

Friday, 20 September 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)

Globaltech Corporation Pty Ltd v Australian Mud Company Pty Ltd (FCAFC) - patent - appellant's 'Orifinder v5' tool infringed 'claims in suit' - no error in primary judge's construction of claims or conclusion of Patent infringement - appeal dismissed

Encompass Corporation Pty Ltd v InfoTrack Pty Ltd (FCAFC) - patent - appeal against dismissal of claim of infringement of patents - 'manner of manufacture' - appeal dismissed

Registered Organisations Commissioner v Australian Hotels Association (FCA) - industrial law - penalties - declarations and orders arising from respondent's contraventions of *Fair Work (Registered Organisations) Act 2009* (Cth) and *Registration and Accountability of Organisations Schedule of the Workplace Relations Act 1996* (Cth) - 'admitted contraventions' - declarations and orders made

Australian Education Union v Yooralla (FCA) - industrial law - alleged underpayment of employee - characterisation of employee's services under awards - erroneous consideration of 'Transitional Minimal Wage' and of Modern Award'

Stephen Richard O'Ryan v Greg Ray Golding (NSWSC) - corporations - winding up - 'just and equitable' ground - Court satisfied to place company 'under winding up order'

In the Matter of Infant Nutrition Company of Australia Pty Ltd (Administrators Appointed) (VSC) - corporations - costs - application to amend 'Originating Process' and 'Points Of Claim' - leave granted to amend - costs determined

Eaton v Rare Nominees Pty Limited (QCA) - joint venture - erroneous finding of fiduciary duty owed by company to respondent - appeal allowed

Summaries With Link (Five Minute Read)

Globaltech Corporation Pty Ltd v Australian Mud Company Pty Ltd [2019] FCAFC 162

Full Court of the Federal Court of Australia

Kenny, Robertson & Moshinsky JJ

Patent - first respondent contended appellant infringed claims in Patent - appellant cross-claimed, challenging validity of 'claims in suit' - primary judge resolved 'construction issues' in first respondent's favour, found appellant infringed claims in suit, rejected appellant's 'validity arguments' to extent they relied on construction issues, and rejected other grounds on which appellant contended Patent invalid - appellant challenged primary judge's approach to claims' construction and conclusion that 'Orifinder v5' infringed claims in suit - *Patents Act 1990 (Cth)* - *Patents Regulations 1991 (Cth)* - *Intellectual Property Laws Amendment (Raising the Bar) Act 2012 (Cth)* - held: no error in decision of primary judge - appeal dismissed.

[Globaltech](#)

[From Benchmark Tuesday, 17 September 2019]

Encompass Corporation Pty Ltd v InfoTrack Pty Ltd [2019] FCAFC 161

Full Court of the Federal Court of Australia

Allsop CJ; Kenny, Besanko, Nicholas & Yates JJ

Patent - appellants were patentee and 'claimed exclusive licensee' of two patents - appellants sued respondent for patents' infringement - respondent sought revocation of claims of patents on basis of invalidity - primary judge found patents not patentable inventions because neither was a 'manner of manufacture' under s6 *Statute of Monopolies* - primary judge revoked patents - appellants appealed, contending primary should have found that invention which each patent claimed involved manner of manufacture - s18(1A) (a) *Patents Act 1990 (Cth)* - whether primary judge misapplied *Research Affiliates LLC v Commissioner of Patents [2014] FCAFC 150* and *Commissioner of Patents v RPL Central Pty Ltd [2015] FCAFC 177* - held: appeal dismissed.

[Encompass](#)

[From Benchmark Wednesday, 18 September 2019]

Registered Organisations Commissioner v Australian Hotels Association [2019] FCA 1516

Federal Court of Australia

O'Callaghan J

Industrial law - penalties - applicant sought 'declarations and civil penalty orders' arising from respondent's contraventions of *Fair Work (Registered Organisations) Act 2009 (Cth)* and *Registration and Accountability of Organisations Schedule of the Workplace Relations Act 1996 (Cth)* - 'admitted contraventions' - whether 'transitional provision' had retrospective operation

- principles applicable to penalties' fixing - held: declarations and orders made.

[Registered Organisations Commissioner](#)

[From Benchmark Thursday, 19 September 2019]

Australian Education Union v Yooralla [2019] FCA 1511

Federal Court of Australia

Steward J

Industrial law - appellant claimed its member was 'underpaid in contravention of' *Fair Work Act 2009* (Cth) due to 'wrong industry awards' being applied - member was respondent's employee - parties disagreed concerning characterisation of appellant's services - Federal Circuit Court dismissed appellant's application - whether primary judge erred in consideration of 'Transitional Minimal Wage' and/or in Modern Award's construction - whether erroneous categorisation of services under awards - 'Pre-Modern Awards' - 'Modern Award' - held: primary judge erred in consideration of 'Transitional Minimal Wage' and of Modern Award' - parties to file agreed orders giving Court's reasons effect or submissions concerning relief.

[Australian Education Union](#)

[From Benchmark Thursday, 19 September 2019]

Stephen Richard O'Ryan v Greg Ray Golding [2019] NSWSC 1229

Supreme Court of New South Wales

Hammerschlag J

Corporations - proceedings concerned whether Court should place third defendant (company) under winding up order but stay order for 'brief period' so that parties could avoid winding up by 'consensual resolution' - motion originally sought receiver's appointment - motion amended to seek also liquidators' appointment - whether winding up on 'just and equitable basis' was 'appropriate' and/or 'necessary' - s461(1)(k) *Corporations Act 2001* (Cth) - held: Court satisfied to place company 'under winding up order'.

[View Decision](#)

[From Benchmark Thursday, 19 September 2019]

In the Matter of Infant Nutrition Company of Australia Pty Ltd (Administrators Appointed) [2019] VSC 595

Supreme Court of Victoria

Kennedy J

Corporations - application to file 'Second Further Amended Originating Process' and 'Further Amended Points of Claim' seeking termination of deed of company arrangement (DOCA) or declaration DOCA void - order adding shares' transferee as a party also sought - whether to grant leave to amend - costs - futility - 'overarching purpose' - 'real issues in dispute' - s9 *Civil Procedure Act 2010* (Vic) - r63.15 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: Court satisfied to grant leave to amend and to add party - orders made - costs determined.

[In the Matter of Infant Nutrition](#)

[From Benchmark Tuesday, 17 September 2019]

Eaton v Rare Nominees Pty Limited [2019] QCA 190

Court of Appeal of Queensland

Philippides & McMurdo JJA; Davis J

Joint venture - proceedings concerned joint venture agreement (JVA) between company (E-Coastal) as proprietor and respondent as one of the "Contributors" - respondent claimed against appellant 'sole director and controlling mind of E-Coastal (Mr Eaton) and Mrs Eaton - respondent claimed that E-Coastal breached fiduciary duties to respondent - trial judge found E-Coastal had fiduciary duties to respondent which were breached - trial judge found against Mr Eaton under Barnes v Addy's 'second limb' - Mr Eaton appealed - construction of "Receipts" in JVA - whether erroneous finding E-Coastal breached fiduciary duty - whether erroneous finding Mr Eaton was liable under Barnes by Addy's second limb - held: trial judge erred in finding there was 'relevant fiduciary obligation' owed to respondent - appeal allowed.

[Eaton](#)

[From Benchmark Monday, 16 September 2019]



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To My Friends

By: Henry Lawson

From: Skyline Riders.

These are the songs of the Friends I neglected -
And the Foes too, in part;
These are songs that were mostly rejected -
And songs from my heart.

https://en.wikipedia.org/wiki/Henry_Lawson - circa 1910

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