



Friday, 28 June 2024

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

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (One Minute Read)

Yan v The Won Capital Pty Ltd (NSWSC) - Deed of Company Arrangement terminated, as misleading information had been given to creditors

In the matter of Openpay Group Ltd (recs and mgrs apptd) (subject to a DOCA) (NSWSC) - leave granted to administrators to transfer all shares to the proponent of a DOCA, as the evidence showed the shares had nil value, and there was thus no prejudice to shareholders

HABEAS CANEM

First beach holiday



Benchmark

Summaries With Link (Five Minute Read)

Yan v The Won Capital Pty Ltd [2024] NSWSC 758

Supreme Court of New South Wales

Pike J

Corporations law - Yan, a Chinese citizen, loaned the equivalent of \$10million to an Australian company, The Won - by a separate written loan agreement, Yan loaned the equivalent of \$10million to an Australian citizen, Liu, and another Australian company, GR Capital - administrators were appointed to GR Capital and a Deed of Company Arrangement was entered into in relation to that company - Yan sought to terminate the GR Capital DOCA - held: s445D(1)(a) of the *Corporations Act 2001* (Cth) empowers the Court to terminate a DOCA if satisfied that information about the company's business, property, affairs or financial circumstances that: (i) was false or misleading; and (ii) can reasonably be expected to have been material to creditors of the company in deciding whether to vote in favour of the resolution that the company execute the deed; was given to the administrator of the company or to such creditor - s445D(1)(g) empowers the Court to terminate a DOCA "for some other reason" - whether information is false or misleading is determined by the objective quality of the information judged at the time of the hearing - "material" means something which was relevant and did affect, or might have affected, the outcome, and the test is an objective one - the words "some other reason" are very broad and should be applied in a way consistent with the policy of the Act and other public policies to which the law gives effect, including the general policy of the Act that insolvent companies should not continue to trade - Liu admits that, in advance of the resolution passed by the creditors of GR Capital to enter into the DOCA, he did not inform the administrators appointed to GR Capital or its creditors of the loan from Yan or the existence of the loan agreements - the Court was satisfied in light of the admitted non-disclosure that the non-disclosure had been misleading, and could reasonably be expected to have been material to creditors of GR Capital in deciding whether to vote in favour of the DOCA - but for the misleading information, the voting composition would have been materially different - the DOCA should be terminated.

[View Decision](#)

[From Benchmark Wednesday, 26 June 2024]

In the matter of Openpay Group Ltd (recs and mgrs apptd) (subject to a DOCA) [2024] NSWSC 789

Supreme Court of New South Wales

Black J

Corporations law - Openpay was listed on the ASX and was the parent company of several companies which primarily operated a "buy now pay later" service - the group aimed to extend its business to operate a platform which allowed consumers to complete transactions up to a limit of \$20,000 with repayment terms of up to 24 months over a range of industries including automotive, healthcare, home improvement, education and retail - in due course, it entered into a trading halt and receivers and managers, and then voluntary administrators, were appointed -

Benchmark

the voluntary administrators sought leave under s444GA of the *Corporations Act 2001* (Cth) to transfer all the shares in Openpay to the proponent of a Deed of Company Arrangement Openpay had entered into¹⁴⁷; held: the possibility of prejudice to a shareholder would arise if there was some residual equity in the company - it was difficult to see how shareholders could be prejudiced by the transfer of their shares in the absence of any residual value or equity in the company - the case law established that there would not ordinarily be any prejudice, or no prejudice that has the requisite quality of "unfairness", if the shares had no value and there would be no distribution in the event of a liquidation, which was the only realistic alternative to the proposed transfer - the Administrators bore the legal onus of proving that the Court's discretion to allow the share transfer should be exercised in their favour - an independent expert had valued the shares on an orderly realisation of assets basis, and the Court accepted that other methodologies such as a cash flow basis, a multiple of earnings method, or a quoted price for listed securities basis, were not available or were not appropriate - the Court accepted that the shares had nil value - the recoveries identified by the Administrators in a liquidation scenario would be insufficient to repay creditors in full - there was no prejudice to shareholders in the orders sought by the Administrators being made, let alone unfair prejudice - orders made as sought.

[View Decision](#)

[From Benchmark Friday, 28 June 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

United States v Rahimi (SCOTUS) - Federal statute that prohibits individuals who are subject to a domestic violence restraining order from firearm possession does not violate the Second Amendment right to keep and bear arms

Summaries With Link (Five Minute Read)

United States v Rahimi 602 US __ (2024)

United States Supreme Court

In an 8-1 decision (Thomas, J dissenting), the Supreme Court upheld the validity of what are known as 'red flag' laws that prohibit firearm possession by domestic abusers. During a dispute with his girlfriend, Rahimi fired a gun that he kept in his car. She obtained a restraining order from a court in Texas. The Texas Court further suspended Rahimi's gun license for two years on the grounds that the violence was likely to occur again. During this period, Rahimi threatened additional women with a gun and was a suspect in an additional five shootings. When police searched his home, they found firearms, ammunition, and a copy of the restraining order. Rahimi was indicted for violating a federal statute that prohibits firearm possession while subject to a domestic violence restraining order. Rahimi claimed that the statute was unconstitutional because it established a restriction on the right to keep and bear arms that was not part of firearm regulation at the time the Second Amendment was adopted in the 18th Century. The District Court rejected this argument, but the US Court of Appeals agreed that the statute was unconstitutional. In the opinion by Roberts CJ, the Court pulled back from a purely historical approach to gun rights. The Chief Justice stated that recent court decisions expanding firearm rights 'were not meant to suggest a law trapped in amber'. By this the Court moved away from the history and tradition test and recognised that the Second Amendment permits regulations that may not have existed in 1791. The Court held that, while the right to keep and bear arms was a fundamental right, prohibitions on going armed were accepted as part of the common law at the time the Second Amendment was adopted. The Court said that the statute only prohibited possession while the restraining order was in effect and where a court had found that the individual represented a credible threat to the physical safety of others in a domestic situation.

[United States v Rahimi](#)

Poem for Friday

Adlestrop

By Edward Thomas (1878-1917)

Yes. I remember Adlestrop
The name, because one afternoon
Of heat the express-train drew up there
Unwontedly. It was late June.

The steam hissed. Someone cleared his throat.
No one left and no one came
On the bare platform. What I saw
Was Adlestrop only the name

And willows, willow-herb, and grass,
And meadowsweet, and haycocks dry,
No whit less still and lonely fair
Than the high cloudlets in the sky.

And for that minute a blackbird sang
Close by, and round him, mistier,
Farther and farther, all the birds
Of Oxfordshire and Gloucestershire.

Edward Thomas, an English poet biographer, author, essayist, and critic was born on 3 March 1878, the son of Welsh parents, a railway clerk, politician and preacher Phillip Thomas, and Mary Townsend. His connection to Wales was important throughout his life. He was described by Aldous Huxley as "*one of England's most important poets*". Thomas wrote poetry from 1914, when he was 36, encouraged by his new neighbour, the then relatively unknown Robert Frost. During his life, his only published poetry was *Six Poems* (1916) under the pseudonym Edward Eastaway. Thomas struggled with the burden of constant production of what some critics described as "hack work" to support his family, and the work he wished to produce. At times he was reviewing up to 15 books each week. He made many attempts at suicide, suffering marital disharmony and depression. Adlestrop is considered one of Thomas' finest poems. The poem describes the ordinary circumstances of Thomas' train from Paddington to Malvern, stopping at Adlestrop station at 12:15pm with images of the surrounding English countryside. However the poem elicits profound feelings in the reader through those descriptions. Thomas was killed in the Battle of Arras, in France on 9 April 1917, having enlisted for service in the British infantry in 1915. Ted Hughes described Thomas as "*the father of us*"

all’.

Adestrop by Edward Thomas, composed by Susanna Self- the third of six “Songs of Immortality”

<https://www.youtube.com/watch?v=2NYUdo12yfg>

Reading by Patricia Conolly. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world’s leading theatrical centres. She has worked extensively in her native Australia, in London’s West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love’s Labour’s Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

[Click Here to access our Benchmark Search Engine](#)