



Friday, 26 April 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)

Erskine as liquidator of North Shore Property Developments Pty Ltd (in liq) v 72-74 Gordon Crescent Lane Cove Pty Ltd (FCAFC) - corporations - liquidator refused extension of time to make applications concerning 'unreasonable director-related transactions' - appeal dismissed

Trenfield (Liquidator), in the matter of Ostwald Bros. Pty Ltd (In Liq) (FCA) - corporations - liquidators sought approval for 'funding agreement' - approval granted

In the matter of Garfox 86 Pty Limited (NSWSC) - corporations - application for company's reinstatement and for ancillary orders - orders granted as sought

Slea Pty Ltd v Connective Services Pty Ltd (VSC) - corporations - application for orders for pleadings' amendment and for 'injunctive relief' - permission to amend pleadings granted in part - injunctive relief refused

Vickers v Queensland Building and Construction Commission & Ors (QCA) - building and construction - corporations - constitutional law - company in liquidation was a "construction company" under s56AC(7) *Queensland Building and Construction Commission Act 1991* (Qld) (QBCC Act) - s56AC QBCC Act was 'constitutionally valid' - appeal dismissed

Buurabalayji Thalanyji Aboriginal Corporation RNTBC v Hayes (WASC) - summary judgment - corporations - loan - parties entered loan agreement - defendant defaulted -

summary judgment granted in plaintiff's favour

Antony Leslie John Woodings as liquidator of The Bell Group Ltd and The Bell Group Finance Pty Ltd v WA Glendinning & Associates Pty Ltd (WASC) - corporations - evidence - privilege - two interlocutory applications - one application granted - other application determined in part

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd (WASC) - stay - oppression - corporations - abuse of process - permanent stay of proceedings refused - stay granted pending payment of amount into Court - security for costs granted

Summaries With Link (Five Minute Read)

Erskine as liquidator of North Shore Property Developments Pty Ltd (in liq) v 72-74 Gordon Crescent Lane Cove Pty Ltd [2019] FCAFC 62

Full Court of the Federal Court of Australia

Jagot, Gleeson & Markovic JJ

Corporations - former liquidator of company (North Shore Property Developments) entered 'deed of release and settlement' - primary judge refused to grant appellant liquidator extension of time to make applications concerning 'unreasonable director-related transactions' subject of the deed of release and settlement - appellant appealed - whether erroneous exercise of discretion - whether misapplication of principle - whether primary judge should have taken approach in *Taylor v Woden Constructions Pty Ltd* [1998] FCA 1228 - whether erroneous consideration of prospects of success - whether circular reasoning - s588FF(3)(b) *Corporations Act 2001* (Cth) - held: appeal dismissed.

[Erskine](#)

[From Benchmark Tuesday, 23 April 2019]

Trenfield (Liquidator), in the matter of Ostwald Bros. Pty Ltd (In Liq) [2019] FCA 558

Federal Court of Australia

Greenwood J

Corporations - applicants were joint and several liquidators of company (Ostwald) - applicants, under s477(2B) *Corporations Act 2001* (Cth), sought approval for 'funding agreement' between Ostwald, applicants and Commonwealth ("Department of Jobs and Small Business") - funding agreement's purpose was to enable applicants to obtain 'insolvency report' as step towards possible proceedings against creditor or creditors on basis one or more of them had received 'preferential payment' - funding agreement's impact on liquidation's duration - whether approval of funding agreement was in the administration's interests - held: funding agreement approved.

[Trenfield](#)

[From Benchmark Friday, 26 April 2019]

In the matter of Garfox 86 Pty Limited [2019] NSWSC 442

Supreme Court of New South Wales

Rees J

Corporations - plaintiff sought company's reinstatement and ancillary orders - whether plaintiff was 'person aggrieved' by company's deregistration - whether just to reinstate company - appropriate ancillary orders - ss601AH(2) & 601AH(3) *Corporations Act 2001* (Cth) - held: Court satisfied to make orders sought by plaintiff.

[View Decision](#)

[From Benchmark Friday, 26 April 2019]

Slea Pty Ltd v Connective Services Pty Ltd [2019] VSC 201

Supreme Court of Victoria

Kennedy J

Corporations - pleadings - plaintiff in 'Oppression Proceeding' and plaintiffs in 'Derivative Proceeding' filed 'Amended Summons' seeking orders for amendment of pleadings and 'injunctive relief' - 'preliminary issue' whether Court should hear application for amendment before injunction argument - relevance of proffered undertakings - held: Court satisfied to hear 'all matters arising under the Amended Summons - leave to amend pleadings granted in part - not appropriate to grant injunctive relief.

[Slea](#)

[From Benchmark Friday, 26 April 2019]

Vickers v Queensland Building and Construction Commission & Ors [2019] QCA 66

Court of Appeal of Queensland

Holmes CJ; Gotterson & Morrison JJA

Building and construction - corporations - constitutional law - proceedings concerned whether company in liquidation (Midson NSW) was a "construction company" under s56AC(7) *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act') and whether s56AC QBCC Act was 'constitutionally invalid' - primary judge found Midson NSW was construction company under s56AC(7) QBCC Act and s56AC QBCC Act 'constitutionally valid' - appellants challenged primary judge's findings - statutory interpretation - held: appeal dismissed.

[Vickers](#)

[From Benchmark Tuesday, 23 April 2019]

Buurabalayji Thalanyji Aboriginal Corporation RNTBC v Hayes [2019] WASC 50

Supreme Court of Western Australia

Master Sanderson

Summary judgment - corporations - loan - parties entered 'Loan Agreement' - defendant defaulted - plaintiff sought summary judgment - whether any defence disclosed - *Corporations*

(Aboriginal and Torres Strait Islander) Act 2006 (Cth) - National Consumer Credit Protection Act 2009 (Cth) - held: summary judgment granted in plaintiff's favour.

[Buurabalayji](#)

[From Benchmark Tuesday, 23 April 2019]

Antony Leslie John Woodings as liquidator of The Bell Group Ltd and The Bell Group Finance Pty Ltd v WA Glendinning & Associates Pty Ltd [2019] WASC 54

Supreme Court of Western Australia

Smith J

Corporations - evidence - privilege - interlocutory applications - plaintiff liquidator of 'Bell Group Ltd' and 'Bell Group Finance' sought that Insurance Commission of Western Australia (ICWA) serve 'revised list of documents' with certain documents removed, and orders that ICWA refuse permission for 'certain parties or intervenors' to inspect documents - second defendant 'Bell Group NV (in liq)' sought that certain documents in respect of which it claimed privilege 'not be produced for made available for inspection' - s1408(1) *Corporations Act 2001* (Cth) - held: plaintiff's application granted - second defendant's application determined in part.

[Antony Leslie John](#)

[From Benchmark Tuesday, 23 April 2019]

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd [2019] WASC 121

Supreme Court of Western Australia

Vaughan J

Stay - oppression - corporations - plaintiff alleged 'oppressive conduct' in first defendant's affairs - plaintiff sought relief under s233 *Corporations Act 2001* (Cth) - defendants sought that proceedings be stayed permanently for abuse of process, or that proceedings be stayed until payment into Court of 'earlier proceedings' 'likely taxed costs' - alternatively, defendants sought security for costs - in earlier proceedings, plaintiff had made oppression allegations which 'substantially' mirrored those in present proceedings - earlier proceedings 'deemed dismissed' on basis of want of prosecution - held: Court not satisfied proceedings' continuation abuse of process warranting proceedings' permanent stay - stay granted pending payment of earlier proceedings' likely taxed costs into Court - application for security for costs granted.

[Patrick Jebb](#)

[From Benchmark Friday, 26 April 2019]

From: The Tempest

By: William Shakespeare, 1564 - 1616

Come unto these yellow sands,
And then take hands:



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Court'sied when you have, and kiss'd,--
The wild waves whist--
Foot it featly here and there;
And, sweet sprites, the burthen bear.
Hark, hark!
Bow, wow,
The watch-dogs bark:
Bow, wow.
Hark, hark! I hear
The strain of strutting chanticleer
Cry, Cock-a-diddle-dow!

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