

Friday, 3 April 2020

## Weekly Corporate Governance A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Corporate Governance Law

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### Executive Summary (1 minute read)

**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

**ComfortDelGro Corporation Australia Pty Ltd, in the matter of ComfortDelGro Corporation Australia Pty Ltd (FCA)** - corporations - 'financial reporting and lodging requirements' - application for relief in relation to compliance - relief granted

**St George - A Division of Westpac Banking Corporation v State of Western Australia (FCA)** - bankruptcy - applicant sought that properties' titles be vested in applicant so it could sell properties and apply proceeds against debts which third respondent owed to it - orders granted

**Australian Securities and Investments Commission v Merlin Diamonds Limited (No 3) (FCA)** - corporations - winding up - insolvency - plaintiff sought that defendant be wound up and appointment of 'joint and several liquidators' - orders granted

**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

**Rural Funds Management Limited as Responsible Entity for the Rural Funds Trust and**

**RF Active v Bonitas Research LLC [No 2]** (NSWSC) - damages - costs - corporations - contravention of ss1041E, 1041F & 1041H *Corporations Act 2001* (Cth) and s12DA(1) *Australian Securities and Investments Act 2001* (Cth) - determination of quantum of loss and damage - determination of costs

**In the matter of Empire Scaffolding Pty Limited** (NSWSC) - corporations - plaintiff judgment creditor of company sought that company be wound up in insolvency - application granted

**Naldoni v Venaldo Corporation Pty Ltd** (WASC) - discovery - corporations - oppression - plaintiff sought 'further and better discovery' - application refused

## Summaries With Link (Five Minute Read)

### **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](#)

[From Benchmark Tuesday, 31 March 2020]

### **ComfortDelGro Corporation Australia Pty Ltd, in the matter of ComfortDelGro Corporation Australia Pty Ltd [2020] FCA 378**

Federal Court of Australia

Beach J

Corporations - plaintiff, pursuant to ss1322(4)(c) & 1322(4)(d) *Corporations Act 2001* (Cth), sought relief 'for itself and on behalf of' plaintiff's wholly owned subsidiaries in relation to 'compliance with the financial reporting and lodging requirements under' ss292, 301, 314 & 319(1) *Corporations Act* - irregularities - whether inadvertence - whether 'substantial injustice' caused or 'like to be caused' by contraventions - public policy - whether plaintiff 'acted reasonably promptly' once aware of error - *ASIC Class Order: Wholly-owned Entities [CO 98/1418]* - *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* - held: relief granted.

[ComfortDelGro](#)

[From Benchmark Monday, 30 March 2020]

**St George - A Division of Westpac Banking Corporation v State of Western**

**Australia [2020] FCA 397**

Federal Court of Australia

Banks-Smith J

Bankruptcy - applicant, under s133(9) *Bankruptcy Act 1966* (Cth), sought that two properties' titles be vested in applicant so it could sell the properties as mortgagee in possession and apply proceeds against debts which third respondent owed to it - 'effect of bankruptcy and disclaimer' - 'just and equitable' - held: Court satisfied to make orders as sought by applicant 'with minor edits as to form only'.

[St George](#)

[From Benchmark Monday, 30 March 2020]

**Australian Securities and Investments Commission v Merlin Diamonds Limited (No 3) [2020] FCA 411**

Federal Court of Australia

O'Bryan J

Corporations - winding up - plaintiff, pursuant to s464 *Corporations Act 2001* (Cth) (*Corporations Act*), sought that defendant be wound up and appointment of 'joint and several liquidators to defendant - winding up sought primarily on 'insolvency ground' - winding up alternatively sought on 'just and equitable ground' - 'Interested Parties' sought that Court not order winding up of defendant - Interested Parties sought appointment of administrator to provide opportunity for 'deed of company arrangement to be put forward and voted upon' - ss459B & 461(1)(k) *Corporations Act* - held: defendant to be wound up on insolvency ground - joint and several liquidators to be appointed - orders made.

[Australian Securities and Investments Commission](#)

[From Benchmark Thursday, 2 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](#)

[From Benchmark Monday, 30 March 2020]

**Rural Funds Management Limited as Responsible Entity for the Rural Funds Trust and RF Active v Bonitas Research LLC [No 2] [2020] NSWSC 335**

Supreme Court of New South Wales  
Hammerschlag J

Damages - costs - corporations - Court gave verdict for plaintiff in proceedings - publication of 'Bonitas report' on 'Bonitas website' in contravention of ss1041E, 1041F & 1041H *Corporations Act 2001* (Cth) (Corporations Act) and s12DA(1) *Australian Securities and Investments Act 2001* (Cth) - determination of quantum of loss and damage - determination of costs - s601FC *Corporations Act 2001* (Cth) (Corporations Act) - whether amounts claimed were recoverable - amount paid to 'EY' for production of EY report - legal fees - 'internal costs' - whether plaintiff entitled to gross sum costs order - held: declarations made - costs orders made - judgment for plaintiff in sum of \$530,201.

[View Decision](#)

[From Benchmark Friday, 3 April 2020]

## **In the matter of Empire Scaffolding Pty Limited [2020] NSWSC 309**

Supreme Court of New South Wales  
Rees J

Corporations - plaintiff was defendant's judgment creditor - plaintiff, under s459A *Corporations Act 2001* (Cth) (Corporations Act), sought that defendant be wound up in insolvency - plaintiff unable to serve application on company and publish notice required by ss465A(1)(b) & 465A(1)(c) *Corporations Act 2001* (Cth) (Corporations Act) - whether Court should exercise discretion in s467(3)(b) *Corporations Act* 'to dispense with compliance with' s465A(1)(b) *Corporations Act* - held: requirement for compliance dispensed with - defendant to be wound up in insolvency and liquidator appointed.

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[From Benchmark Friday, 3 April 2020]

## **Naldoni v Venaldo Corporation Pty Ltd [2019] WASC 490**

Supreme Court of Western Australia  
Master Sanderson

Discovery - corporations - oppression - plaintiff sought 'further and better discovery' - discovery's extent - discovery's 'overall probative value' - 'forensic value' - costs - whether 'proper exercise of discretion' to grant further and better discovery - *Corporations Act 2001* (Cth) - held: application dismissed.

[Naldoni](#)

[From Benchmark Tuesday, 31 March 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!



# Benchmark

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](https://en.wikipedia.org/wiki/Harold_Monro)

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