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Weekly Corporate Governance

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

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Executive Summary (One Minute Read)

Australian Securities and Investments Commission v Open4Sale Global Ltd (FCA) - Court made interlocutory orders against a company director who did not appear, restraining him from doing acts that would contravene the *Corporations Act 2001* (Cth)

Davis-Jacenko v Roxy's Bootcamp Pty Limited (No 2) (NSWSC) - Court ordered a company be wound up on the just and equitable ground as the relationship between the principals had broken down irretrievably

HABEAS CANEM

The scent on the breeze

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Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v Open4Sale Global Ltd [2024] FCA 718
Federal Court of Australia
Charlesworth J
Interlocutory applications - ASIC applied for interlocutory injunctions under s1324(4) of the *Corporations Act 2001* (Cth) to restrain a company and two directors from offering securities in the first defendant or any other Australian company engaged in the commercialisation of information technology, or distributing application forms for such offers, without the requisite disclosure documentation being lodged in accordance with the Act - the company and one of the directors were legally represented and consented to the interlocutory orders - the other director did not appear - held: the Court was satisfied that the interlocutory application was served on the absent director by way of service on a solicitor who was at that time the solicitor on the record for that director - there was no admissible evidence explaining why the director was not in attendance - ASIC had to show that there was a serious question to be tried at a level sufficient to justify the orders sought, and that the balance of convenience favoured the making of the order - in its discretion, the Court did not required ASIC to give an undertaking as to damages in light of its status as a regulator responsible for the administration and enforcement of the Act - the absence of the director had the forensic consequence that there was no evidence to counter the evidence adduced by ASIC in support of the application - the Court was satisfied that there was a serious question to be tried as to whether or not the director was liable for the contraventions of s727(1), (2) and (6) of the *Corporations Act* alleged against him (failing to lodge a disclosure document with ASIC and without offers being included in, or the application forms accompanying, a disclosure document) - the injunctions sought the director would restrain him from acts that are prohibited in any event under the Act, and so it was difficult to see what inconvenience he would suffer if the interlocutory application were granted - the injunction would nevertheless have some utility, as it would enable the Court to punish the director for contempt if he breached the orders - interlocutory orders made as sought.
Australian Securities and Investments Commission
[From Benchmark Wednesday, 10 July 2024]

Davis-Jacenko v Roxy's Bootcamp Pty Limited (No 2) [2024] NSWSC 827
Supreme Court of New South Wales
McGrath J
Corporations law - the plaintiff and two investors registered a company to promote training courses offered by the plaintiff - the company, the plaintiff, and the investors entered into a promotions agreement to stage a promotion, under which persons who purchased a training course would go into a draw to win a property at Cronulla or $250,000, a Rolex watch and Hermes Birkin bag, or a Chanel wallet on chain - the relationship deteriorated - the plaintiff applied to wind up the company and for the appointment of provisional liquidators - the Court

had previously appointed provisional liquidators (see Benchmark 13 June 2024) - the Court now decided whether to wind up the company on the just and equitable ground - held: it remained abundantly clear to the Court that the present case remained one in which there had been a complete and irretrievable breakdown of the relationships between each of the principals of the company - further, one of the investors appeared to have conducted himself in the interests of company with which he was associated and which was owned and controlled by his wife - the company should be wound up on the just and equitable basis - the provisional liquidators had consented to act as the joint and several liquidators of the company - this as an appropriate case in which to dispense with the notice and advertising requirements under s465A(1)(c) and s465A(1)(a) of the *Corporations Act 2001* (Cth), as no substantive purpose could be achieved by compliance with those requirements - the Court was satisfied that there was no realistic prospect of any creditor of the company opposing the winding up application - the Court should make a declaration regarding the irretrievable breakdown of the relationship between the members of the company, together with the orders for the winding up of the company and the appointment of liquidators.

View Decision

[From Benchmark Monday, 8 July 2024]

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ___ (2024)
Supreme Court of the United States
The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.
Moody

Poem for Friday

Iceland

By Jonas Hallgrimsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almanna gorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrimsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjolnir first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
https://www.youtube.com/watch?v=6OqbfGSJDUc

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