

Friday, 14 September 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)

Baron v Commonwealth Bank of Australia Limited, in the matter of Baron (FCA) - pleadings - representative proceeding - 'non-disclosure case' - paragraph of statement of claim struck out with leave to replead

Hagerty v Hills Central Pty Ltd (NSWCA) - real property - wills and estates - deed - option to acquire land not validly exercised - appeal allowed

Scudooda Pty Ltd v K&E Property Pty Ltd (NSWSC) - leases and tenancies - retail leases - real property - defendant entitled to demised premises' possession, arrears and mesne profits

In the matter of Bar Machiavelli Pty Ltd (Administrator Appointed) (NSWSC) - leases and tenancies - lessor required to consent to assignment of lease - declaration and orders made

Re Tuscan Property Development Pty Ltd (VSC) - corporations - winding-up - application for remuneration by liquidators of company - application granted

Yadlamalka Land Pty Ltd v Ragless & Anor (SASC) - judgments and orders - freezing orders - contract - application for freezing order to quarantine portion of sales proceeds of pastoral lease - application dismissed

Ammon v Colonial Leisure Group Pty Ltd (WASC) - nuisance - private nuisance - injunction - plaintiff claimed noise emanating from hotel interfered with his enjoyment of his adjacent apartment - nuisance not established - injunction refused

Russell v Lee Holdings Pty Ltd (WASC) - corporations - applicants granted leave to bring derivative action on behalf of company

Summaries With Link (Five Minute Read)

Baron v Commonwealth Bank of Australia Limited, in the matter of Baron [2018] FCA 1384

Federal Court of Australia

Yates J

Pleadings - representative proceeding - 'non-disclosure case' - respondent sought to strike out paragraph of statement of claim under r16.21 *Federal Court Rules 2011* (Cth) or that applicants give further and better particulars - whether pleading identified 'with appropriate precision' information which allegedly should have been disclosed - held: Court satisfied that paragraph of statement of claim was embarrassing - paragraph struck out with leave to replead.

[Baron](#)

[From Benchmark Friday, 14 September 2018]

Hagerty v Hills Central Pty Ltd [2018] NSWCA 200

Court of Appeal of New South Wales

McColl, Macfarlan & Leeming JJ

Real property - wills and estates - deed - primary judge found respondent validly exercised option to acquire land which appellants owned as executors of mother's deceased estate - deed which granted option required delivery of two executed contracts for sale, and provided for completion date 42 days after contract - respondent, in purported execution of option, left completion date blank and requested date of completion in covering letter of 192 days from contract's date, citing 'irrelevant clause' in deed - whether respondent validly exercised option - construction of deed - construction of documents purportedly exercising option - *Real Property Act 1900* (NSW) - held: option was not validly exercised - appeal allowed.

[View Decision](#)

[From Benchmark Friday, 14 September 2018]

Scudooda Pty Ltd v K&E Property Pty Ltd [2018] NSWSC 1397

Supreme Court of New South Wales

Darke J

Leases and tenancies - retail leases - real property - plaintiff was lessee in respect of land - lessors sold and transferred land to defendant, which became proprietor of fee simple in 2015 - plaintiff claimed to have validly exercised first option to renew lease in 2014 and was in occupation of land - plaintiff sought specific performance of agreement to grant new lease - plaintiff also claimed that costs of electricity supplied to premises fell on lessor - plaintiff had met costs of electricity and sought reimbursement of some amounts - defendant denied reimbursement to plaintiff - plaintiff ceased paying rent on basis it was entitled to set off for

electricity costs - construction of lease - *Retail Leases Act 1994* (NSW) - held: plaintiff failed in claim of entitlement to electricity costs - defendant entitled to demised premises' possession, arrears and mesne profits - judgment for defendant.

[View Decision](#)

[From Benchmark Friday, 14 September 2018]

In the matter of Bar Machiavelli Pty Ltd (Administrator Appointed) [2018] NSWSC 1395

Supreme Court of New South Wales

Brereton JA

Leases and tenancies - retail lease - assignment - plaintiffs (Bicher) sought order that first defendant lessor consent to third defendant's assignment of lease of premises to Bicher - grounds on which consent to assignment could be withheld - whether 'proposed assignee' had 'financial resources and retailing skills' which were 'not inferior' to proposed assignor's - whether compliance by lessee with procedure for obtaining consent - ss39 & 41 *Retail Leases Act 1994* (NSW) - held: first defendant not entitled to withhold consent to assignment of lease - first defendant required to consent to assignment - declaration and orders made.

[View Decision](#)

[From Benchmark Friday, 14 September 2018]

Re Tuscan Property Development Pty Ltd [2018] VSC 511

Supreme Court of Victoria

Matthews JR

Corporations - winding up - interlocutory application - liquidators appointed as defendant's joint and several liquidators sought, under s473(3)(b)(ii) *Corporations Act 2001* (Cth) (*Corporations Act*) and r9.2 *Supreme Court (Corporations) Rules 2013* (Vic), approval of their 'remuneration and expenses' - whether liquidators had prima facie case - whether Court satisfied to approve remuneration in amount sought - consideration of matters in s473(10) *Corporations Act* - held: Court approved application for remuneration

[Re Tuscan Property](#)

[From Benchmark Friday, 14 September 2018]

Yadlamalka Land Pty Ltd v Ragless & Anor [2018] SASC 131

Supreme Court of South Australia

Hinton J

Judgments and orders - freezing orders - contract - plaintiff sought specific performance of contract for 'purchase and sale of a pastoral lease and livestock and sundry items' and damages for breach of the contract - plaintiffs sought freezing order quarantining portion of sale proceeds of pastoral lease - plaintiff contended substantive proceedings' utility would be defeated if freezing order not granted - whether risk of frustration of judgment - whether risk of dissipation of assets - whether judgment sum overestimated - whether defendant had adequate assets to satisfy judgment debt - held: application dismissed.

[Yadlamalka](#)

[From Benchmark Friday, 14 September 2018]

Ammon v Colonial Leisure Group Pty Ltd [2018] WASC 280

Supreme Court of Western Australia

Master Sanderson

Nuisance - private nuisance - injunction - plaintiff contended noise emanating from hotel was private nuisance interfering with plaintiff's enjoyment of his adjacent apartment - plaintiff sought injunction to restrain 'playing of music' in certain areas between certain hours - whether claim in nuisance established - whether plaintiff established 'substantial and unreasonable interference', by noise emanating from hotel, with 'beneficial use of his apartment' - whether to grant injunction - *Southern Properties (WA) Pty Ltd v Executive Director of the Department of Conservation and Land Management* [2012] WASCA 79 - held: claim not established - injunction refused.

[Ammon](#)

[From Benchmark Friday, 14 September 2018]

Russell v Lee Holdings Pty Ltd [2018] WASC 275

Supreme Court of Western Australia

Corporations - applicants were C-class shareholders in first defendant - applicants, pursuant to ss236 & 237, pt 2F.1A Corporations Act 2001 (Cth) sought to bring derivative action on first defendant's behalf - standing - whether factors in s237(2) of the Act satisfied - best interests of company - good faith - probability of company bringing proceedings, or taking responsibility for proceedings or for proceedings' steps - whether serious question to be tried - notice - held: Court satisfied s237(2) factors were satisfied - leave to bring derivative action granted.

[Russell](#)

[From Benchmark Friday, 14 September 2018]



Benchmark

The Crocuses

By: Frances Ellen Watkins Harper
They heard the South wind sighing
 A murmur of the rain;
And they knew that Earth was longing
 To see them all again.

While the snow-drops still were sleeping
 Beneath the silent sod;
They felt their new life pulsing
 Within the dark, cold clod.

Not a daffodil nor daisy
 Had dared to raise its head;
Not a fairhaired dandelion
 Peeped timid from its bed;

Though a tremor of the winter
 Did shivering through them run;
Yet they lifted up their foreheads
 To greet the vernal sun.

And the sunbeams gave them welcome,
 As did the morning air—
And scattered o'er their simple robes
 Rich tints of beauty rare.

Soon a host of lovely flowers
 From vales and woodland burst;
But in all that fair procession
 The crocuses were first.

First to weave for Earth a chaplet
 To crown her dear old head;
And to beauty the pathway
 Where winter still did tread.

And their loved and white haired mother
 Smiled sweetly 'neath the touch,
When she knew her faithful children
 Were loving her so much.



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

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