



Friday, 7 June 2019

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)

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

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

O'Hare v Bradfield Bentley Pty Ltd (in liq) (NSWCA) - corporations - contract - extension of time to appeal refused - notice of motion dismissed

In the matter of Aurora Funds Management Limited (NSWSC) - corporations - managed investment scheme - plaintiff sought orders that meeting and resolutions passed at meeting were invalid - plaintiff sought register's rectification - orders granted

In the matter of 77738930144 Pty Limited (in liquidation) (ACN 103 983 777) (formerly known as Commercial Indemnity Pty Limited) (NSWSC) - security costs - claims by 'special purpose liquidator' - security for costs refused

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

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]

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]

O'Hare v Bradfield Bentley Pty Ltd (in liq) [2019] NSWCA 122

Court of Appeal of New South Wales

Gleeson JA

Corporations - contract - applicant sought extension of time to appeal and leave to proceed against respondent under s500(2) *Corporations Act 2001* (Cth) - r51.9(1) *Uniform Civil Procedure Rules 2005* (NSW) - 'gross' delay - adequacy of explanation for delay - prejudice - appeal's merit - entitlement to justice - 'balancing exercise' - 'need for reasonable expedition' - *Nanschild v Pratt* [2011] NSWCA 85 - held: extension of time refused - notice of motion dismissed.

[View Decision](#)

[From Benchmark Monday, 3 June 2019]

In the matter of Aurora Funds Management Limited [2019] NSWSC 630

Supreme Court of New South Wales

Rees J

Corporations - plaintiff was 'incumbent responsible entity' of managed investment scheme - proceedings concerned meeting at which 'change of responsible entity' was 'said to have' occurred - plaintiff sought orders that meeting and resolutions were invalid - plaintiff also sought rectification of register - plaintiff contended 'insufficient notice given of the meeting', that meeting held at 'unreasonable time and place', that meeting's notice failed to disclose members who called the meeting and that 'notice and supporting explanatory memorandum were misleading' - held: orders granted.

[View Decision](#)

[From Benchmark Monday, 3 June 2019]

In the matter of 77738930144 Pty Limited (in liquidation) (ACN 103 983 777) (formerly known as Commercial Indemnity Pty Limited) [2019] NSWSC 626

Supreme Court of New South Wales

Rees J

Security for costs - second plaintiff was 'special purpose liquidator' - first plaintiff was company in liquidation - second plaintiff brought proceedings against first plaintiff's 'former director' (first defendant), shareholder of first plaintiff (second defendant) and another company (third defendant) - first plaintiff sought 'compensation and other relief' against first defendant for breach of duty, against second defendant for 'accessorial liability' and against third defendant for loan's recovery - defendants sought security for costs - strength of plaintiffs' case - 'matter of public importance' - litigation funding's existence - impecuniosity's cause - held: security for costs refused.

[View Decision](#)

[From Benchmark Tuesday, 4 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.

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[Queensland](#)

[From Benchmark Tuesday, 4 June 2019]

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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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