

Friday, 7 June 2019

Weekly Construction Law Review Selected from our Daily Bulletins covering Construction

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Executive Summary (1 minute read)

Israel Discount Bank Limited v ACN 078 272 867 Pty Ltd (in liq) (formerly Advance Finances Pty Ltd) (FCAFC) - service - service out of jurisdiction - corporations - conveyancing - Court granted respondents leave to serve documents on applicants in Israel - leave to appeal refused - application dismissed

Bluescope Steel (AIS) Pty Ltd v Australian Workers' Union (FCAFC) - industrial law - superannuation - statutory interpretation - appeal against decision that first appellant had contravened item 15 of Sch 16 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) and s50 *Fair Work Act 2009* (Cth) - appeal allowed

Verguier Pty Ltd v Ramelius Resources Limited (FCA) - corporations - plaintiffs sought relief in relation to defendant's failure to register share transfer - plaintiffs entitled to relief

Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International B.V. (Permanent Stay) (FCA) - stay - trade mark - abuse of process - failure by non-party to give discovery concerning allegations in Third Further Amended Cross-Claim - Third Further Amended Cross-Claim permanently stayed

Searle v Commonwealth of Australia (NSWCA) - administrative law - contract - damages - separate question - "Fettering Doctrine" - appeal against dismissal of claim for breach of contract - appeal allowed

RebelMH Neutral Bay Pty Limited v North Sydney Council (NSWCA) - environment and planning - refusal of development consent in respect of proposed building - appeal dismissed

Moggridge v The Benevolent Society (NSWSC) - negligence - plaintiff claimed damages against defendant 'Benevolent Society' for injuries in fall while in 'respite care' at cottage - no breach of duty of care by carer - judgment for defendant

JCB v Bishop Paul Bird for the Diocese of Ballarat & Anor (VSC) - pleadings - joinder - negligence - plaintiff sought to file amended statement of claim and to join defendants - leave to file amended statement of claim granted

Queensland Phosphate Pty Ltd v Korda (VSCA) - stay - corporations - winding up - application for lifting of stay on basis order and undertaking not complied with - stay varied

The Public Advocate v C, B (SASCFC) - habeas corpus - trespass - false imprisonment - guardianship - Public Advocate directed BC to reside in 'locked ward' - primary judge found 'writ of habeas corpus should issue' - appeal dismissed

Canberra Drilling Rigs Pty Ltd v Haides Pty Ltd (ACTCA) - security of payments - challenge to adjudication determination - 'jurisdictional requirements' of s15(4) *Building and Construction Industry (Security of Payment) Act 2009* (ACT) - appeal dismissed

Summaries With Link (Five Minute Read)

Israel Discount Bank Limited v ACN 078 272 867 Pty Ltd (in liq) (formerly Advance Finances Pty Ltd) [2019] FCAFC 90

Full Court of the Federal Court of Australia

Yates, Beach & Moshinsky JJ

Service - service out of jurisdiction - corporations - conveyancing - 'voidable transactions' - directors' duties - 'involvement in contraventions' - Court granted respondents leave to serve documents on applicants in Israel - applicants, by interlocutory application, sought discharge of orders or that documents' service be set aside - primary judge dismissed application - applicants sought to appeal - whether respondents had 'prima facie case' for claimed relief - whether discretionary reasons to discharge orders - s37A *Conveyancing Act 1919* (NSW) (Conveyancing Act) - ss79, 181(2) & 182(2) *Corporations Act 2001* (Cth) (Corporations Act) - held: no error in primary judge's conclusion that respondents had prima facie case in respect of claim under Corporations Act - unnecessary to consider challenge to conclusion on claim under Conveyancing Act - leave to appeal refused - application dismissed.

[Israel Discount](#)

[From Benchmark Tuesday, 4 June 2019]

Bluescope Steel (AIS) Pty Ltd v Australian Workers' Union [2019] FCAFC 84

Full Court of the Federal Court of Australia

Allsop CJ; Collier & Rangiah JJ

Industrial law - superannuation - Court found that first appellant, by failure 'to make appropriate superannuation contributions to its employees', contravened item 15 of Sch 16 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) and s50 *Fair Work Act 2009* (Cth) - appellants ('Bluescope') appealed - 'threshold question' whether '2006 Award' and 'enterprise agreements' ('2012 and 2105 agreements') capable of contravention - whether to grant Commissioner of Taxation leave to intervene - statutory interpretation - s6 *Superannuation Guarantee (Administration) Act 1992* (Cth) - "ordinary time earnings" - "ordinary hours of work" - held: appeal allowed.

[Bluescope](#)

[From Benchmark Wednesday, 5 June 2019]

Verguier Pty Ltd v Ramelius Resources Limited [2019] FCA 796

Federal Court of Australia

White J

Corporations - plaintiffs sought declarations concerning 'lawfulness of the failure' by defendant to register 'share transfer' - first plaintiff, pursuant to s1071F(2) *Corporations Act 2001* (Cth), sought that Court require defendant to register share transfer - second, third and fourth plaintiffs sought that Court enforce 'statutory contract' contained in defendant's constitution by requiring defendant to register share transfer - s21 *Federal Court of Australia Act 1976* (Cth) - whether breach of statutory contract - whether defendant had 'refused or failed' to register share transfer 'without just cause' - held: plaintiffs entitled to relief.

[Verguier](#)

[From Benchmark Thursday, 6 June 2019]

Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International B.V. (Permanent Stay) [2019] FCA 802

Federal Court of Australia

Perram J

Stay - trade mark - 'Third Further Amended Cross-Claim' ('Cross-Claim') had been stayed since 20/11/17 - cross-respondent sought Cross-Claim's dismissal or permanent stay - Cross-Claimants sought lift of stay - stay had been placed due to non-party Russian Federation's failure 'to give adequate discovery' of material pertaining to Cross-Claim's subject matter - s88 *Trade Marks Act 1995* (Cth) - whether to dismiss proceeding for want of prosecution - whether abuse of process - held: Third Further Amended Cross-Claim permanently stayed as abuse of process insofar as its allegations concerned topics on which Russian Federation had 'failed to give discovery'.

[Federal Treasury Enterprise](#)

[From Benchmark Friday, 7 June 2019]

Searle v Commonwealth of Australia [2019] NSWCA 127

Court of Appeal of New South Wales
Bathurst CJ; Bell P & Basten JA

Administrative law - contract - applicant was 'marine technician' employed in Navy - applicant and other marine technicians entered "training contracts" - training intended to lead to 'certificate in engineering' - Navy terminated training - applicant commenced representative action seeking damages - applicant sought to appeal from determination of separate question concerning respondent's liability to applicant for breach of contract - trial judge found respondent had 'no enforceable contract' with applicant and dismissed applicant's claim - trial judge 'contingently assessed damages' in amount of \$60,000 - "Fettering Doctrine" - whether training contract fettered discretion of 'Naval Command' - whether beyond respondent's power to enter contract - whether training contract 'supported by consideration' - whether erroneous assessment of damages - held: appeal allowed.

[View Decision](#)

[From Benchmark Tuesday, 4 June 2019]

RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130

Court of Appeal of New South Wales
Gleeson & Payne JJA; Preston CJ of LEC

Environment and planning - appellant sought development consent in respect of proposed building - respondent refused application - appellant revised plans and submitted 'revised request' - Land and Environment Court refused revised request and dismissed appeal - appellant contended primary judge misconstrued and misapplied cl 4.6(3) & (4)(a)(i) North Sydney Local Environmental Plan 2013, misconstrued and misapplied objectives of 'height development standard', misconstrued and misapplied 'objective (f)' of 'height development standard' and denied appellant procedural fairness by 'not affording' "amber light approach" to appellant - held: grounds of appeal not established - appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 7 June 2019]

Moggridge v The Benevolent Society [2019] NSWSC 638

Supreme Court of New South Wales
Harrison AsJ

Negligence - plaintiff claimed damages against defendant 'Benevolent Society' for injuries in fall while in 'respite care' at cottage - fall occurred during transfer between chairs - defendant was cottage's owner/occupier with 'care, control and management' of cottage - whether breach of duty of care by carer - s5B *Civil Liability Act 2005* (NSW) - assessment of damages - held: no breach of duty of care - judgment for defendant.

[View Decision](#)

[From Benchmark Wednesday, 5 June 2019]

JCB v Bishop Paul Bird for the Diocese of Ballarat & Anor [2019] VSC 348

Supreme Court of Victoria

McDonald J

Pleadings - joinder - negligence - defendants admitted priest sexually abused plaintiff - plaintiff claimed damages in negligence against defendants - plaintiff sought to file amended statement of claim and to join Catholic Diocese of Ballarat and Roman Catholic Trust Corporation for the Diocese of Ballarat as third and fourth defendants - *Legal Identity of Defendants (Organisational Child Abuse) Act 2018 (Vic)* - occupiers' duty - held: leave to file amended statement of claim granted.

[JCB](#)

[From Benchmark Monday, 3 June 2019]

Queensland Phosphate Pty Ltd v Korda [2019] VSCA 119

Court of Appeal of Victoria

McLeish & Hargrave JJA

Stay - winding up - corporations - applicants were two companies ('Paradise' and 'Queensland Phosphate') - Paradise held 'mining tenements and associated exploration authorities' - applicants entered arrangement by which Queensland Phosphate 'purported to acquire' shares in Paradise from second respondent - Randall AsJ found 'relevant agreements' 'void and unenforceable', ordered that Paradise 'be wound up in insolvency' and ordered first respondent's appointment as liquidators - Randall AsJ stayed orders to permit application for leave to appeal - stay extended by Hargrave JA - respondents sought lifting of stay on basis of Paradise's failure to comply with order and breach of undertaking by applicants - whether orders and undertaking complied with - held: stay varied.

[Queensland](#)

[From Benchmark Tuesday, 4 June 2019]

The Public Advocate v C, B [2019] SASCF 58

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Hinton JJ

Habeas corpus - trespass - false imprisonment - Tribunal made order under s29 *Guardianship and Administration Act 1993 (SA)* placing BC under Public Advocate's 'limited guardianship' - Public Advocate directed BC to reside in 'locked ward' - primary judge satisfied BC's 'freedom of movement' restricted - primary judge found Public Advocate's direction unauthorised by 'limited guardianship' grant - primary judge found BC 'unlawfully detained' and that 'writ of habeas corpus should issue' - whether primary judge erred in issue of habeas corpus - whether restriction of BC's movement constituted false imprisonment and/or trespass - whether direction authorised - held: appeal dismissed.

[The Public Advocate](#)

[From Benchmark Thursday, 6 June 2019]

Canberra Drilling Rigs Pty Ltd v Haides Pty Ltd [2019] ACTCA 15

Court of Appeal of the Australian Capital Territory

Murrell CJ, Mossop & Loukas-Karlsson JJ



Security of payments - primary judge dismissed appellant's challenge to adjudication determination - appellant appealed - appellant contended primary judge failed to determine 'jurisdictional fact' whether 'claimed work' was performed under construction contract and, as a consequence, erroneously failed to determine whether first respondent entitled to payment for work under contract and erroneously held that decision in *Estate Property Holdings v Barclay Mowlem Construction Ltd* [2004] NSWCA 393 meant claim within time under s15(4) *Building and Construction Industry (Security of Payment) Act 2009* (ACT) - 'jurisdictional requirements' of s15(4) of the Act - whether 'the objective fact' of work done construction contract was 'a condition of the adjudicator exercising jurisdiction' - *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* [2010] NSWCA 190 - held: appeal dismissed.

[Canberra](#)

[From Benchmark Monday, 3 June 2019]

Benchmark

To a Locomotive in Winter

By: Walt Whitman

Thee for my recitative,
Thee in the driving storm even as now, the snow, the winter-
day declining,
Thee in thy panoply, thy measur'd dual throbbing and thy
beat convulsive,
Thy black cylindric body, golden brass, and silvery steel,
Thy ponderous side-bars, parallel and connecting rods,
gyrating, shuttling at thy sides,
Thy metrical, now swelling pant and roar, now tapering in
the distance,
Thy great protruding head-light fix'd in front,
Thy long, pale, floating vapor-pennants, tinged with delicate
purple,
The dense and murky clouds out-belching from thy smoke-
stack,
Thy knitted frame, thy springs and valves, the tremulous
twinkle of thy wheels,
Thy train of cars behind, obedient, merrily following,
Through gale or calm, now swift, now slack, yet steadily
careering;
Type of the modern—emblem of motion and power—pulse of
the continent,
For once come serve the Muse and merge in verse, even
as here I see thee,
With storm and buffeting gusts of wind and falling
snow,
By day thy warning ringing bell to sound its notes,
By night thy silent signal lamps to swing.

Fierce-throated beauty!
Roll through my chant with all thy lawless music, thy
swinging lamps at night,
Thy madly-whistled laughter, echoing, rumbling like an
earthquake, rousing all,
Law of thyself complete, thine own track firmly holding,
(No sweetness debonair of tearful harp or glib piano thine,)
Thy trills of shrieks by rocks and hills return'd,
Launch'd o'er the prairies wide, across the lakes,
To the free skies unpent and glad and strong.



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

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