

Friday, 18 October 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)

Croghan v Blacktown City Council (NSWCA) - costs - indemnity costs - land and environment - compulsory acquisition of land - appeal against costs orders allowed

Omaya Investments Pty Ltd v Project Lawyers (NSWSC) - solicitor's lien - determination of 'terms and conditions' of 'first mortgage' offered by plaintiff in substitution for lien

National Australia Bank Limited v Human Group Pty Ltd (NSWSC) - stay - first and second defendants sought 'temporary stay' of present proceedings pending criminal proceedings' determination - stay granted with respect to second defendant

Stephen Richard O'Ryan v Gregory Ray Golding No.3 (NSWSC) - corporations - winding up - liquidators sought orders they were justified to enter funding agreement, to 'appoint themselves as voluntary administrators' and ancillary orders modifying Pt 5.3A *Corporations Act 2001* (Cth) - orders granted

Di Falco v Emirates (No 2) (VSC) - aviation - strict liability - flight passenger fractured ankle when she fainted at 'bathroom doorway' - defendant not liable - claim dismissed

Mediratta v Clark (VSC) - contract - sale of land - purchaser sought to set aside vendors' 'Default Notice' contending breach of general term and implied term of contract - claim dismissed - deposit forfeited

In the matter of AXF Group Pty Ltd (VSC) - corporations - statutory demand - service - demands validly served on appellant - appeal dismissed

Kilmaley Investments Pty Ltd v City of Wanneroo (WASCA) - compulsory acquisition of land - two appeals - objection to amount of compensation - objection to costs orders - appeals dismissed

Rirratjingu Parties v Galpu Parties & Anor (NTSC) - commercial arbitration - application for appointment of arbitrator - order granted

Summaries With Link (Five Minute Read)

Croghan v Blacktown City Council [2019] NSWCA 248

Court of Appeal of New South Wales

Meagher & McCallum JJA; Simpson AJA

Costs - indemnity costs - land and environment - compulsory acquisition of land - applicant sought to appeal against costs orders made under r42.15 *Uniform Civil Procedure Rules 2005* (NSW) (Rules) - applicant had rejected respondent's offer of compromise - applicant obtained judgment less than amount of offer - whether erroneous application of r42.15 Rules in 'Class 3 proceeding' - whether failure to determine whether presumption that claimant bear litigation's costs, on indemnity basis, from time offer was rejected, should be displaced - held: appeal allowed.

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[From Benchmark Friday, 18 October 2019]

Omaya Investments Pty Ltd v Project Lawyers [2019] NSWSC 1394

Supreme Court of New South Wales

Slattery J

Solicitor's lien - plaintiff terminated defendant's retainer - plaintiff disputed memoranda of fees - solicitors claimed lien over file to secure fees' payment - plaintiff sought file's production under s472 *Legal Profession Uniform Law* (NSW) - Court satisfied it was appropriate to exercise jurisdiction - plaintiff offered 'first mortgage' securing its liability to solicitors - solicitors accepted first mortgage was 'adequate substitute for their lien' but disputed some of its 'terms and conditions' - held: terms and conditions of first mortgage determined.

[View Decision](#)

[From Benchmark Friday, 18 October 2019]

National Australia Bank Limited v Human Group Pty Ltd [2019] NSWSC 1404

Supreme Court of New South Wales

Henry J

Stay - second defendant was facing charges in criminal proceedings - in present proceedings plaintiff claimed second defendant and first defendant (defendants) 'engaged in a fraudulent scheme' which resulted in loss to plaintiff - facts in present proceedings overlapped with facts

allegedly giving rise to criminal proceedings - defendants, under s67 *Civil Procedure Act 2005* (NSW) sought 'temporary stay' of present proceedings pending criminal proceedings' determination - principles applicable to civil proceeding's stay - *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 964 - 'right to silence' - 'privilege against self-incrimination' - held: Court granted temporary stay of proceedings against second defendant - stay refused concerning first defendant - plaintiff entitled to use Court's processes to access documents 'produced under subpoena'.

[View Decision](#)

[From Benchmark Friday, 18 October 2019]

Stephen Richard O’Ryan v Gregory Ray Golding No.3 [2019] NSWSC 1372

Supreme Court of New South Wales

Hammerschlag J

Corporations - winding up - liquidators sought order they were justified to enter funding agreement, order they 'appoint themselves as voluntary administrators', and ancillary orders modifying Pt 5.3A *Corporations Act 2001* (Cth) (Corporations Act) - ss477(2B), 436B(2)(g) & 438A Corporations Act - held: orders granted.

[View Decision](#)

[From Benchmark Friday, 18 October 2019]

Di Falco v Emirates (No 2) [2019] VSC 654

Supreme Court of Victoria

Forbes J

Aviation - plaintiff flight passenger fractured ankle when she fainted at 'bathroom doorway' - plaintiff claimed she fainted due to dehydration - plaintiff sued defendant - plaintiff claimed she had requested water on plane but water not provided - whether *Civil Aviation (Carriers' Liability) Act 1959* (Vic) (Carriers' Act) applied to claim - . whether 'accident' under Carriers' Act had occurred - if 'accident' had occurred, whether accident had caused plaintiff's 'fall and fracture' - whether defendant liable for plaintiff's injury under s9E Carriers' Act - whether 'accident' within definition contained in Article 17 of The Convention for the Unification of Certain Rules for International Carriage by air, done at Montreal ('Montreal Convention') had occurred, resulting in strict liability of carrier - held: no 'accident' within definition contained in Article 17 Montreal Convention had occurred - defendant not liable - claim dismissed.

[Di Falco](#)

[From Benchmark Friday, 18 October 2019]

Mediratta v Clark [2019] VSC 685

Supreme Court of Victoria

Derham AsJ

Contract - sale of land - plaintiff purchaser and defendant vendors entered contract for sale of land - settlement did not occur - defendant gave 'Default Notice' and purported to terminate contract - plaintiff claimed that at time of Default Notice defendant was in breach of general

condition of contract and implied term of contract - plaintiff sought that Default Notice be set aside - s49 *Property Law Act 1958* (Vic) - held: defendant did not breach general condition - no implied term - Default Notice should be set aside - contract 'validly rescinded' by defendant - deposit forfeited to defendant.

[Mediratta](#)

[From Benchmark Friday, 18 October 2019]

In the matter of AXF Group Pty Ltd [2019] VSC 671

Supreme Court of Victoria

Sifris J

Corporations - statutory demand - service - respondent sought to wind up appellant for 'presumed insolvency by virtue of an unsatisfied statutory demand' - appellant, by interlocutory process, sought determination of preliminary questions concerning whether statutory demands served - demands had been sent by Australia Post to appellant's registered office - building which housed office demolished but appellant's solicitor had arranged 'mail redirection' to solicitor's residential premises ('redirection address') - Associate Judge found demands 'not delivered to, or received by' solicitor at redirection address - Associate Judge found demands 'validly served' - appellant appealed against findings concerning validity of service - whether appellant rebutted 'presumption of service' which s29(1) *Acts Interpretation Act 1901* (Cth) raised - held: appeal dismissed.

[In the matter of AXF](#)

[From Benchmark Friday, 18 October 2019]

Kilmaley Investments Pty Ltd v City of Wanneroo [2019] WASCA 156

Court of Appeal of Western Australia

Murphy, Beech & Pritchard JJA

Compulsory acquisition of land - two appeals - in one appeal 'Kilmaley', pursuant to s241 *Land Administration Act 1997* (WA) (Land Administration Act), appealed concerning amount of compensation awarded by primary judge in respect of land's compulsory acquisition - Kilmaley contended compensation amount 'should have been higher' ('substantive appeal') - in other appeal 'City' appealed against costs orders ('costs appeal') - whether erroneous findings concerning 'permissible uses' of 'unaffected situation' - valuation of lot 'in unaffected state' - 'severance/injurious affection' claim - 'assignability' of compensation entitlement - statutory construction - s208 *Land Administration Act* - O24A r10 *Rules of the Supreme Court 1971*(WA) - appeals dismissed.

[Kilmaley](#)

[From Benchmark Friday, 18 October 2019]

Rirratjingu Parties v Galpu Parties & Anor [2019] NTSC 77

Supreme Court of the Northern Territory

Grant CJ

Commercial arbitration - plaintiff, pursuant to s11(4) *Commercial Arbitration (National Uniform*



Legislation) Act 2011 (NT) (Commercial Arbitration Act) sought appointment of arbitrator on terms in arbitration agreement - whether agreements which parties reached in mediation were "arbitration agreements" under s7 Commercial Arbitration Act - whether parties had 'failed to agree' on arbitrator's agreement - held: application granted.

[Rirratjingu](#)

[From Benchmark Friday, 18 October 2019]



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Fairy-Land

BY:EDGAR ALLAN POE

Dim vales—and shadowy floods—
And cloudy-looking woods,
Whose forms we can't discover
For the tears that drip all over:
Huge moons there wax and wane—
Again—again—again—
Every moment of the night—
Forever changing places—
And they put out the star-light
With the breath from their pale faces.
About twelve by the moon-dial,
One more filmy than the rest
(A kind which, upon trial,
They have found to be the best)
Comes down—still down—and down
With its centre on the crown
Of a mountain's eminence,
While its wide circumference
In easy drapery falls
Over hamlets, over halls,
Wherever they may be—
O'er the strange woods—o'er the sea—
Over spirits on the wing—
Over every drowsy thing—
And buries them up quite
In a labyrinth of light—
And then, how, deep! —O, deep,
Is the passion of their sleep.
In the morning they arise,
And their moony covering
Is soaring in the skies,
With the tempests as they toss,
Like—almost any thing—
Or a yellow Albatross.
They use that moon no more
For the same end as before,
Videlicet, a tent—
Which I think extravagant:



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Its atomies, however,
Into a shower dissever,
Of which those butterflies
Of Earth, who seek the skies,
And so come down again
(Never-contented things!)
Have brought a specimen
Upon their quivering wings.

[EDGAR ALLAN POE](#)

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