to keep them dry, they wrapped their feet



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In a pinky paper all folded neat,
And they fastened it down with a pin.
And they passed the night in a crockery-jar,
And each of them said, 'How wise we are!
Though the sky be dark, and the voyage be long,
Yet we never can think we were rash or wrong,
While round in our Sieve we spin!
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

IV

And all night long they sailed away;
And when the sun went down,
They whistled and warbled a moony song
To the echoing sound of a coppery gong,
In the shade of the mountains brown.
'O Timballo! How happy we are,
When we live in a sieve and a crockery-jar,
And all night long in the moonlight pale,
We sail away with a pea-green sail,
In the shade of the mountains brown!
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

V

They sailed to the Western Sea, they did,
To a land all covered with trees,
And they bought an Owl, and a useful Cart,
And a pound of Rice, and a Cranberry Tart,
And a hive of silvery Bees.
And they bought a Pig, and some green Jack-daws,
And a lovely Monkey with lollipop paws,
And forty bottles of Ring-Bo-Ree,
And no end of Stilton Cheese.



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Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

VI

And in twenty years they all came back,
In twenty years or more,
And every one said, 'How tall they've grown!'
For they've been to the Lakes, and the Terrible Zone,
And the hills of the Chankly Bore;
And they drank their health, and gave them a feast
Of dumplings made of beautiful yeast;
And everyone said, 'If we only live,
We too will go to sea in a Sieve,—
To the hills of the Chankly Bore!'
Far and few, far and few,
Are the lands where the Jumblies live;
Their heads are green, and their hands are blue,
And they went to sea in a Sieve.

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

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