

Friday, 6 September 2019

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

**Zoetis Australia Pty Ltd v Abbott (FCAFC)** - security for costs - representative proceedings - applicant sought to appeal against refusal of application for security for costs - leave to appeal refused

**Connelly, in the matter of Gregorski Investments Pty Ltd (in liq) v 320 Nominees Pty Ltd as trustee of the Gregorski Property Trust (FCA)** - corporations - liquidators sought appointment as receivers of property of 'property trust' and 'investment trust' - application granted

**In the matter of Acciona Infrastructure Australia Pty Limited (NSWSC)** - corporations - winding up - application to set statutory demand aside on basis of genuine dispute concerning debt's existence or amount - statutory demand set aside

**Re Twenty-Seventh Android Pty Ltd (VSC)** - corporations - plaintiff sought review of determination which creditors of company made of defendant's remuneration - determination reviewed - remuneration approved in sum of \$52,369

**In the Matter of CV Constructions Pty Ltd (In Liq) ACN 008 003 709 Prior (SASC)** - corporations - winding up - applicant sought that Court regularise his appointment as liquidator and 'remedy any invalidity' in resolution's passing - order granted

**Cammarano & Ors v Powell & Anor (SASC)** - corporations - Return To Work SA's provision of

appellants' witness statements to respondent liquidators of company was lawful - appeal dismissed

## Summaries With Link (Five Minute Read)

### **Zoetis Australia Pty Ltd v Abbott [2019] FCAFC 153**

Full Court of the Federal Court of Australia

Allsop CJ, Perram & Beach JJ

Security for costs - representative proceedings - primary judge refused application for security for costs - applicant sought to appeal - applicant contended primary judge had failed to 'balance the considerations' required by *Bray v F Hoffman-La Roche Ltd* [2003] FCAFC 153 and *Madgwick v Kelly* [2013] FCAFC 61 - whether erroneous exercise of discretion - whether 'appropriate balancing' by primary judge - held: leave to appeal refused.

[Zoetis](#)

[From Benchmark Thursday, 5 September 2019]

### **Connelly, in the matter of Gregorski Investments Pty Ltd (in liq) v 320 Nominees Pty Ltd as trustee of the Gregorski Property Trust [2019] FCA 1400**

Federal Court of Australia

Derrington J

Corporations - plaintiffs were liquidators of second plaintiff - second plaintiff was former trustee of 'Gregorski Property Trust' (property trust) and trustee of 'Gregorski Investment Trust' (investment trust) - plaintiffs, pursuant to s600K, ss45-1 & 90-15 Sch 2 *Corporations Act 2001* (Cth) and s57 *Federal Court of Australia Act 1976* (Cth) sought appointment as receivers of property of property trust and investment trust - whether to appoint plaintiffs as receivers of trusts' property - *Hosking, re Business Aptitude Pty Ltd (in liq)* [2016] FCA 1438 - held: application granted.

[Connelly](#)

[From Benchmark Monday, 2 September 2019]

### **In the matter of Acciona Infrastructure Australia Pty Limited [2019] NSWSC 1156**

Supreme Court of New South Wales

Rees J

Corporations - winding up - statutory demand - application, under s459G *Corporations Act 2001* (Cth) to set statutory demand aside on basis of genuine dispute concerning debt's existence or amount - *Eyota Pty Ltd v Hanave Pty Ltd* (1994) 12 ACSR 785 - construction of Supply Agreement (Services) (Wet Plant Hire) between parties - meaning of 'stand down' rates - held: statutory demand set aside.

[View Decision](#)

[From Benchmark Friday, 6 September 2019]

**Re Twenty-Seventh Android Pty Ltd [2019] VSC 563**

Supreme Court of Victoria

Matthews JR

Corporations - defendant was former liquidator of (Twenty-Seventh Android) - plaintiff sought review of determination which creditors of Twenty-Seventh Android made of defendant's remuneration ('remuneration determination') - remuneration incurred by defendant before termination of Twenty-Seventh Android's liquidation - s60-12 Practice Schedule - whether 'appropriate and just' to review remuneration determination - remuneration's reasonableness - held: Court satisfied it was appropriate that remuneration determination be reviewed - Court approved remuneration in sum of \$52,369.

[Re Twenty Seventh](#)

[From Benchmark Monday, 2 September 2019]

**In the Matter of CV Constructions Pty Ltd (In Liq) ACN 008 003 709 Prior [2019] SASC 156**

Supreme Court of South Australia

Judge Dart

Corporations - winding up - applicant appointed liquidator of company (CV Constructions) following resolution which company members passed - applicant, under s1322(4) *Corporations Act 2001* (Cth), sought that Court regularise appointment and 'remedy any invalidity' - s1322(6) *Corporations Act* - *Sheahan & Anor v Londish & Ors* [2010] NSWCA 270 - held: Court satisfied to make order sought.

[In the Matter of CV Constructions](#)

[From Benchmark Friday, 6 September 2019]

**Cammarano & Ors v Powell & Anor [2019] SASC 131**

Supreme Court of South Australia

David AJ

Corporations - appellant appealed against Judge Dart's decisions that Return To Work SA's provision of appellants' witness statements to respondent liquidators of company was lawful - whether 'Authorisations' valid - if Authorisations valid, whether 'Disclosures' not "made under" the Authorisations - whether 'material non-disclosure' by respondents - whether examination summonses should be set aside - s183 *Return to Work Act 2014* (SA) - held: appeal dismissed.

[Cammarano](#)

[From Benchmark Friday, 6 September 2019]



**From: The Hunting of the Snark**

**By: Lewis Carroll**

**Fit the Sixth**

**The Barrister's Dream**

They sought it with thimbles, they sought it with care;  
They pursued it with forks and hope;  
They threatened its life with a railway-share;  
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain  
That the Beaver's lace-making was wrong,  
Fell asleep, and in dreams saw the creature quite plain  
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,  
Where the Snark, with a glass in its eye,  
Dressed in gown, bands, and wig, was defending a pig  
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,  
That the sty was deserted when found:  
And the Judge kept explaining the state of the law  
In a soft under-current of sound.

The indictment had never been clearly expressed,  
And it seemed that the Snark had begun,  
And had spoken three hours, before any one guessed  
What the pig was supposed to have done.

The Jury had each formed a different view  
(Long before the indictment was read),  
And they all spoke at once, so that none of them knew  
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed  
"Fudge!"

That statute is obsolete quite!  
Let me tell you, my friends, the whole question depends  
On an ancient manorial right.



# Benchmark

"In the matter of Treason the pig would appear  
To have aided, but scarcely abetted:  
While the charge of Insolvency fails, it is clear,  
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;  
But its guilt, as I trust, is removed  
(So far as relates to the costs of this suit)  
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."  
Here the speaker sat down in his place,  
And directed the Judge to refer to his notes  
And briefly to sum up the case.

But the Judge said he never had summed up before;  
So the Snark undertook it instead,  
And summed it so well that it came to far more  
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,  
As the word was so puzzling to spell;  
But they ventured to hope that the Snark wouldn't mind  
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,  
It was spent with the toils of the day:  
When it said the word "GUILTY!" the Jury all groaned,  
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being  
quite  
Too nervous to utter a word:  
When it rose to its feet, there was silence like night,  
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,  
"And then to be fined forty pound."  
The Jury all cheered, though the Judge said he feared  
That the phrase was not legally sound.



# Benchmark

But their wild exultation was suddenly checked  
When the jailer informed them, with tears,  
Such a sentence would have not the slightest effect,  
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:  
But the Snark, though a little aghast,  
As the lawyer to whom the defence was intrusted,  
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed  
To grow every moment more clear:  
Till he woke to the knell of a furious bell,  
Which the Bellman rang close at his ear.

[https://en.wikipedia.org/wiki/Lewis\\_Carroll](https://en.wikipedia.org/wiki/Lewis_Carroll)

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