

Friday, 31 July 2020

Weekly Business Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Business Law

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Ceramiche Caesar S.p.A v Caesarstone Ltd (FCAFC) - trade mark - three proceedings - 'deceptively similar' - 'honest concurrent use' - 'authorised use' - 'quality control' - 'control on a wider basis' - appeals allowed

Padraic Gibson (on behalf of the Dungay family) v Commissioner of Police (NSW Police Force) (NSWCA) - public assembly - respondent granted 'prohibition order' pursuant to s25(1) *Summary Offences Act 1988* (NSW) - jurisdiction - appeal dismissed

Savills (NSW) Pty Ltd v ATF CTH Pty Ltd (NSWSC) - contract - consumer law - claim arising from 'alleged agency agreement' - judgment for defendant

New Acland Coal Pty Ltd v Oakey Coal Action Alliance Inc (QSC) - corporations - winding up - applicant sought to wind up respondent on basis of insolvency - respondent sought stay or adjournment of application until after appeal's hearing in High Court - winding up application adjourned

JKC Australia Pty Ltd v CH2M Hill Companies Ltd [No 2] (WASCA) - contract - appellant sought declarations concerning proper construction of 'Parent Company Guarantees' - primary judge rejected appellant's 'preferred construction' - appeal dismissed

Uon Pty Ltd v Hoascar (WASC) - confidentiality - plaintiffs sought confidentiality orders' variation - 'commercial sensitivity' - 'trade rivals' - application allowed in part

The Wilderness Society v Wild Drake Pty Ltd (TASSC) - environment and planning -

development approval - proposed development complied with clause of Planning Scheme -
appeal dismissed

Summaries With Link (Five Minute Read)

Ceramiche Caesar S.p.A v Caesarstone Ltd [2020] FCAFC 124

Full Court of the Federal Court of Australia

Nicholas, Burley & Thawley JJ

Trade mark - three proceedings - in first proceeding 'Ceramiche Caesar' sought to appeal against orders which allowed application of 'Caeserstone' for 'Caesarstone Goods Word Mark' 'to proceed to registration' - in second proceeding Ceramiche Caesar sought to appeal against orders which allowed application of Caesarstone for 'Caesarstone Device Mark' 'to proceed to registration' - in third proceeding Ceramiche Caesar appealed against orders which allowed application of Caesarstone for 'Caesarstone Services Word Mark' to remain registered - 'deceptively similar' - 'honest concurrent use' - 'authorised use' - 'quality control' - 'control on a wider basis' - "because of other circumstances" - ss8, 44, 88, 89 & 195(2) *Trade Marks Act 1995* (Cth) held: appeals allowed.

[Ceramiche](#)

[From Benchmark Friday, 31 July 2020]

Padraic Gibson (on behalf of the Dungay family) v Commissioner of Police (NSW Police Force) [2020] NSWCA 160

Court of Appeal of New South Wales

Bathurst CJ; Bell P; Macfarlan JA

Public assembly - administrative law - respondent sought, pursuant to s25(1) *Summary Offences Act 1988* (NSW), 'prohibition order' in respect of 'public assembly and procession' - protest's 'stated purpose' was "To protest against Aboriginal deaths in custody and demand justice for David Dungay Jnr" - prohibition order granted - appellant appealed - jurisdiction - procedural fairness - whether non-compliance with procedures in s25(2) *Summary Offences Act* deprived Court of jurisdiction - held: appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 31 July 2020]

Savills (NSW) Pty Ltd v ATF CTH Pty Ltd [2020] NSWSC 956

Supreme Court of New South Wales

Adamson J

Contract - consumer law - plaintiff claimed commission under 'alleged agency agreement' under which plaintiff retained by defendant to sell property - plaintiff alternatively claimed damages for defendant's alleged unconscionable conduct in encouraging plaintiff to do work on basis of assumption plaintiff was defendant's 'exclusive agent' for property's sale - defendant denied there was concluded written agreement with plaintiff - defendant alternatively contended

that if there was 'concluded agreement; its terms did not entitle plaintiff to payment - defendant also contended it did not act unconscionably and that evidence which plaintiff adduced did not prove loss from the unconscionable conduct alleged - held: judgment for defendant.

[View Decision](#)

[From Benchmark Friday, 31 July 2020]

New Acland Coal Pty Ltd v Oakey Coal Action Alliance Inc [2020] QSC 212

Supreme Court of Queensland

Davis J

Corporations - winding up - applicant sought to wind up respondent incorporated association on basis of insolvency - debt which gave applicant standing to make application was a costs order which had been made in litigation between parties - respondent had appealed judgment in litigation to High Court of Australia - special leave to appeal had been granted - respondent sought stay or adjournment of application until after appeal's hearing in High Court - whether 'discretionary considerations' in favour of making winding up order - respondent's interest in prosecution of appeal - whether appeal would be practically frustrated by winding up order - applicant's interest to 'avoid incurring ongoing costs' in defence of appeal where respondent would likely be unable to meet costs order if unsuccessful - possibility of High Court ordering security for costs - prejudice to respondent's interest if adjournment refused - *Mineral Resources Act 1989* (Qld) - *Associations Incorporation Act 1981* (Qld) - held: application for winding up of respondent adjourned.

[New Acland](#)

[From Benchmark Friday, 31 July 2020]

JKC Australia Pty Ltd v CH2M Hill Companies Ltd [No 2] [2020] WASCA 112

Court of Appeal of Western Australia

Buss P; Beech & Vaughan JJA

Contract - appellant sought declarations concerning proper construction of 'Parent Company Guarantees' which respondents had executed - primary judge dismissed application, rejecting appellant's construction of the Parent Company Guarantees - appellant sought to establish its 'preferred construction' - whether Parent Company Guarantees were 'pay now, argue later' instruments' such that liability of respondents to respondent to claim under the Parent Company Guarantees was not subject to 'defence, set-off or counterclaim - held: appeal dismissed.

[JKC](#)

[From Benchmark Friday, 31 July 2020]

Uon Pty Ltd v Hoascar [2020] WASC 271

Supreme Court of Western Australia

Archer J

Confidentiality - Court made 'confidentiality orders' concerning documents which defendants had discovered ('Regime') - plaintiffs sought confidentiality orders' variation - under Regime, Court had limited allegedly confidential documents' inspection to 'parties' lawyers, counsel and

experts' and court - plaintiffs sought permission to inspect documents personally - 'commercial sensitivity' - 'trade rivals' - held: application allowed in part.

[Uon](#)

[From Benchmark Friday, 31 July 2020]

The Wilderness Society v Wild Drake Pty Ltd [2020] TASSC 34

Supreme Court of Tasmania

Estcourt J

Environmental and planning - first respondent sought grant of permit from third respondent Council for development of 'accommodation facility' on land in 'Environmental Management Zone under the Central Highlands Interim Planning Scheme 2015' - .use characterised as "visitor accommodation - Council refused application - first respondent appealed to Tribunal under s61(4) *Land Use Planning and Approvals Act 1993* (Tas) - one clause of Planning Scheme was in issue - Tribunal found proposal complied with clause - appellant appealed - jurisdiction - whether error in decision of Tribunal - whether erroneous interpretation of clause - whether erroneous reliance on 'RAA decision to satisfy Clause' - held: appeal dismissed.

[The Wilderness Society](#)

[From Benchmark Friday, 31 July 2020]



Benchmark

About Ben Adhem

By: Leigh Hunt

Abou Ben Adhem (may his tribe increase!)

Awoke one night from a deep dream of peace,

And saw, within the moonlight in his room,

Making it rich, and like a lily in bloom,

An angel writing in a book of gold:—

Exceeding peace had made Ben Adhem bold,

And to the presence in the room he said,

"What writest thou?"—The vision raised its head,

And with a look made of all sweet accord,

Answered, "The names of those who love the Lord."

"And is mine one?" said Abou. "Nay, not so,"

Replied the angel. Abou spoke more low,

But cheerly still; and said, "I pray thee, then,

Write me as one that loves his fellow men."

The angel wrote, and vanished. The next night

It came again with a great wakening light,

And showed the names whom love of God had blest,

And lo! Ben Adhem's name led all the rest.

Benchmark



AR CONOLLY & COMPANY
L A W Y E R S

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

[Click Here to access our Benchmark Search Engine](#)