



Friday, 30 July 2021

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)

Dragontail Systems Limited, in the matter of Dragontail Systems Limited (FCA) - corporations - plaintiff, pursuant to ss411(1) & 1319 *Corporations Act 2001* (Cth), sought orders for convening of 'Scheme Meeting' of plaintiff's members 'to consider and vote upon' Scheme plaintiff 'and its ordinary shareholders' - orders granted

Colwell (Deed Administrator), in the matter of Wealth Mining Pty Ltd (Subject to Deed of Company Arrangement) v Wealth Resources Pty Ltd (FCA) - corporations - interlocutory application - administrators of deed of company arrangement, pursuant s444GA *Corporations Act 2001* (Cth), sought to transfer '100% of the existing fully paid shares' in 'Wealth Mining' to 'MACA' 'in accordance with deed of company arrangement' - interlocutory application granted

Trilogy Funds Management Limited as trustee and responsible entity of the Pacific First Mortgage Fund v CBRE (V) Pty Ltd (NSWSC) - negligence - trade practices - 'misleading or deceptive representations' - corporations - managed investment scheme - valuation - defendant sought dismissal of proceedings for abuse of process - notice of motion dismissed

IMO Michael Sklovsky Pty Ltd (subject to deed of company arrangement) (VSC) - corporations - plaintiffs ('Former Administrators') sought approval of remuneration - remuneration approved

Bol v Coolgardie Minerals Ltd (Receiver and Manager Appointed) (In Liq) (WASC) - corporations - winding up - plaintiff, under s500(2) *Corporations Act 2001* (Cth), sought leaver

nunc pro tunc 'to commence and proceed with' action against defendant - application granted

Re Metalicity Ltd; Ex Parte Metalicity Ltd (WASC) - corporations - plaintiff sought orders under s1322(4)(a) *Corporations Act 2001* (Cth) (Corporations Act) concerning contravention of s329(5) Corporations Act - relief granted

Summaries With Link (Five Minute Read)

Dragontail Systems Limited, in the matter of Dragontail Systems Limited [2021] FCA 834

Federal Court of Australia

Halley J

Corporations - plaintiff, pursuant to ss411(1) & 1319 *Corporations Act 2001* (Cth) (Corporations Act), sought orders for convening of 'Scheme Meeting' of plaintiff's members 'to consider and vote upon' Scheme plaintiff 'and its ordinary shareholders' - Scheme was 'conventional cash acquisition scheme' - whether 'formal requirements' for convening of meeting of members for Scheme's consideration and approval of Scheme Booklet 'for circulation to' plaintiff's members met - whether to exercise discretion to grant orders - 'performance risk and Israeli withholding tax' - 'exclusivity arrangements' - 'break fee' - 'deemed warranties' - 'hybrid meeting of shareholders' - 'approval of the Scheme Booklet by the Court' - held: orders granted.

[Dragontail](#)

[From Benchmark Monday, 26 July 2021]

Colwell (Deed Administrator), in the matter of Wealth Mining Pty Ltd (Subject to Deed of Company Arrangement) v Wealth Resources Pty Ltd [2021] FCA 857

Federal Court of Australia

Derrington J

Corporations - interlocutory application - administrators of deed of company arrangement, pursuant s444GA *Corporations Act 2001* (Cth) (Corporations Act) sought to transfer '100% of the existing fully paid shares' in 'Wealth Mining' to 'MACA' 'in accordance with deed of company arrangement' - defendant ('Wealth Resources'), which owned all shares in Wealth Mining, opposed application - s447A Corporations Act - 'extension of the Sunset Date' - 'Participation of the Deed Administrators in the proceedings' - held: interlocutory application granted.

[Colwell](#)

[From Benchmark Wednesday, 28 July 2021]

Trilogy Funds Management Limited as trustee and responsible entity of the Pacific First Mortgage Fund v CBRE (V) Pty Ltd [2021] NSWSC 883

Supreme Court of New South Wales

Williams J

Negligence - trade practices - 'misleading or deceptive representations' - corporations -

managed investment scheme - valuation - abuse of process - proceedings concerned valuation of part of development - defendant sought dismissal of proceedings for abuse of process - *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 - *UBS AG v Tyne* (2018) 265 CLR 77 - held: notice of motion dismissed.

[View Decision](#)

[From Benchmark Friday, 30 July 2021]

IMO Michael Sklovsky Pty Ltd (subject to deed of company arrangement) [2021] VSC 421

Supreme Court of Victoria

Matthews AsJ

Corporations - plaintiffs ('Former Administrators') sought approval of remuneration - s77.05 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* - *Re WITS Holdings Pty Ltd (in liq)* [2021] VSC 179 - whether Court had power 'to approve remuneration for the Post-Appointment Period' - 'method and amount' - 'remuneration for the Appointment Period' - 'remuneration for the Future Period' - *Insolvency Practice Schedule (Schedule 2 to the Corporations Act (2001) (Cth)* - held: remuneration approved.

[IMO Michael Sklovsky Pty Ltd](#)

[From Benchmark Monday, 26 July 2021]

Bol v Coolgardie Minerals Ltd (Receiver and Manager Appointed) (In Liq) [2021] WASC 255

Supreme Court of Western Australia

Acting Master Strk

Corporations - winding up - plaintiff, under s500(2) *Corporations Act 2001 (Cth)*, sought leave nunc pro tunc 'to commence and proceed with' action against defendant company - resolution for defendant's winding up had been passed - failure by plaintiff to seek leave prior to proceeding's commencement - whether Court could grant leave nunc pro tunc - whether to grant leave - *Latimer v Cutwood Panels Pty Ltd (in liq)* [2012] WASC 408 - held: application granted.

[Bol](#)

[From Benchmark Thursday, 29 July 2021]

Re Metalicity Ltd; Ex Parte Metalicity Ltd [2021] WASC 256

Supreme Court of Western Australia

Hill J

Corporations - plaintiff sought orders under s1322(4)(a) *Corporations Act 2001 (Cth)* (Corporations Act) concerning contravention of s329(5) Corporations Act - whether requirements of s1322(4)(a) Corporations Act satisfied - whether 'pre-conditions' in pre-conditions in s1322(6)(a) Corporations Act satisfied - whether 'substantial injustice' - whether 'discretionary reason to withhold relief' - held: relief granted.

[Re Metalicity](#)

[From Benchmark Friday, 30 July 2021]



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The Open Sea

By: Dorothea Mackellar

FROM my window I can see,
Where the sandhills dip,
One far glimpse of open sea.
Just a slender slip
Curving like a crescent moon— 5
Yet a greater prize
Than the harbour garden-fair
Spread beneath my eyes.

Just below me swings the bay,
Sings a sunny tune, 10
But my heart is far away
Out beyond the dune;
Clearer far the sea-gulls' cry
And the breakers' roar,
Than the little waves beneath 15
Lapping on the shore.

For that strip of sapphire sea
Set against the sky
Far horizons means to me—
And the ships go by 20
Framed between the empty sky
And the yellow sands,
While my freed thoughts follow them
Out to other lands.

All its changes who can tell? 25
I have seen it shine
Like a jewel polished well,
Hard and clear and fine;
Then soft lilac—and again
On another day 30
Glimpsed it through a veil of rain,
Shifting, drifting grey.

When the livid waters flee,



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Flinching from the storm,
From my window I can see, 35
Standing safe and warm,
How the white foam tosses high
On the naked shore,
And the breakers' thunder grows
To a battle-roar... 40

Far and far I look—Ten miles?
No, for yesterday
Sure I saw the Blessed Isles
Twenty worlds away.
My blue moon of open sea, 45
Is it little worth?
At the least it gives to me
Keys of all the earth!

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

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