

Friday, 21 June 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)

Aberdeen Bear Pty Ltd v MJJK Investments Pty Ltd; MJJK Investments Pty Ltd v Calvert (NSWSC) - heads of agreement did not give the plaintiff an option to purchase other family members' interests in a family business

The Estate of Lorenzo Antonio Pastrello (NSWSC) - receivers appointed to hotel business after financial irregularities discovered

In the matter of MacDonald Contracting Australia Pty Ltd (in liquidation) (NSWSC) - declaratory relief granted that a fixed and floating charge granted in 2009 had been continuously perfected for the purposes of s56 of the *Personal Property Securities Act 2009* (Cth) and had not vested in the grantor

BBHF Pty Ltd v Sleeping Duck Pty Ltd & Ors (VSC) - allegation of oppression by a business advisor who had been given a minority shareholding dismissed

Yume Group Holdings v Ashthorn (VSCA) - Court construed terms of a contract entitling a business advisor to a capital raising fee



HABEAS CANEM

Small dog, big surf



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Summaries With Link (Five Minute Read)

Aberdeen Bear Pty Ltd v MJJK Investments Pty Ltd; MJJK Investments Pty Ltd v Calvert [2024] NSWSC 722

Supreme Court of New South Wales

Stevenson J

Contracts - family dispute relating to the ownership of a business as a distributor of luxury watches with franchise distribution agreements with a number of famous brands - plaintiff claimed he had an option to purchase other family members' interests under a heads of agreement - held: the question is what a reasonable business person in the position of the parties would have understood the relevant terms to mean - Court analysed the text of the heads of agreement - the heads of agreement did not give the plaintiff an option to purchase the other family members' interests in the business.

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[From Benchmark Tuesday, 18 June 2024]

The Estate of Lorenzo Antonio Pastrello [2024] NSWSC 734

Supreme Court of New South Wales

Slattery J

Equity - a deceased and his family had built a thriving hotel and holiday park businesses on the Federal Highway just outside the ACT - at the time of his death, the deceased had held one share in the company conducting the hotel business, and one share the company running the holiday park business - an *Anton Piller* search order, issued because of demonstrated cash deficiencies in the operations of the hotel business, revealed unexplained cash in a safe at the residence of the deceased's eldest son, who was the licensee of an ran the hotel business - the Court appointed a supervisor of the hotel business, without formally appointing the supervisor as a receiver, or giving him direct authorisation to conduct the hotel business - the supervisor found unaccounted for cash banked from and held on the hotel premises, and sought to be appointed as receiver and manager of the hotel business - the eldest son sought that different receivers be appointed, and sought to ensure that the scope of the receivership did not include the holiday park business - held: the Court may, at any stage of proceedings, on terms, appoint a receiver by interlocutory order in any case in which it appears to the Court to be just or convenient so to do, pursuant to s67 of the *Supreme Court Act 1970* (NSW) - it is a remedy that ought to be exercised with care and caution and as a last resort - the supervisor and another person should be appointed receivers and managers as sought - the holiday park business should not be included in the receivership - the intermingling of finances between the hotel business and the holiday park business should not be so great as to create difficulties in separating the accounting for the two.

[View Decision](#)

[From Benchmark Wednesday, 19 June 2024]

In the matter of MacDonald Contracting Australia Pty Ltd (in liquidation) [2024] NSWSC

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Supreme Court of New South Wales

McGrath J

Personal property securities - MCA was incorporated in 2007 and carried on business as a civil construction contractor, providing services including the drilling and installation of temporary and permanent ground anchors, rock bolting and rock face stabilisation, soil nailing, micro piling and shot concreting - in 2023, MCA was placed into a members' voluntary liquidation - the same person was the sole director of MCA and of Tarenast, which engaged in the business of hiring out plant and construction equipment - Tarenast applied for a declaration that a fixed and floating charge granted by MCA to Tarenast in 2009 had been continuously perfected for the purposes of s56 of the *Personal Property Securities Act 2009* (Cth) (PPSA) and had not vested in MCA by the operation of either s588FL of the *Corporations Act 2001* (Cth) or s267 of the PPSA - held: the terms of the Tarenast security interest plainly fall within the definition of a "security interest" in s12 of the PPSA - the Tarenast security interest was both a "transitional security interest" under s308 of the PPSA and a "migrated security interest" under s 332 - therefore, subject to the Court's determination concerning purported defects in the registration, the registration of the Tarenast security interest did not cease to become effective, and as such was continuously perfected during the relevant period - the Court rejected the argument that the Tarenast registration was ineffective by reason of one or more seriously misleading defects and that it therefore vested in MCA - the Tarenast security interest did not vest in MCA upon the winding up of MCA by operation of s588FL(4) of the *Corporations Act* or either of s267 or s267A of the PPSA - declaratory relief granted.

[View Decision](#)

[From Benchmark Thursday, 20 June 2024]

BBHF Pty Ltd v Sleeping Duck Pty Ltd & Ors [2024] VSC 320

Supreme Court of Victoria

Delany J

Oppression - an advisor who had advised Sleeping Duck reached an agreement with the founders that he would receive 5% of the founders' shares and an option to acquire a further 5% - he alleged a common understanding that he would have active involvement in management, and that he held a legitimate expectation that any shareholder agreement entered into by Sleeping Duck would provide him with the right to appoint a director to the board and that director would have an effective veto on any resolution concerning the business of Sleeping Duck - the founder currently held 9.4% of the shares - he commenced proceedings alleging oppression - held: it has been held that the failure to meet the 'legitimate expectations' of a member or shareholder of a company formed as a 'quasi-partnership' could amount to oppression - a plaintiff may make a case of oppression by reference both to individual items of conduct and by reference to the cumulative effect of that conduct - fairness is not to be assessed in a vacuum. It is to be assessed in the context in which the conduct occurred and in relation to what is known at the time of the conduct and not in relation to what subsequently transpired - the test is objective - the oppressive conduct here had not been made out -

application dismissed.

[BBHF Pty Ltd](#)

[From Benchmark Tuesday, 18 June 2024]

Yume Group Holdings v Ashthorn [2024] VSCA 134

Court of Appeal of Victoria

McLeish & Kennedy JJA, & Waller AJA

Contracts - Yume operates an online platform for surplus food management - Ashthorn agreed to provide Yume consultancy and advisory services in respect of a possible capital raising or business sale - Ashthorn was entitled to receive monthly advisory retainer fees, and, subject to certain conditions being met, a capital raising fee or a business sale fee - a dispute arose as to whether two sets of transactions by Yume entitled Ashthorn to the capital raising fee - the primary judge found Yume liable to pay the fee in respect of one set of transaction, but not in respect of the other - Yume appealed, and Ashthorn cross-appealed - held: the primary judge's decision rested on the conclusion that the relevant capital raising was obtained or committed in one or more transactions, which constituted a single contract or capital raising transaction - the critical question was whether part or all of any capital raising was obtained or committed (or deemed to have been) prior to a defined expiry date - the primary judge's approach failed to take sufficient account of the terms of the contracts and led to a result wholly inconsistent with those terms - to the extent that the primary judge relied on subjective intentions as going to construction of the relevant agreements, they would not be relevant to that issue - on the other hand, evidence of mutually known objective background circumstances relevant to the purpose is admissible no matter how clear the 'ordinary meaning' of the words - these considerations did not assist Ashthorn, however - on the cross-appeal, Ashthorn's authorisation to solicit commitments from "potential counterparties" did not restrict the definition of such parties to those who had in fact been so solicited - appeal and cross-appeal both allowed.

[Yume Group Holdings](#)

[From Benchmark Tuesday, 18 June 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine (SCOTUS) - Plaintiff pro-life doctors and medical associations challenged Food and Drug Administration (FDA) decision to relax prescribing restrictions on a drug used to terminate pregnancies. The Court held the plaintiffs lacked standing to challenge the FDA decision

Summaries With Link (Five Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine [2024] 602 US ____
Supreme Court of the United States

In 2021, the Food and Drug Administration (FDA) relaxed regulations for prescribing mifepristone, an abortion drug, to make the drug more accessible to women. The plaintiffs, consisting of pro-life doctors and medical associations, brought suit, alleging that the FDA regulations violated the *Administrative Procedure Act*. The District Court granted plaintiffs an injunction. The Court of Appeals found that plaintiffs had standing to sue and were likely to win on the merits. Reversing the lower courts, a unanimous Supreme Court held that the doctors and medical societies lacked standing to bring suit. Article III of the US Constitution limits the jurisdiction of federal courts to actual cases and controversies. The Court said that this is a matter of separation of powers. General complaints about how the government conducts its business are matters for the legislative and executive branches, not the judiciary. To establish standing, a plaintiff must demonstrate that (1) the plaintiff will likely suffer an injury in fact; (2) that the injury would likely be caused by the defendant; and (3) that the injury can be redressed by judicial relief. The plaintiffs are pro-life and do not prescribe the abortion drug. Nothing contained in the FDA regulations requires doctors to prescribe this drug. In short, the plaintiffs are acting to restrict the availability of the drug to others. While plaintiffs argued that they have suffered injury because doctors may suffer conscience objections when forced to perform abortions or perform abortion related treatment, the argument failed because federal conscience laws explicitly protect doctors from being required to perform abortions or other treatment that violates their consciences. The Court also rejected arguments that, if plaintiffs were not allowed to sue, then no one would have standing to challenge the FDA's actions. The Court said that even if this were true, it could not create standing and that some issues must be dealt with through the political and democratic processes and not the courts.

[Food and Drug Administration](#)



Poem for Friday

"Hope" is the thing with feathers (314)

By Emily Dickinson (10 December, 1830-15 May, 1886)

Hope is the thing with feathers -
That perches in the soul -
And sings the tune without the words -
And never stops - at all -

And sweetest - in the Gale - is heard -
And sore must be the storm -
That could abash the little Bird
That kept so many warm -

I've heard it in the chillest land -
And on the strangest Sea -
Yet - never - in Extremity,
It asked a crumb - of me.

Emily Dickinson https://en.wikipedia.org/wiki/Emily_Dickinson

Emily Dickinson Museum https://en.wikipedia.org/wiki/Emily_Dickinson_Museum

Hope is the thing with feathers, sung by Nazareth College Treble Choir, Linehan Chapel,
Nazareth College

<https://www.youtube.com/watch?v=gDlSo4hEzmE>

Recitation by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada.

Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir

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Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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