



Friday, 21 September 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)

Qantas Airways Limited v Ardlie (FCAFC) - industrial law - appellant ordered to pay amounts to respondent employees in respect of underpayments - employees incorrectly classified under enterprise agreement - appeal allowed - matter remitted

Hyundai Engineering & Steel Industries Co Ltd v Two Ways Constructions Pty Ltd (FCA) - arbitration - international arbitration - application for leave to proceed with enforcement application under s440D(1)(b) *Corporations Act 2001* (Cth) - application granted

ACN 116 746 859 (formerly Palermo Seafoods Pty Ltd) v Lunapas Pty Ltd (NSWCA) - damages - conversion - costs - challenge to rejection of items of loss - costs order varied - appeal otherwise dismissed

Hanna v Raoul (NSWCA) - contract - transfer of property from respondent to appellant was not binding - deed and transfer unconscionable and unjust - appeal dismissed

In the matter of Precise Training Pty Limited (NSWSC) - corporations - winding up - application to set aside statutory demand dismissed

Greenwood Futures v DSD Builders (NSWSC) - security of payments - challenges to adjudication determination failed - amended summons dismissed

Li v Dao (VSC) - corporations - plaintiff granted leave to bring certain claims on Company's behalf - leave granted to join Company as second plaintiff and another company as third defendant

Samwise Holdings Pty Ltd v Allied Distribution Finance Pty Ltd & Ors (SASCFC) - personal property - loans and mortgages - statutory construction - priority conferred when grantor obtained possession 'as grantor', not possession simpliciter - appeal dismissed

Allison v Tuna Tasmania Pty Ltd (TASFC) - contract - partnership - dismissal of claim for breach of fiduciary duty under alleged arrangement - appeal dismissed

Summaries With Link (Five Minute Read)

Qantas Airways Limited v Ardlie [2018] FCAFC 154

Full Court of the Federal Court of Australia

White, Perry & Charlesworth JJ

Industrial law - respondents were employed by appellant - five respondents commenced proceedings against appellant in Industrial Relations Court of South Australia (IRCSA), alleging appellant had contravened s50 *Fair Work Act 2009* (Cth) by its failure to make payments according to terms of enterprise agreement made under the Act - Industrial Magistrate found in respondent's favour - IRCSA dissolved - South Australian Employment Tribunal (SAET) required appellant to make payments to respondents - appellant appealed - whether employees correctly classified in accordance with enterprise agreement - "working up the scale" - Constitutional validity of IRCSA's dissolution, and of provision in respect of proceedings' transfer to SAET - held: Industrial Magistrate did not determine employees' classification in manner which enterprise agreement required - Industrial Magistrate's error affected orders made by SAET - 'constitutional question' did not arise - appeal allowed.

[Qantas](#)

[From Benchmark Friday, 21 September 2018]

Hyundai Engineering & Steel Industries Co Ltd v Two Ways Constructions Pty Ltd [2018] FCA 1427

Federal Court of Australia

O'Callaghan J

Arbitration - proceeding in which applicant, under s8(2) *International Arbitration Act 1974* (Cth) sought enforcement as judgment of "the Final Award" in Singapore International Arbitration Centre Registry of Awards - directors of respondent company appointed voluntary administrators - proceeding, as result of voluntary administrators' appointment, was stayed under s440D *Corporations Act 2001* (Cth) (Corporations Act) - applicant sought leave to proceed with enforcement application under s440D(1)(b) - held: application granted.

[Hyundai](#)

[From Benchmark Friday, 21 September 2018]

ACN 116 746 859 (formerly Palermo Seafoods Pty Ltd) v Lunapas Pty Ltd [2018] NSWCA

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Court of Appeal of New South Wales

Basten, Meagher & Ward JJA

Damages - conversion - costs - appeal concerned challenge to rejection of items of loss and rejection of expert's evidence - loss of goodwill claim - claim in respect of value of plant and equipment - claim for "legal and corporate costs" - whether erroneous rejection of claims - r51.53 *Uniform Civil Procedure Rules 2005* (NSW) - challenge to costs orders - whether Court could address first trial's costs on remitter - whether costs of first trial should have been addressed when rehearing costs awarded - held: costs order varied - appeal otherwise dismissed.

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[From Benchmark Friday, 21 September 2018]

Hanna v Raoul [2018] NSWCA 201

Court of Appeal of New South Wales

Beazley P; Macfarlan & White JJA

Contract - respondent was registered proprietor of property subject to a mortgage in third party financier's favour - respondent resided in house on property - respondent and appellant executed deed of arrangement providing appellant would discharge mortgage and respondent would transfer property to appellant subject to life estate in respondent's favour - appellant discharged mortgage - transfer executed and registered under *Real Property Act 1900* (NSW) - primary judge found transfer not binding, and that respondent was beneficially entitled to property, subject to compensation to appellant for money paid in discharging mortgage - whether respondent had capacity to enter deed and transfer - whether deed and transfer could be set aside because they were unconscionable - whether deed and transfer unjust - held: deed and transfer were unconscionable and unjust - appeal dismissed.

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[From Benchmark Friday, 21 September 2018]

In the matter of Precise Training Pty Limited [2018] NSWSC 1383

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiff, under s459H *Corporations Act 2001* (Cth) sought to set aside creditor's statutory demand which Chief Commissioner of State Revenue served on it - alternatively plaintiff sought to set demand aside under s459J of the Act - alternatively plaintiff sought order that demand was 'null and void' - whether genuine dispute established - whether 'some other reason' to set aside demand - held: proceedings dismissed.

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[From Benchmark Friday, 21 September 2018]

Greenwood Futures v DSD Builders [2018] NSWSC 1407

Supreme Court of New South Wales

McDougall J

Security of payments - first defendant agreed to construct townhouses for plaintiff under construction contract for purposes of *Building and Construction Industry Security of Payment Act 1999* (NSW) - first defendant contended it was entitled to 'milestone payment' - first defendant served documents 'purporting to be payment claims' under s13 of the Act - payment claims generated four applications, three of which were withdrawn - in fourth adjudication, adjudicator found first defendant entitled to milestone payment - plaintiff sought to quash determination - validity of payment claims - whether open to first defendant to "withdraw" application - whether adjudicator erroneously failed to value construction work in accordance with s10(1)(b) of the Act - held: challenges to adjudicator's determination failed - amended summons dismissed.

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[From Benchmark Friday, 21 September 2018]

Li v Dao [2018] VSC 530

Supreme Court of Victoria

Connock J

Corporations - plaintiff, pursuant to s237 *Corporations Act 2001* (Cth), sought to bring proceedings on Company's behalf against first and second defendant, and against Burke Road Developments Pty Ltd (Burke Road) - plaintiff sought to join Company as second plaintiff and Burke Road as third defendant - whether plaintiff acting in good faith - whether in best interests of Company to grant leave - whether serious question to be tried in respect of claim of claims - held: plaintiff granted leave to bring certain claims concerning declaratory relief in relation to funds Company received, misleading or deceptive conduct claims, and claims of breached of directors' duties - leave granted to join Company as second plaintiff and Burke Road as third defendant.

[Li](#)

[From Benchmark Friday, 21 September 2018]

Samwise Holdings Pty Ltd v Allied Distribution Finance Pty Ltd & Ors [2018] SASFC 95

Full Court of the Supreme Court of South Australia

Kourakis CJ; Parker & Doyle JJ

Personal property - loans and mortgages - statutory construction - primary judge found that respondent's perfected purchase money security interest under *Personal Property Securities Act 2009* (Cth) with respect to 40 motorcycles had 'priority over all other registered security interests' - appellant contended trial judge erroneously construed s62(2)(b)(i) of the Act as 'directed to possession as grantor rather than possession simpliciter' - 'the grantor' - rationales for 'conferral of super-priority' and 'requirement of timely notice' - held: no error in trial judge's construction of s62(2)(b)(i) of the Act - priority was conferred when grantor obtained possession 'from or through' security holder 'as grantor' - appeal dismissed.

[Samwise](#)

[From Benchmark Friday, 21 September 2018]

Allison v Tuna Tasmania Pty Ltd [2018] TASFC 5

Full Court of the Supreme Court of Tasmania

Pearce & Brett JJ; Martin AJ

Contract - partnership - appellant sued second respondent and entities associated with him - appellant claimed he and second respondent 'agreed to go into a fishing business venture' - appellant claimed second respondent breached fiduciary duty to appellant under arrangement - appellant claimed equitable compensation - appellant also claimed other relief - trial judge gave judgment for respondents - appellant did not challenge finding of no partnership agreement - appellant contended trial judge erroneously failed to find "agreement for a partnership" - whether appellant should be permitted to raise case alleged agreement for partnership for the first time on appeal - whether alleged agreement established - held: appeal dismissed.

[Allison](#)

[From Benchmark Friday, 21 September 2018]

Benchmark

Drifting Flowers of the Sea

By: Sadakichi Hartmann

Sadakichi Hartmann

Across the dunes, in the waning light,
The rising moon pours her amber rays,
Through the slumbrous air of the dim, brown night
The pungent smell of the seaweed strays—
From vast and trackless spaces
Where wind and water meet,
White flowers, that rise from the sleepless deep,
Come drifting to my feet.
They flutter the shore in a drowsy tune,
Unfurl their bloom to the lightlorn sky,
Allow a caress to the rising moon,
Then fall to slumber, and fade, and die.

White flowers, a-bloom on the vagrant deep,
Like dreams of love, rising out of sleep,
You are the songs, I dreamt but never sung,
Pale hopes my thoughts alone have known,
Vain words ne'er uttered, though on the tongue,
That winds to the sibilant seas have blown.
In you, I see the everlasting drift of years
That will endure all sorrows, smiles and tears;
For when the bell of time will ring the doom
To all the follies of the human race,
You still will rise in fugitive bloom
And garland the shores of ruined space.

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

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