



Friday, 25 September 2020

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)

Commissioner of Taxation v Pike (FCAFC) - taxation - 'Double Tax Agreement' - "'tiebreaker" provisions' - respondent was 'a resident solely of Thailand' for income years - appeal and cross-appeal dismissed

Knowles v Secretary, Department of Defence (FCA) - judicial review - applicant challenged Department's decision concerning applications under 'Australian Privacy Principles' - relief refused - originating application dismissed

Mayfield Development Corporation Pty Ltd v NSW Ports Operations Hold Co Pty Ltd (FCA) - consumer law - applicant sought to appeal against primary judge's dismissal of application for 'non-party discovery' - leave to appeal refused - application dismissed

Srikantha v Commonwealth of Australia (No 2) (FCA) - summary dismissal - pleadings - employment - torts - respondent sought proceeding's summarily dismissal or that amended statement of claim be struck out - interlocutory application dismissed

Boehringer Ingelheim Animal Health USA Inc. v Intervet International B.V. (FCA) - patent - dismissal of opposition to patent application - appeal dismissed

In the matter of Maitland Benevolent Society Limited (in liquidation) (NSWSC) - corporations - Maitland Benevolent Society wound up - liquidator justified to pay surplus to Royal Freemasons' Benevolent Institution

Re Dinjac Pty Ltd (VSC) - corporations - statutory demand - plaintiff sought to set aside

statutory demand - 'genuine dispute' - statutory demand reduced

EHome Construction Pty Ltd v GCB Constructions Pty Ltd (QSC) - security of payments - applicant sought declarations payment claim void and adjudicator's adjudication void - originating application dismissed

Smith v National Injury Insurance Agency, Queensland (QSC) - judicial review - insurance - statutory interpretation - applicant's application for 'approval to participate' in Scheme refused by respondent's 'internal review officer' - decision quashed - matter 'referred back' for determination

Summaries With Link (Five Minute Read)

Commissioner of Taxation v Pike [2020] FCAFC 158

Full Court of the Federal Court of Australia

Davies, White & Steward JJ

Taxation - income tax - primary judge concluded respondent was deemed 'resident solely of Thailand' for income years under Art 4(3)(c) *Agreement between Australia and the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* ('Double Tax Agreement') - appellant appealed against findings of primary judge that Double Taxation Agreement deemed respondent 'a resident solely of Thailand' for income years and that respondent 'did not satisfy' 'domicile test until April 2014' - respondent cross-appealed against findings of primary judge that he was 'resident of Australia' in relevant income years on 'ordinary concepts test', that he was resident of Australia under domicile tests from April 2014, and that Art 4(3)(b) of Double Tax Agreement did not deem respondent 'a resident solely of Thailand' during income years 2009-2014 - "'tiebreaker" provisions' - "resident" - s6 *Income Tax Assessment Act 1936* (Cth) - "habitual abode" - "'personal and economic relations" test' held: appeal and cross-appeal dismissed.

[Commissioner](#)

[From Benchmark Thursday, 24 September 2020]

Knowles v Secretary, Department of Defence [2020] FCA 1328

Federal Court of Australia

Snaden J

Judicial review - applicant challenged Department's decision concerning applications under 'Australian Privacy Principles' provided for by Sch 1 *Privacy Act 1988* (Cth) - *Regulatory Powers (Standard Provisions) Act 2014* (Cth) - alleged failure to provide access to information 'within 30 days' of request - alleged bad faith - alleged contravention of Australian Privacy Principles - alleged interference with privacy - held: relief refused - originating application dismissed.

[Knowles](#)

[From Benchmark Friday, 25 September 2020]

Mayfield Development Corporation Pty Ltd v NSW Ports Operations Hold Co Pty Ltd [2020] FCA 1334

Federal Court of Australia

Yates J

Non-party discovery - consumer law - applicant sought 'non-party discovery' - applicant sought to appeal against primary judge's dismissal of application - whether decision 'attended by sufficient doubt to warrant' Full Court's reconsideration - whether there would be 'substantial injustice' if leave refused - *Décor Corporation Pty Ltd v Dart Industries Inc* [1991] FCAFC 844 - *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* [2017] FCAFC 98 - s83(1) *Competition and Consumer Act 2010* (Cth) - held: leave to appeal refused - application dismissed.

[Mayfield](#)

[From Benchmark Friday, 25 September 2020]

Srikantha v Commonwealth of Australia (No 2) [2020] FCA 134

Federal Court of Australia

Snaden J

Summary dismissal - pleadings - employment - torts - applicant was Commonwealth agency's former employee - applicant sought relief against respondent concerning end of his employment - applicant contended 'Dismissal' contravened 'two statutory injunctions' - applicant sought 'damages in tort' - respondent, by interlocutory application, sought proceeding's summarily dismissal or that amended statement of claim be struck out - r26.01 *Federal Court Rules 2011* (Cth) - s31A *Federal Court of Australia Act 1976* (Cth) - *Superannuation Act 1990* (Cth) - *Calveley v Chief Constable of Merseyside Police* [1989] AC 1228 - whether 'reasonable cause of action' disclosed - whether abuse of process - held: interlocutory application dismissed.

[Srikantha](#)

[From Benchmark Friday, 25 September 2020]

Boehringer Ingelheim Animal Health USA Inc. v Intervet International B.V. [2020] FCA 1333

Federal Court of Australia

Moshinsky J

Patent - appellant filed 'notice of opposition' to respondent's patent application - delegate of Commissioner of Patents dismissed opposition - appellant, under s60(4) *Patents Act 1990* (Cth), appealed against decision of delegate - whether 'lack of novelty' - whether 'lack of inventive step' - whether 'lack of utility' - onus - whether "clear" (or "practically certain") that 'patent, if granted, would not be valid' - *Commissioner of Patents v Sherman* (2008) 172 FCR 394 - held: appeal dismissed

[Boehringer](#)

[From Benchmark Thursday, 24 September 2020]

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In the matter of Maitland Benevolent Society Limited (in liquidation) [2020] NSWSC 1284

Supreme Court of New South Wales

Rees J

Corporations - Maitland Benevolent Society (benevolent society) wound up - liquidator sought order or direction to pay surplus to 'Royal Freemasons Benevolent Institution' (institution) - institution supported application - other charity ('United Protestant Association of NSW Ltd) sought half or quarter of surplus - s23 *Supreme Court Act 1970* (NSW) - s90-15, Sch 2 *Corporations Act 2001* (Cth) - whether liquidator justified to pay surplus to institution - whether to divide surplus between institution and 'United Protestant Association of NSW Ltd - 'construction of constitutions' - *Application of Gregory Jay Parker (liquidator of Shellharbour Golf Club Ltd (in liq) [2006] NSWSC 219 - Bankstown Community Child Care Incorporated [2008] NSWSC 173* held: Court satisfied that liquidator justified to pay surplus to Royal Freemasons' Benevolent Institution.

[View Decision](#)

[From Benchmark Thursday, 24 September 2020]

Re Dinjac Pty Ltd [2020] VSC 603

Supreme Court of Victoria

Gardiner AsJ

Corporations - statutory demand - plaintiff sought to set aside statutory demand - whether 'genuine dispute' - whether 'some other reason to set aside statutory demand - ss459G, 459H & 459J *Corporations Act 2001* (Cth) - *Malec Holdings Ltd v Scotts Agencies Pty Ltd (in liq) [2015] VSCA 330* - whether 'genuine dispute' - held: statutory demand reduced.

[Re Dinjac](#)

[From Benchmark Friday, 25 September 2020]

EHome Construction Pty Ltd v GCB Constructions Pty Ltd [2020] QSC 291

Supreme Court of Queensland

Bond J

Security of payments - applicant sought declarations payment claim served on it by first respondent void for non-compliance with requirements *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIFA) - applicant also sought declaration second respondent's adjudication of payment claim void - 'periods provided for' in ss75(2) & 75(3) BIFA - *Grocon (Belgrave St) Developer Pty Ltd v Construction Profile Pty Ltd [2020] NSWSC 409* - held: originating application dismissed.

[EHome](#)

[From Benchmark Wednesday, 23 September 2020]

Smith v National Injury Insurance Agency, Queensland [2020] QSC 289

Supreme Court of Queensland

Henry J

Judicial review - insurance - statutory interpretation - applicant injured in 'motorcycle crash' -

proceedings concerned whether applicant's injury was "an impairment equivalent to a shoulder disarticulation amputation", and thus was a "serious personal injury" under *National Injury Insurance Scheme (Queensland) Act 2016* (Qld) such that applicant was 'eligible for approval to participate in the National Injury Insurance Scheme, Queensland' - applicant's application for 'approval to participate' was refused by respondent's 'internal review officer' - applicant sought judicial review - held: decision of internal review officer quashed - matter 'referred back' for determination.

[Smith](#)

[From Benchmark Wednesday, 23 September 2020]



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From: Ode to the Moon

By Thomas Hood

I
MOTHER of light! how fairly dost thou go
Over those hoary crests, divinely led!—
Art thou that huntress of the silver bow
Fabled of old? Or rather dost thou tread
Those cloudy summits thence to gaze below, 5
Like the wild Chamois from her Alpine snow,
Where hunter never climb'd,—secure from dread?
How many antique fancies have I read
Of that mild presence! and how many wrought!
 Wondrous and bright, 10
 Upon the silver light,
Chasing fair figures with the artist, Thought!

II
What art thou like? Sometimes I see thee ride
A far-bound galley on its perilous way,
Whilst breezy waves toss up their silvery spray;—
15
 Sometimes behold thee glide,
 Cluster'd by all thy family of stars,
 Like a lone widow, through the welkin wide,
 Whose pallid cheek the midnight sorrow mars;—
 Sometimes I watch thee on from steep to steep, 20
 Timidly lighted by thy vestal torch,
 Till in some Latmian cave I see thee creep,
 To catch the young Endymion asleep,—
 Leaving thy splendour at the jagged porch!

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

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