

Friday, 16 August 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)

Global Fruit Protection Pty Ltd v Mount Somerset Pty Ltd (FCA) - patent - pleadings - respondents sought leave to amend cross-claim - 'prior art' - adequacy of particulars - leave to appeal refused

Elevate NSW Pty Ltd v Canada Bay Private Hospital Pty Ltd (FCA) - corporations - statutory demand - trade practices - plaintiff sought to set aside statutory demand on basis of off-setting claims - originating process dismissed

Westpac Life Insurance Services Ltd v Estate of the Late Graham Brian Ugle (FCA) - insurance - wills and estates - insurer sought permission to pay 'death benefit' into Court under s215 *Life Insurance Act 1995* (Cth) - permission granted

In the matter of Fawaz Pty Ltd (NSWSC) - corporations - second applicant sought termination of first applicant's winding up and that company's control 'be returned' to first applicant's director - winding up terminated - company's control returned to director - originating process otherwise dismissed

Palmer v Mohareb (NSWSC) - vexatious proceedings - plaintiff granted orders against defendant under *Vexatious Proceedings Act 2008* (NSW) - defendant's notice of motion seeking to prosecute plaintiff for perjury dismissed

In the matter of BBY Limited (receivers and managers appointed) (in liquidation) (NSWSC) - corporations - service - liquidators sought directions concerning reviving of 'interim regime' - not all defendants served - Court satisfied sought directions

appropriate but not prepared to make directions until defendants properly served and heard (should they wish to be heard) - orders made

IMO Rand Mining Limited (VSC) - corporations - application for validation of plaintiff's acquisitions of shares in company - orders granted

Tokio Marine & Nichido Fire Insurance Co Ltd v Hans Bo Kristian Holgersson trading as Holgerssons Complete Home Service (WASCA) - insurance contract - 'construction and legal liability policy' - preliminary question - construction of contract - first respondent insured under policy - appeal dismissed

Summaries With Link (Five Minute Read)

Global Fruit Protection Pty Ltd v Mount Somerset Pty Ltd [2019] FCA 1264

Federal Court of Australia

Greenwood J

Patent - pleadings - respondents, by interlocutory application, sought to file and serve 'amended statement of cross?claim' - respondents sought to add 'five pieces of prior art' to their 'novelty and inventive step case' - adequacy of particulars - r16.53 *Federal Court Rules 2011* (Cth) - ss37M & 37N *Federal Court of Australia Act 1976* (Cth) - held: Court not satisfied to grant respondents leave to amend - interlocutory application dismissed.

[Global Fruit](#)

[From Benchmark Friday, 16 August 2019]

Elevate NSW Pty Ltd v Canada Bay Private Hospital Pty Ltd [2019] FCA 1248

Federal Court of Australia

Griffiths J

Corporations - trade practices - statutory demand - plaintiff, under s459H *Corporations Act 2001* (Cth), sought to set statutory demand aside - plaintiff contended off-settling claim 'equivalent to' the debt - consideration of off-setting claim based on 'misleading or deceptive conduct' (first claim), off-setting claim based on 'conversion and detinue' ('second claim') and off-setting claim based on contractual breaches ('third claim') - held: third claim met 'requisite threshold' - off-setting claim insufficient to set statutory demand aside - originating process dismissed.

[Elevate](#)

[From Benchmark Friday, 16 August 2019]

Westpac Life Insurance Services Ltd v Estate of the Late Graham Brian Ugle [2019] FCA 1251

Federal Court of Australia

Thawley J

Insurance - wills and estates - applicant issued insurance policy to deceased - applicant sought

that it be permitted to pay 'death benefit' into Court under s215 *Life Insurance Act 1995* (Cth) - whether proceeding should continue in absence of representative of deceased - whether Court satisfied applicant had formed opinion it could not 'obtain a "sufficient discharge"' concerning death benefit - r9.24 *Federal Court Rules 2011* (Cth) - held: Court satisfied to grant application.

[Westpac](#)

[From Benchmark Friday, 16 August 2019]

In the matter of Fawaz Pty Ltd [2019] NSWSC 1010

Supreme Court of New South Wales

Ward CJ in Eq

Corporations - winding up - second applicant, pursuant to s482 *Corporations Act 2001* (Cth), sought termination of first applicant's winding up and that company's control 'be returned' to first applicant's director - factors in *Glass Recycling Pty Ltd (ACN 001 332 654)* [2014] NSWSC 439 - held: winding up terminated - company's control returned to director - originating process otherwise dismissed.

[View Decision](#)

[From Benchmark Friday, 16 August 2019]

Palmer v Mohareb [2019] NSWSC 975

Supreme Court of New South Wales

Fagan J

Vexatious proceedings - plaintiff sought orders against defendant under *Vexatious Proceedings Act 2008* (NSW) (Vexatious Proceedings Act) - defendant, by notice of motion, sought, pursuant to s338(1) *Crimes Act 1900* (NSW), to prosecute plaintiff for perjury - 'three years of vexatious applications' - 10 proceedings - lack of 'reasonable prospects of success' - dismissal of all claims - ss6 & 8(4)(d) (Vexatious Proceedings Act) - "frequently instituted or conducted" - held: orders granted - notice of motion dismissed.

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[From Benchmark Friday, 16 August 2019]

In the matter of BBY Limited (receivers and managers appointed) (in liquidation) [2019] NSWSC 998

Supreme Court of New South Wales

Rees J

Corporations - liquidators of company (BBY) sought directions under section 90-15 Insolvency Practice Schedule (Corporations) - liquidators sought to revive 'interim regime' concerning 'allocation of the liquidators and BBY's costs amongst the classes of BBY clients' - non-appearance of legal representatives - non-service of certain defendants - whether sought directions appropriate - whether to endorse liquidators' reversion to interim regime 'on temporary basis' - held: Court satisfied sought directions appropriate - Court not satisfied to make directions until defendants properly served and heard (should they wish to be heard) - orders made.

[View Decision](#)

[From Benchmark Friday, 16 August 2019]

IMO Rand Mining Limited [2019] VSC 529

Supreme Court of Victoria

Gardiner AsJ

Corporations - application for validation of plaintiff's acquisitions of shares in company ('Tribune') so that plaintiff could 'dispose of the subject shares' - acquisition would 'otherwise be void' due to s259C *Corporations Act 2001* (Cth) (Corporations Act) - whether to grant orders under s1322(4) Corporations Act for share transfers' validation - whether 'just and equitable' to make orders - whether 'substantial injustice' - held: Court granted orders pursuant to s1322(4) of for share transfers' validation.

[IMO](#)

[From Benchmark Friday, 16 August 2019]

Tokio Marine & Nichido Fire Insurance Co Ltd v Hans Bo Kristian Holgersson trading as Holgerssons Complete Home Service [2019] WASCA 114

Court of Appeal of Western Australia

Buss P; Beech & Pritchard JJA

Insurance contract - fifth respondent was insured concerning 'building activities' under 'construction and legal liability policy' (policy) which appellant issued - second respondents engaged fifth respondent to renovate second respondents' home - fifth respondent engaged first respondent subcontractor for works on home - home damaged by fire 'during the renovations' - second respondents claimed against appellant and others - appellant, after granting fifth respondent indemnity required, in exercise of subrogation rights, fifth defendant to 'maintain proceedings against' first respondent - primary judge, in determination of preliminary question, found first respondent was 'an insured' under policy - appellant sought extension of time to appeal - construction of policy - held: appeal dismissed.

[Tokio](#)

[From Benchmark Friday, 16 August 2019]

Benchmark

Down By the Carib Sea (VI: Sunset in the Tropics)

By: James Weldon Johnson

A silver flash from the sinking sun,
Then a shot of crimson across the sky
That, bursting, lets a thousand colors fly
And riot among the clouds; they run,
Deepening in purple, flaming in gold,
Changing, and opening fold after fold,
Then fading through all of the tints of the rose into gray.
Till, taking quick fright at the coming night,
They rush out down the west,
In hurried quest
Of the fleeing day.

Now above where the tardiest color flares a moment yet,
One point of light, now two, now three are set
To form the starry stairs,—
And, in her firefly crown,
Queen Night, on velvet slippered feet, comes softly down.

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

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