

Benchmark

Friday, 19 October 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)

UBS AG v Tyne (HCA) - judgments and orders - stay - abuse of process - trusts and trustees - no error in decision to stay proceedings as abuse of the Federal Court's processes - appeal allowed

Linfox Australia Pty Ltd v O'Loughlin (FCAFC) - workers compensation - Administrative Appeals Tribunal affirmed appellant's revocation of grant of workers compensation to worker - no error in primary judge's decision to set aside Tribunal's decision - s6 *Safety, Rehabilitation and Compensation Act 1988* (Cth) was not engaged - appeal dismissed

Mineral Resources Limited v Langford (FCA) - pleadings - consumer law - misleading or deceptive conduct - applicant sought that respondent provide further and better particulars of defence - application granted

Hooke v Bux Global Limited (No 6) (FCA) - corporations - company to be wound up on just and equitable grounds - liquidators appointed - orders made

Business Innovation Pty Ltd v Maddison Morgan & Bailey Pty Ltd (NSWSC) - corporations - statutory demand - director of company sought leave to bring proceedings in company's name - application dismissed

Hungerford v Richardson (NSWSC) - partnership - dissolution of partnership - taking of final accounts on partnership's winding up - first defendant debtor of partnership to pay sum to plaintiff creditor of partnership

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Asahi Beverages Pty Ltd v RFGA Management Pty Ltd (VSC) - preliminary discovery - dispute concerning 'volume representation' under supply agreement - application for preliminary discovery dismissed

Victorian Taxi Families Inc & Anor v Taxi Services Commission (VSC) - preliminary discovery - two applicants sought preliminary discovery on basis of potential right to relief - one applicant might have right to relief - sought documents could be relevant to right to relief - parties to make further submissions

ACN 158 148 951 Pty Ltd v Prout (WASC) - consumer law - appellant convicted of 23 charges - appeal allowed in part - notice of contention upheld

Summaries With Link (Five Minute Read)

UBS AG v Tyne [2018] HCA 45

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Judgments and orders - stay - abuse of process - trusts and trustees - respondent in capacity as trustee of trust and wife commenced Federal Court proceedings against appellant seeking 'damages and equitable compensation' arising from 'advice and representations' which respondent made to respondent and "through him" to "Tyne Related Entities" including trust's former trustee and company (Telesto) - former trustee, Telesto and respondent had previously brought proceedings in Supreme Court of New South Wales (SCNSW proceedings) arising from same facts and making 'essentially the same claims' as in present proceedings - respondent and former trustee discontinued claims in the SCNSW proceedings - SCNSW proceedings stayed on basis Telesto was seeking to re-litigate causes of action determined in High Court of Singapore proceedings - appellant sought to stay present proceedings as abuse of Federal Court's process - primary judge permanently stayed proceedings, finding claims 'could, and should' have been brought in SCNSW proceedings and that there was no adequate explanation why they were not - Full Court of Federal Court found it was not open to primary judge to find proceedings abuse of process - appellant granted special leave to appeal - held: no error in primary judge's decision to stay proceedings as abuse of the Federal Court's processes - appeal allowed.

UBS

[From Benchmark Friday, 19 October 2018]

Linfox Australia Pty Ltd v O'Loughlin [2018] FCAFC 173

Full Court of the Federal Court of Australia

Kenny, Moshinsky & Bromwich JJ

Workers compensation - respondent injured in 'physical altercation' with mechanic at service station while delivering petrol for appellant's petrol supplier customer - Administrative Appeals

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Tribunal affirmed appellant's decision to revoke grant of workers compensation to respondent - appellant had revoked workers compensation grant on basis it had not been liable for injury - Tribunal considered whether respondent's injury occurred in course of employment - Tribunal found respondent's injury occurred because he 'voluntarily and unreasonably submitted to an abnormal risk of injury' and that, due to application of s6(3)(a) *Safety, Rehabilitation and Compensation Act 1988* (Cth), respondent's injury 'could not be treated as having arisen in the course of his employment' - primary judge set Tribunal's decision aside, finding it erred in applying s6(3) of the Act - appellant appealed - whether primary judge erred in finding s6 of the Act was not engaged - held: no error in decision of primary judge - appeal dismissed.

[Linfox](#)

[From Benchmark Friday, 19 October 2018]

Mineral Resources Limited v Langford [2018] FCA 1532

Federal Court of Australia

Barker J

Pleadings - consumer law - misleading or deceptive conduct - applicant, by interlocutory application, sought further and better particulars of respondent's defence - *Competition and Consumer Act 2010* (Cth) - *Corporations Act 2001* (Cth) - adequacy of particulars - held: Court satisfied that respondent should provide further and better particulars of [21.2] of defence - orders made.

[Mineral Resources](#)

[From Benchmark Friday, 19 October 2018]

Hooke v Bux Global Limited (No 6) [2018] FCA 1545

Federal Court of Australia

Colvin J

Corporations - proceedings concerned determination of four issues - whether to make winding up order in respect of company on just and equitable grounds - whether to make winding up order on grounds of insolvency - determination of who should be appointed as liquidator - determination of what should occur concerning orders Court made for provisional liquidator's appointment which had been stayed - ss461(1)(k), 462(2) & 466(2) *Corporations Act 2001* (Cth) - held: Court made orders for winding up of company on just and equitable grounds and appointed liquidators - orders concerning provisional liquidation discharged.

[Hooke](#)

[From Benchmark Friday, 19 October 2018]

Business Innovation Pty Ltd v Maddison Morgan & Bailey Pty Ltd [2018] NSWSC 1523

Supreme Court of New South Wales

Parker J

Corporations - statutory demand - proceedings to set aside statutory demand which defendant issued - proceedings commenced in company's name by plaintiff director - plaintiff sought, pursuant to s14 *Civil Procedure Act 2005* (NSW) , that Court dispense with requirement that

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company was only able to commence and carry or proceedings by solicitor - plaintiff sought leave to conduct proceedings on company's behalf - whether company unable to afford legal representation - factors in *Super Choice Now Pty Ltd v BrisConnections Management Co Ltd* (2009) 259 ALR 451 - held: Court not persuaded to allow plaintiff to conduct proceedings - application dismissed.

[View Decision](#)

[From Benchmark Friday, 19 October 2018]

Hungerford v Richardson [2018] NSWSC 1543

Supreme Court of New South Wales

Ward CJ in Eq

Partnership - dissolution of partnership - Lindsay J made orders for winding up o partnership between plaintiff and first defendant and for taking of accounts on partnership's winding up - proceedings concerned taking of final accounts - financial statements - 'claimed surcharges' of plaintiff and first defendant - whether to make adjustments in favour of plaintiff and/or first defendant - held: adjustments to made in favour of both parties - plaintiff was creditor of partnership in certain sum - first defendant was debtor of partnership - first defendant to pay sum to plaintiff.

[View Decision](#)

[From Benchmark Friday, 19 October 2018]

Asahi Beverages Pty Ltd v RFGA Management Pty Ltd [2018] VSC 606

Supreme Court of Victoria

Derham AsJ

Preliminary discovery - dispute concerning 'volume representation' under 'supply agreement' - applicant, pursuant to r32.05 *Supreme Court (General Civil Procedure) Rules 2015* (Vic), sought preliminary discovery of documents in certain categories from respondent - applicant sought discovery of documents in 'two broad categories' - whether prerequisites to making of preliminary discovery order satisfied - whether 'reasonable cause to believe' applicant had or might have right to relief - reasonableness of inquiries - whether 'reasonable cause to believe' respondent possessed documents relevant to right to relief - held: Court not satisfied to make order for preliminary discovery - application dismissed.

[Asahi](#)

[From Benchmark Friday, 19 October 2018]

Victorian Taxi Families Inc & Anor v Taxi Services Commission [2018] VSC 594

Supreme Court of Victoria

Derham AsJ

Preliminary discovery - applicants, pursuant to r32.05 *Supreme Court (General Civil Procedure) Rules 2015* (Vic), sought preliminary discovery - applicants contended they may have 'right to relief' against respondent concerning 'its action and inaction in exercising its statutory functions regulating the commercial passenger vehicle industry' - *Transport Integration Act 2010*

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(Vic) - *Transport (Compliance and Miscellaneous) Act 1983* (Vic) - duty of care concerning licencing requirements' 'monitoring and enforcement' - held: second applicant, not first applicant, may have right to relief - certain documents could be relevant to right to relief - parties to make further submissions concerning documents' descriptions.

Victorian Taxi Families

[From Benchmark Friday, 19 October 2018]

ACN 158 148 951 Pty Ltd v Prout [2018] WASC 190

Supreme Court of Western Australia

Jenkins J

Consumer law - Magistrate convicted appellant of 23 charges under *Fair Trading Act 2010* (WA) and *Australian Consumer Law* (WA) - appellant appealed - whether Magistrate 'lifted or pierced the corporate veil' - whether Magistrate made inconsistent findings - whether Magistrate failed to give reasons for rejection of evidence - whether appellant could be convicted on basis different from basis which Magistrate set out - held: appeal allowed in part - notice of contention upheld.

ACN 158 148 951 Pty Ltd

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Sonnet 53

By: William Shakespeare

What is your substance, whereof are you made,
That millions of strange shadows on you tend?
Since every one hath, every one, one shade,
And you but one, can every shadow lend.
Describe Adonis, and the counterfeit
Is poorly imitated after you;
On Helen's cheek all art of beauty set,
And you in Grecian tires are painted new:
Speak of the spring, and foison of the year,
The one doth shadow of your beauty show,
The other as your bounty doth appear;
And you in every blessed shape we know.
In all external grace you have some part,
But you like none, none you, for constant heart.

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

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