

Friday, 3 April 2020

Weekly Civil Law Review

Selected from our Daily Bulletins covering Insurance, Banking,
Construction & Government

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Executive Summary (1 minute read)

Watson v The Commissioner of Patents (FCAFC) - patent - revocation of 'Innovation Patent' on basis claims not for "a manner of manufacture" under s6 Statute of Monopolies 1623 (UK) - appeal dismissed (I B)

Cassimatis v Australian Securities and Investments Commission (FCAFC) - corporations - appellants contravened ss945A(1)(b), 945A(1)(c) & 180(1) *Corporations Act 2001* (Cth) - appeal dismissed (I B C G)

Universal 1919 Pty Ltd v 122 Pitt Street Pty Ltd (NSWCA) - administrative law - environment and planning - dismissal of appellant's application for judicial review of Development Control Order - appeal dismissed (I B C G)

Mohareb v Booth (NSWCA) - defamation - defences - "offer to make amends" - erroneous dismissal of applicant's claim against respondent - appeal allowed (I B)

Workers Compensation Nominal Insurer v Hill (NSWCA) - workers compensation - deceased killed by de facto partner - de facto found not guilty of murder on basis of mental illness - deceased and de facto partner both worked from home in family business - compensation claims by children of deceased - payments ordered in children's favour - appeal dismissed (B C I G)

Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust t/as The Australian Jewish News (NSWCA) - defamation - dismissal of action arising from publication of articles and editorial in newspaper - appeal dismissed (I)

Aardwolf Industries LLC v Riad Tayeh (NSWSC) - corporations - trade mark - negligence - consumer law - plaintiffs sought leave 'nunc pro tunc' to bring proceedings against liquidators of companies related to plaintiffs - leave refused - application dismissed (I B)

Catalyst Provisional Lending Pty Ltd v Dick-Telfar (NSWSC) - real property - stay - residential tenancies - *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW) - defendants sought stay of writ of possession - stay refused (I B C G)

The Estate of Ron Tee Lim (deceased); The Application of Kaye Lim (NSWSC) - wills and estates - probate - executrix sought leave to 'retract renunciation of probate' - application granted (B)

Galaxy Developments Pty Ltd v Civil Contractors (Aust) Pty Ltd t/a CCA Winslow & Ors (QSC) - security of payments - second respondent's 'purported adjudication decision' under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIFA) void (I B C G)

Summaries With Link (Five Minute Read)

Watson v The Commissioner of Patents [2020] FCAFC 56

Full Court of the Federal Court of Australia

Greenwood, McKerracher & Yates JJ

Patent - respondent's delegate revoked 'Innovation Patent 2017101681 entitled "A Method of Innovation"' on basis no claims were for "a manner of manufacture" under s6 Statute of Monopolies 1623 (UK) - primary judge affirmed delegate's decision - applicant appealed - whether to grant leave to rely on fresh evidence - whether primary judge erred in finding method in claims was 'merely an abstract scheme or idea involving a collocation or combination of steps, which do not result in a material or tangible product' - s18(1A)(a) *Patents Act 1990* (Cth) - *D'Arcy v Myriad Genetics Inc* (2015) 258 CLR 334 - *National Research Development Corporation v Commissioner of Patents* [1959] HCA 67 - *Grant v Commissioner of Patents* [2006] FCAFC 120 - *Research Affiliates LLC v Commissioner of Patents* [2014] FCAFC 150 - held: appeal dismissed.

[Watson](#) (I B)

[From Benchmark Thursday, 2 April 2020]

Cassimatis v Australian Securities and Investments Commission [2020] FCAFC 52

Full Court of the Federal Court of Australia

Greenwood, Rares & Thawley JJ

Corporations - appellants were directors of company (Storm) which held Australian Financial Services Licence (AFSL) - Storm 'advised clients to invest in accordance with the "Storm

model" - primary judge, in proceedings brought by respondent against appellants, found appellants contravened ss945A(1)(b), 945A(1)(c) & 180(1) *Corporations Act 2001* (Cth) (Corporations Act) - appellants appealed - 'duty of care and diligence' - onus of proof - whether misapplication of s180(1) Corporations Act - whether erroneous finding of contravention of s945A Corporations Act - held: appeal dismissed.

[Cassimatis](#) (I B C G)

[From Benchmark Tuesday, 31 March 2020]

Universal 1919 Pty Ltd v 122 Pitt Street Pty Ltd [2020] NSWCA 50

Court of Appeal of New South Wales

Macfarlan, Meagher & Gleeson JJ

Administrative law - environment and planning - first respondent was heritage listed premises' registered proprietor - appellant had possession of premises under registered lease - appellant sought judicial review of Development Control Order (DCO) which second respondent issued to first respondent - primary judge dismissed application - whether denial of procedural fairness - whether carving of flag into wall required 'development approval' or 'Heritage Council' approval - whether carving of flag was 'in any event approved in both respects as part of the 2016 renovation works approval' - whether DCO void due to failure to give notice to renovation works' 'principal certifier' - s4.2 *Environmental Planning and Assessment Act 1979* (NSW) - s57(1) *Heritage Act 1977* (NSW) - held: appeal dismissed.

[View Decision](#) (I B C G)

[From Benchmark Monday, 30 March 2020]

Mohareb v Booth [2020] NSWCA 49

Court of Appeal of New South Wales

Basten & White JJA; Simpson AJA

Defamation - defences - bias - 'offer to make amends' - 'concerns notice' - Court gave judgment for respondent in proceedings - applicant sought to appeal - whether respondent's 'offer to make amends' (offer) complied with s14(1) *Defamation Act 2005* (NSW) (Defamation Act) - prohibition in s14(1) Defamation Act on making offer 'once 28 days have elapsed since the publisher was given a concerns notice' - whether offer made "as soon as reasonably practicable" - relationship between s14(1) & s18(1) Defamation Act - 'lapse of a year' - whether appropriate to determined grounds of appeal concerning bias - held: primary judge erred in dismissing applicant's action against respondent - appeal allowed.

[View Decision](#) (I B)

[From Benchmark Tuesday, 31 March 2020]

Workers Compensation Nominal Insurer v Hill [2020] NSWCA 54

Court of Appeal of New South Wales

Basten & Payne JJA; Simpson AJA

Workers compensation - deceased killed by de facto partner - deceased and de facto partner 'employed by a family company' which conducted business from 'family home' - de facto

partner found not guilty of murder on basis of mental illness - deceased's 'two dependent children' made workers compensation claims - Workers Compensation Commission Arbitrator found deceased died due to injury 'arising out of and in the course of her employment' - Arbitrator ordered payments in children's favour - Deputy President dismissed appellant's appeal - appellant appealed - whether Deputy President erred in identification of Deputy President's scope of function - whether 'failure to address "critical element" as to causal connection' - challenge to factual findings - whether erroneous reliance on *Whiteley Muir and Zwanenberg Ltd v Kerr* (1966) 39 ALJR 505 - held: appeal dismissed.

[View Decision](#) (B C I G)

[From Benchmark Wednesday, 1 April 2020]

Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust t/as The Australian Jewish News [2020] NSWCA 56

Court of Appeal of New South Wales

White JA; Emmett & Simpson AJJA

Defamation - appellant sued respondents for defamation concerning articles and editorial in newspaper - primary judge gave judgment for respondents - appellant appealed - appeal was out of time - whether leave to appeal required - whether amount in issue 'more than \$100,000' - competency of appeal - whether to grant leave to appeal - rr51.2, 51.9, 51.22 & 51.41 *Uniform Civil Procedure Rules 2005* (NSW) - "material date" - honest opinion - whether defamatory imputations 'substantially true' - statutory qualified privilege - fair report - procedural fairness - bias - ss8, 25, 26, 29, 30 & 31 *Defamation Act 2005* (NSW) - held: appeal dismissed.

[View Decision](#) (I)

[From Benchmark Friday, 3 April 2020]

Aardwolf Industries LLC v Riad Tayeh [2020] NSWSC 299

Supreme Court of New South Wales

Rees J

Corporations - trade mark - negligence - consumer law - defendants were liquidators of companies 'related to the plaintiffs' - plaintiffs sought leave 'nunc pro tunc' to bring proceedings against defendants - proposed claims arising from defendants' sale of companies trade marks - merits of claims - negligence - misleading and deceptive conduct - 'liquidators' duty to third parties' - Australian Consumer law - *Civil Liability Act 2002* (NSW) - *Corporations Act 2001* (Cth) - *Trade Marks Act 1995* (Cth) - *Trade Marks Regulations 1995* (Cth) - held: leave refused - notice of motion dismissed.

[View Decision](#) (I B)

[From Benchmark Monday, 30 March 2020]

Catalyst Provisional Lending Pty Ltd v Dick-Telfar [2020] NSWSC 324

Supreme Court of New South Wales

Harrison J

Real property - stay - residential tenancies - defendants sought stay of writ of possession issued

to plaintiffs - amendments to *Residential Tenancies Act 2010* (NSW) by *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW) - s229 *Residential Tenancies Act 2010* (NSW) - "Regulation-making power" - whether basis to grant stay - held: stay refused.

[View Decision](#) (I B C G)

[From Benchmark Thursday, 2 April 2020]

The Estate of Ron Tee Lim (deceased); The Application of Kaye Lim [2020] NSWSC 322

Supreme Court of New South Wales

Hallen J

Wills and estates - probate - applicant executrix sought leave to 'retract a renunciation of probate' - s69 *Probate and Administration Act 1898* (NSW) - *Re Estate of Daphne Lillian May Thurston* [2001] NSWSC 144 - *Estate de Wild, deceased* [2019] NSWSC 1128 - whether retraction of probate's renunciation would benefit estate - held: application granted.

[View Decision](#) (B)

[From Benchmark Thursday, 2 April 2020]

Galaxy Developments Pty Ltd v Civil Contractors (Aust) Pty Ltd t/a CCA Winslow & Ors [2020] QSC 51

Supreme Court of Queensland

Dalton J

Security of payments - second respondent, by purported adjudication decision under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIFA), found applicant was required to pay sum to first respondent - applicant sought to quash adjudication decision was void - applicant contended the building contract under which first respondent had claimed payment was void because first respondent 'was not appropriately licensed' - applicant also contended adjudication decision had been delivered after 'maximum period prescribed by' BIFA - held: applicant's contentions upheld - adjudication decision void.

[Galaxy Developments](#) (I B C G)

[From Benchmark Wednesday, 1 April 2020]



Benchmark

The Wind

By: Harold Monro

SO wayward is the wind to-night

'Twill send the planets tumbling down;

And all the waving trees are dight

In gauzes wafted from the moon.

Faint streaky wisps of roaming cloud

Are swiftly from the mountains swirl'd;

The wind is like a floating shroud

Wound light about the shivering world.

I think I see a little star

Entangled in a knotty tree,

As trembling fishes captured are

In nets from the eternal sea.

There seems a bevy in the air

Of spirits from the sparkling skies:

There seems a maiden with her hair

All tumbled in my blinded eyes.

O, how they whisper, how conspire,

And shrill to one another call!



I fear that, if they cannot tire,

The moon, her shining self, will fall.

Blow! Scatter even if you will

Like spray the stars about mine eyes!

Wind, overturn the goblet, spill

On me the everlasting skies!

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

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