

Friday, 22 May 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)

Yeo, in the matter of Ready Kit Cabinets Pty Ltd (in liq) v Deputy Commissioner of Taxation (FCA) - corporations - taxation - payments made by company to respondent recoverable from respondent as 'unfair preferences' under s588FA *Corporations Act 2001* (Cth)

White, in the matter of Macro Realty Developments Pty Ltd and Macro Realty Pty Ltd (No 2) (FCA) - corporations - liquidators sought approval to enter litigation funding agreement and 'confidentiality order' - approval granted 'subject to minor amendment' - confidentiality order granted.

McGuinness v Workplace Eye Protection Pty Ltd (FCA) - corporations - 'derivative action' - plaintiff sought leave to bring proceedings on behalf of defendant company against defendant's directors and 'a former director' - leave refused

Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 4) (FCA) - corporations - administrators of companies sought further extension of convening period for second meetings of creditors and ancillary orders - extension of confidentiality orders also sought - orders granted

PropertyShares Holdings Pty Ltd v 8 Hopetoun Rd Pty Ltd & Ors (VSC) - mortgage - rectification - equity - plaintiff sought rectification of 'electronic mortgage' and direction under s103(1) *Transfer of Land Act 1958* (Vic) - rectification and direction granted

Shannon & Ors v Simmons (QSC) - corporations - insolvent trading - application by liquidators of company for declaration of respondent's failure to prevent company incurring debts, for payment of amount and interest, and costs - judgment for applicants

Miluc Pty Ltd v Maddalena (WASC) - corporations - statutory demand - plaintiff sought to set aside statutory demand - genuine dispute established - demand set aside

Re Kinetiko Energy Ltd; Ex Parte Kinetiko Energy Ltd (WASC) - corporations - plaintiff sought extension of time for 'admission to quotation' by 'ASX' of securities and, subject to securities' admission, 'validation and confirmation' of issue of securities - held: orders granted

Summaries With Link (Five Minute Read)

Yeo, in the matter of Ready Kit Cabinets Pty Ltd (in liq) v Deputy Commissioner of Taxation [2020] FCA 632

Federal Court of Australia

Middleton J

Corporations - taxation - third applicant was company in liquidation (company) - first and second applicants were company's 'former deed administrators' and company's liquidators - company entered deed of arrangement - deed terminated - company, in discharge of tax liabilities, made payments to respondent during deed's administration - payments were made while company subject to deed of arrangement - applicants claimed payments were recoverable respondent as 'unfair preferences' under s588FA *Corporations Act 2001* (Cth) (*Corporations Act*) - whether requirements of sub-s 588FE(2B)(d) *Corporations Act* satisfied - whether payments made on company's behalf 'under the authority of' deed administrators - held: payments recoverable from respondent as unfair preferences under s588FA *Corporations Act*.

[Yeo](#)

[From Benchmark Tuesday, 19 May 2020]

White, in the matter of Macro Realty Developments Pty Ltd and Macro Realty Pty Ltd (No 2) [2020] FCA 649

Federal Court of Australia

McKerracher J

Corporations - applicants were liquidators of companies (Macro Realty Developments and Macro Realty Pty Ltd) - applicants sought, pursuant to s477(2B) *Corporations Act 2001* (Cth) (*Corporations Act*) and ss90-15 & 90-20 of *Corporations Act*, Court's 'approval to enter into a litigation funding agreement' - applicants also sought, pursuant to s37AF *Federal Court of Australia Act 1976* (Cth) that 'confidential affidavit' and certain paragraphs of applicants' submissions 'be kept confidential' - held: approval granted 'subject to minor amendment' - confidentiality order granted.

[White, in the matter of Macro Realty](#)

[From Benchmark Wednesday, 20 May 2020]

McGuinness v Workplace Eye Protection Pty Ltd [2020] FCA 626

Federal Court of Australia

Gleeson J

Corporations - 'derivative action' - plaintiff, pursuant to s237 *Corporations Act 2001* (Cth) (Corporations Act), sought leave to bring proceedings on behalf of defendant company against defendant's directors and 'a former director' - whether probable that defendant would itself bring proceedings - whether good faith - whether serious question to be tried - limitations - defendant's best interests - *Re Gladstone Pacific Nickel Ltd* [2011] NSWSC 1235 - *Carpenter v Pioneer Park Pty Ltd (in liq)* [2004] NSWSC 973 - *Keenan v Bundaberg Port Authority* [2016] FCA 134 - held: leave refused.

[McGuinness](#)

[From Benchmark Thursday, 21 May 2020]

Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 4) [2020] FCA 671

Federal Court of Australia

Markovic J

Corporations - plaintiffs in capacity as joint and several administrators of companies ('CBCH Group', 'CBCH Australia', 'CBCH Buying Co' and 'Colette International') sought further extension of convening period for each company for 'second meeting of creditors' and ancillary orders - plaintiffs also sought extension of confidentiality orders - ss435A, 439A, 447A(1) & 439A(1) *Corporations Act 2001* (Cth) - *Re Acquire Learning & Careers Pty Ltd (administrators appointed)* [2017] VSC 572 - *Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed)* [2017] FCA 635 - held: orders granted.

[Strawbridge](#)

[From Benchmark Friday, 22 May 2020]

PropertyShares Holdings Pty Ltd v 8 Hopetoun Rd Pty Ltd & Ors [2020] VSC 265

Supreme Court of Victoria

Kennedy J

Mortgage - rectification - equity - plaintiff sought rectification of 'electronic mortgage' due to error in name of registered mortgagee of property - whether Court should make order for rectification - whether Court should grant direction under s103(1) *Transfer of Land Act 1958* (Vic) requiring Registrar to amend register - 'unilateral instrument' - doctrine of indefeasibility - whether prejudice - held: rectification and direction granted.

[Property Shares](#)

[From Benchmark Monday, 18 May 2020]

Shannon & Ors v Simmons [2020] QSC 115

Supreme Court of Queensland

Flanagan J

Corporations - first applicants were second applicant's liquidators - applicants, pursuant to r288 *Uniform Civil Procedure Rules 1999* (Qld) (Rules), sought declaration of failure by respondent to prevent second applicant incurring debts in contravention of s588G(2) *Corporations Act 2001* (Cth) (Corporations Act), that respondent pay applicants amount under s588M Corporations Act, that respondent pay interest to applicants under s58 *Civil Proceedings Act 2011* (Qld), and costs - applicants sought that application be heard on the papers - held: application under r288(2) Rules not 'required to be served on a respondent' - application could 'appropriately be dealt with on the papers' - judgment granted as sought by applicants - order made.

[Shannon](#)

[From Benchmark Monday, 18 May 2020]

Miluc Pty Ltd v Maddalena [2020] WASC 156

Supreme Court of Western Australia

Master Sanderson

Corporations - statutory demand - plaintiff sought to set aside statutory demand - whether genuine dispute established - low threshold for establishment of genuine dispute - whether amount claimed in debt was for 'reasonable expenses' - whether s159 *Planning and Development Act 2005* (WA) applied - *Corporations Act 2001* (Cth) - held: genuine dispute established - statutory demand set aside.

[Miluc](#)

[From Benchmark Monday, 18 May 2020]

Re Kinetiko Energy Ltd; Ex Parte Kinetiko Energy Ltd [2020] WASC 169

Supreme Court of Western Australia

Hill J

Corporations - plaintiff, under s1322(4)(d) *Corporations Act 2001* (Cth) (Corporations Act), sought extension of time under ss723(3)(b) & 724(1)(b)(ii) Corporations Act for 'admission to quotation' by 'ASX' of 'securities issued' by plaintiff - plaintiff, under ss254E & 1322(4)(a) Corporations Act, also sought, subject to securities' admission, 'validation and confirmation of issue of securities' - held: orders granted.

[Re Kinetiko](#)

[From Benchmark Friday, 22 May 2020]



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The Bee

By: Emily Dickinson

Like trains of cars on tracks of plush
I hear the level bee:
A jar across the flowers goes,
Their velvet masonry
Withstands until the sweet assault
Their chivalry consumes,
While he, victorious, tilts away
To vanquish other blooms.
His feet are shod with gauze,
His helmet is of gold;
His breast, a single onyx
With chrysoprase, inlaid.
His labor is a chant,
His idleness a tune;
Oh, for a bee's experience
Of clovers and of noon!

https://en.wikipedia.org/wiki/Emily_Dickinson

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