



Friday, 15 December 2023

Weekly Business Law

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

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Executive Summary (One Minute Read)

Mitsubishi Motors Australia Ltd v Begovic (HCA) - finding of misleading and deceptive conduct in placing a fuel consumption sticker on a car overturned, as the sticker had to be affixed in that form under other Commonwealth legislation

In the matter of West Homes Australia Pty Ltd (VSC) - company that had failed to comply with a statutory demand was refused leave to oppose winding up on the grounds of solvency and the existence of a genuine dispute about the debt

HABEAS CANEM

McGregor wishes you a happy and peaceful holiday season



Summaries With Link (Five Minute Read)

Mitsubishi Motors Australia Ltd v Begovic [2023] HCA 43

High Court of Australia

Gageler CJ, Gordon, Steward, Gleeson, & Jagot JJ

Consumer protection - Begovic bought a new Mitsubishi MQ Triton 4x4 GLS DID Auto DC-PU from Northpark - he became dissatisfied with the fuel consumption exceeding the fuel consumption shown on a label attached to the windscreen - he filed a claim in the Victorian Civil and Administrative Tribunal, alleging that Mitsubishi and Northpark had contravened both s18 and s54 of the *Australian Consumer Law* in that the fuel consumption label was misleading or deceptive, and the vehicle was defective and therefore not of acceptable quality as required by the consumer guarantee - Begovic succeeded before the Tribunal, which ordered Northpark to pay Begovic the purchase price of the vehicle, on which the vehicle would become the property of Northpark - a single judge of the Victorian Supreme Court allowed an appeal on questions of law regarding s54 but dismissed an appeal regarding s18, holding that compulsory labelling can be misleading or deceptive if it inaccurately records information about the goods which it is obliged by law to describe accurately - Mitsubishi and Northpark appealed to the Court of Appeal regarding the s18 decision, which dismissed the appeal - Mitsubishi and Northpark were granted special leave to appeal to the High Court - held: as a part of a national legislative scheme, whether the *Australian Consumer Law* applies as a law of the Commonwealth, a law of the Commonwealth enacted as a law of the State, or as a law of the State, it is necessary to construe s18 of the *Australian Consumer Law* consistently with the provisions of the *Motor Vehicle Standards Act 1989* (Cth) which give effect to the *Vehicle Standard (Australian Design Rule 81/02 - Fuel Consumption Labelling for Light Vehicles) 2008* (Cth) as a safety standard under s106 of the *Australian Consumer Law* - where the conduct in trade or commerce said to contravene s18 is the same conduct which is required by another consumer protection law to be carried out only in a prescribed manner, the need to reconcile s18 with that other law cannot be avoided by characterising the conduct (such as presentation and supply) as voluntary - there was no evidence that either Mitsubishi or Northpark engaged in any conduct, save for applying the label in trade or commerce (that is, in importing, presenting and supplying the vehicle) - under the *Motor Vehicle Standards Act*, Mitsubishi could not import the vehicle or supply it to Northpark without the fuel consumption label being applied to it, and Northpark could not supply the vehicle to Begovic without the label attached - Mitsubishi was bound to apply and Mitsubishi and Northpark were bound to maintain the fuel consumption label on the vehicle, in order not to contravene s106 of the *Australian Consumer Law* - the form and content of the fuel consumption label as applied were dictated by the *Vehicle Standard (Australian Design Rule 81/02 - Fuel Consumption Labelling for Light Vehicles) 2008* - if Mitsubishi declared the values for fuel consumption in accordance with the requirements of *UN ECE Regulation 101 (Revision 2)*, then the standard operated to deem those declared values to be the values required to be reported - appeal allowed.

[Mitsubishi Motors Australia Ltd](#)

[From Benchmark Thursday, 14 December 2023]



In the matter of West Homes Australia Pty Ltd [2023] VSC 732

Supreme Court of Victoria

Irving AsJ

Corporations - the plaintiff applied to have West Homes Australia Pty Ltd wound up after failure to comply with a statutory demand - West Homes sought leave to oppose the winding up application, as it disputed the existence and quantum of the debt West Homes also asserted that it was solvent - held:s495 of the *Corporations Act 2001* (Cth) provides that, on an application for a company to be wound up in insolvency on the basis of failure to comply with a statutory demand, the company may not, without leave of the Court, oppose the application on a ground that the company relied on for the purposes of an application by it for the demand to be set aside; or that the company could have so relied on, but did not (whether it made such an application or not) - further, the Court is not to grant leave unless it is satisfied that the ground is material to proving that the company is solvent - in considering whether to grant leave, the Court must give preliminarily consideration to the company's basis for disputing the debt, examine the reason why the issue of indebtedness was not raised in an application to set aside the statutory demand and the reasonableness of the party's conduct at that time, and investigate whether the dispute about the debt is material to proving the company is solvent - the Court must be provided with the 'fullest and best' evidence of solvency, and unaudited accounts and unverified claims of ownership or valuation are not ordinarily probative in this regard - nor are mere assertions of solvency arising from a general review of the accounts, even if made by qualified accountants who have detailed knowledge of how those accounts were prepared - West Homes was presumed insolvent unless it could prove that it is able to pay its debts as and when they become due and payable - West Homes was not trading, it was clearly not a dormant company - in October 2023 it was a plaintiff in Supreme Court proceedings in which interlocutory costs orders were made against it - the financial reports provided to the Court made no reference to the costs order, and contained no historical information to explain when and in what circumstances West Homes ceased trading - West Homes had not discharged its burden of proving solvency such as to displace the presumption of its insolvency - it was therefore not strictly necessary to decide whether there was a genuine dispute about the existence or quantum of the debt - however, the Court was not satisfied that there was such a genuine dispute, even on a preliminary basis - there was no dispute between that the statutory demand had been served on West Homes at its registered address - there was some dispute about whether the *Masri* principle remained good law, that is, the principle that, where the directors of a company did not become aware of the existence of the statutory demand until after the expiration of the 21-day period for filing of an application to set aside a statutory demand, and they acted reasonably with respect to the collection of mail within their registered office, fairness requires the company be permitted to raise a ground available to challenge the demand - in the Court's view, the *Masri* principle was no longer good law and, even if it were, on the facts of this case the mail collection system at the registered office was not reasonable - leave to oppose the winding up application on the asserted grounds refused.

[In the matter of West Homes Australia Pty Ltd](#)

Benchmark



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L A W Y E R S

[From Benchmark Tuesday, 12 December 2023]

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Minnesota v Torgerson (MINSC) - Odor of marijuana on its own without other facts did not constitute probable cause for warrantless search of vehicle

Summaries With Link (Five Minute Read)

Minnesota v Torgerson 995 N.W.2d 164 (2023)

Supreme Court of Minnesota

Gildea CJ, Anderson, & McKeig JJ

A motor vehicle was stopped by the police because it had too many lights mounted on the grill. When the driver gave his license to the police, the officer stated that he smelled marijuana emanating from the vehicle. When questioned, the driver denied possessing marijuana. After conferring with a second officer, the police ordered the driver and passengers out of the vehicle and conducted a search. In the course of the search, the police discovered a canister of what was later found to be methamphetamine. At trial, the defendant sought to suppress the evidence obtained from the vehicle search on the grounds that there did not exist requisite probable cause for the search. The trial court suppressed the evidence and dismissed the matter. This was affirmed by the Minnesota Court of Appeals. The Minnesota Supreme Court stated that both the US and Minnesota Constitutions protect against unreasonable searches and seizures. Warrantless searches are *per se* unreasonable unless one of the exceptions to the warrant requirement applies. One of these exceptions is the automobile exception which permits the police to search a vehicle without a warrant if there is probable cause to believe the search will result in the discovery of evidence. The Court said that probable cause requires more than suspicion but less than the evidence necessary for conviction. A warrantless search must be based on objective facts and not the subjective good faith of the police. The Court noted that both industrial hemp and medical cannabis were lawful in Minnesota and the possession of a small quantity of marijuana was a petty misdemeanour and not a crime. The Supreme Court stated that, while the odour of marijuana can be a fact that supports probable cause, it is insufficient on its own because of the lawful right to possess medical cannabis under certain circumstances. As there was nothing else to support probable cause, the facts were insufficient to establish a fair probability that the search would yield evidence of criminal conduct. The suppression order was affirmed.

[Minnesota](#)



Poem for Friday

In Memoriam, (Ring out, wild bells)

By: Alfred, Lord Tennyson (1809-1892)

Ring out, wild bells, to the wild sky,
The flying cloud, the frosty light:
The year is dying in the night;
Ring out, wild bells, and let him die.

Ring out the old, ring in the new,
Ring, happy bells, across the snow:
The year is going, let him go;
Ring out the false, ring in the true.

Ring out the grief that saps the mind
For those that here we see no more;
Ring out the feud of rich and poor,
Ring in redress to all mankind.

Ring out a slowly dying cause,
And ancient forms of party strife;
Ring in the nobler modes of life,
With sweeter manners, purer laws.

Ring out the want, the care, the sin,
The faithless coldness of the times;
Ring out, ring out my mournful rhymes
But ring the fuller minstrel in.

Ring out false pride in place and blood,
The civic slander and the spite;
Ring in the love of truth and right,
Ring in the common love of good.

Ring out old shapes of foul disease;
Ring out the narrowing lust of gold;
Ring out the thousand wars of old,
Ring in the thousand years of peace.

Ring in the valiant man and free,



The larger heart, the kindlier hand;
Ring out the darkness of the land,
Ring in the Christ that is to be.

Alfred, Lord Tennyson was born on 6 August 1809, in Somersby, Lincolnshire, England. *Ring Out, Wild Bells*, was part of *In Memoriam*, written to Arthur Henry Hallam, who died at 22. The poem was published in 1850, the year Tennyson was appointed Poet Laureate. The poem is inspired by the English custom to have the ring of bells, muffled to ring out the old year, and then, with muffles removed, to ring in the new year. *Ring Out, Wild Bells*, has been set to music including by Charles Gounod and Percy Fletcher. Alfred, Lord Tennyson died on 6 October 1892.

Ring Out, Wild Bells, Gounod, sung by the Mormon Tabernacle Choir
https://www.youtube.com/watch?v=TVEAt8v7b_g

Ring Out, Wild Bells, from *The Passing of the Year* by Jonathan Dove, Andrew Hon, conductor, sung by the Yale Glee Club
<https://www.youtube.com/watch?v=yPlqqvOM8Og>

Bell Ringing in the Belfry at Great St. Mary's, Cambridge
<https://www.youtube.com/watch?v=KNMFvNZIsCM>

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