

Friday, 20 September 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)

Ruralco Holdings Limited, in the matter of Ruralco Holdings Limited (No 2) (FCA) - corporations - plaintiff sought approval of 'proposed scheme of arrangement' between plaintiff and plaintiff's shareholders - orders granted as sought

In the matter of Villa World Limited (NSWSC) - corporations - plaintiff sought orders that it 'convene a meeting of its members' for consideration of and voting on 'proposed scheme of arrangement', approval of 'explanatory memorandum' and directions concerning manner of meeting's convening and conduct - orders granted as sought

Stephen Richard O'Ryan v Greg Ray Golding (NSWSC) - corporations - winding up - 'just and equitable' ground - Court satisfied to place company 'under winding up order'

In the matter of Australian Tailings Group Pty Limited (NSWSC) - corporations - plaintiff sought to set aside creditor's statutory demand - originating process dismissed

In the Matter of Infant Nutrition Company of Australia Pty Ltd (Administrators Appointed) (VSC) - corporations - costs - application to amend 'Originating Process' and 'Points Of Claim' - leave granted to amend - costs determined

Eaton v Rare Nominees Pty Limited (QCA) - joint venture - erroneous finding of fiduciary duty owed by company to respondent - appeal allowed

SGR Pastoral Pty Ltd v Christensen (QSC) - corporations - statutory demand - application to set aside statutory demand on basis of 'genuine dispute' and 'offsetting claim' - statutory demand set aside

Mannix Electrical Pty Ltd v Belport Pty Ltd (SASC) - security for costs - appeal against dismissal of security for costs application - appeal dismissed

Summaries With Link (Five Minute Read)

Ruralco Holdings Limited, in the matter of Ruralco Holdings Limited (No 2) [2019] FCA 1507

Federal Court of Australia

Farrell J

Corporations - plaintiff sought approval of 'proposed scheme of arrangement' between plaintiff and plaintiff's shareholders - matters required to be proved at 'second court hearing' - Court's role at second court hearing - factors taken into account by Court in exercise of discretion - *Ancor Limited, in the matter of Ancor Limited* (No 2) [2019] FCA 842 - s411 *Corporations Act 2001* (Cth) - held: Court satisfied to make orders sought by plaintiff.

[Ruralco](#)

[From Benchmark Monday, 16 September 2019]

In the matter of Villa World Limited [2019] NSWSC 1207

Supreme Court of New South Wales

Black J

Corporations - plaintiff sought orders that it 'convene a meeting of its members' for consideration of and voting on 'proposed scheme of arrangement', approval of 'explanatory memorandum' and directions concerning manner of meeting's convening and conduct - ss411 & 1319 *Corporations Act 2001* (Cth) - held: orders granted as sought by plaintiff.

[View Decision](#)

[From Benchmark Monday, 16 September 2019]

Stephen Richard O'Ryan v Greg Ray Golding [2019] NSWSC 1229

Supreme Court of New South Wales

Hammerschlag J

Corporations - proceedings concerned whether Court should place third defendant (company) under winding up order but stay order for 'brief period' so that parties could avoid winding up by 'consensual resolution' - motion originally sought receiver's appointment - motion amended to seek also liquidators' appointment - whether winding up on 'just and equitable basis' was 'appropriate' and/or 'necessary' - s461(1)(k) *Corporations Act 2001* (Cth) - held: Court satisfied to place company 'under winding up order'.

[View Decision](#)

[From Benchmark Thursday, 19 September 2019]

In the matter of Australian Tailings Group Pty Limited [2019] NSWSC 1218

Supreme Court of New South Wales

Black J

Corporations - plaintiff, under ss459G, 459H & 459J *Corporations Act 2001* (Cth), sought to set aside creditor's statutory demand which defendants had served - whether genuine dispute concerning claimed debt - whether off-setting claim - whether demand should be set aside due to "defect" in demand - held: originating process dismissed.

[View Decision](#)

[From Benchmark Friday, 20 September 2019]

In the Matter of Infant Nutrition Company of Australia Pty Ltd (Administrators Appointed) [2019] VSC 595

Supreme Court of Victoria

Kennedy J

Corporations - application to file 'Second Further Amended Originating Process' and 'Further Amended Points of Claim' seeking termination of deed of company arrangement (DOCA) or declaration DOCA void - order adding shares' transferee as a party also sought - whether to grant leave to amend - costs - futility - 'overarching purpose' - 'real issues in dispute' - s9 *Civil Procedure Act 2010* (Vic) - r63.15 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: Court satisfied to grant leave to amend and to add party - orders made - costs determined.

[In the Matter of Infant Nutrition](#)

[From Benchmark Tuesday, 17 September 2019]

Eaton v Rare Nominees Pty Limited [2019] QCA 190

Court of Appeal of Queensland

Philippides & McMurdo JJA; Davis J

Joint venture - proceedings concerned joint venture agreement (JVA) between company (E-Coastal) as proprietor and respondent as one of the "Contributors" - respondent claimed against appellant 'sole director and controlling mind of E-Coastal (Mr Eaton) and Mrs Eaton - respondent claimed that E-Coastal breached fiduciary duties to respondent - trial judge found E-Coastal had fiduciary duties to respondent which were breached - trial judge found against Mr Eaton under Barnes v Addy's 'second limb' - Mr Eaton appealed - construction of "Receipts" in JVA - whether erroneous finding E-Coastal breached fiduciary duty - whether erroneous finding Mr Eaton was liable under Barnes by Addy's second limb - held: trial judge erred in finding there was 'relevant fiduciary obligation' owed to respondent - appeal allowed.

[Eaton](#)

[From Benchmark Monday, 16 September 2019]

SGR Pastoral Pty Ltd v Christensen [2019] QSC 229

Supreme Court of Queensland

Bowskill J

Corporations - statutory demand - applicant, under s459G *Corporations Act 2001* (Cth), sought to set aside respondents' statutory demand on basis of genuine dispute as to claimed debt's 'existence and amount' - applicant also contended it had offsetting claim - respondents sought that application be dismissed on basis it was not served within 'strict 21 day time period' and that there was no genuine dispute 'at least not as to the whole' debt - whether application served in time - whether genuine dispute - whether offsetting claim - held: genuine dispute and offsetting claim 'potentially' exceeding claimed debt's whole amount established - statutory demand set aside.

[SGR](#)

[From Benchmark Monday, 16 September 2019]

Mannix Electrical Pty Ltd v Belport Pty Ltd [2019] SASC 159

Supreme Court of South Australia

Doyle J

Security for costs - Master dismissed defendant's security for costs application - defendant appealed, contending Master erroneously concluded defendant did not satisfy 'threshold requirement' under s1335 *Corporations Act 2001* (Cth) - whether it appeared 'by credible testimony' there was 'reason to believe' plaintiff would not be able to pay defendant's costs if defendant succeeded - 'limited share capital' - 'failure to provide' requested financial information - whether Master's decision "unreasonable or plainly unjust" in sense in *House v The King* (1936) 55 CLR 499 - held: no error in Master's decision - appeal dismissed.

[Mannix](#)

[From Benchmark Wednesday, 18 September 2019]



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To My Friends

By: Henry Lawson

From: Skyline Riders.

These are the songs of the Friends I neglected -
And the Foes too, in part;
These are songs that were mostly rejected -
And songs from my heart.

https://en.wikipedia.org/wiki/Henry_Lawson - circa 1910

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