



Friday, 20 December 2024

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)

Pleash v Bezel Pty Ltd (FCA) - liquidator succeeded in enforcing loans made to related companies, where those companies had sought to rely on deeds of forgiveness executed by common director



HABEAS CANEM

Merry Christmas from McGregor

Summaries With Link (Five Minute Read)

Pleash v Bezel Pty Ltd [2024] FCA 1440

Federal Court of Australia

Cheeseman J

Corporations law - Eatrip made loans to Bezel and MP01, which had the same director - director later executed deeds of forgiveness, naming Eatrip as debtor and Bezel and MP01 as creditors, but now said this was mistake, and deeds forgave loans from Eatrip - Eatrip's liquidator sought to enforce loans - held: Bezel could not rely on forgiveness deed, as it had taken no role in the proceedings and had neither sought rectification nor led evidence Eatrip was estopped - loan to MP01 undocumented, and, on the evidence, Eatrip loaned the money in its own right, not as trustee - in any event, Court would have appointed liquidator as receiver of the trust - further, attempts to remove Eatrip as trustee had been ineffective, and Eatrip remained a bare trustee, and would have had standing to enforce loan in any event - MP01 failed to establish both conditions required to justify reading 'debtor' as 'creditor' (and vice versa) as a matter of contractual construction, namely (1) literal meaning was absurd; and (2) objective intention was self-evident - Court not satisfied MP01 never loaned money to Eatrip - in light of director's poor record-keeping practices, a cogent purpose of forgiveness deed may well have been to put beyond doubt that Eatrip did not owe anything to MP01 - equitable rectification claim failed, as Court again not satisfied common objective intention was to forgive MP01's debts to Eatrip - waiver and estoppel claims failed - judgment for Eatrip (in liq) in respect of the loans.

[Pleash](#)

[From Benchmark Tuesday, 17 December 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

Khachatryan



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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