

AUSTRALIAN BUSINESS LAW REVIEW

Volume 51, Number 6

2023

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ARTICLES

A New Sheriff in Town? Section 596A and Shareholders’ Newfound Powers – *Aaron Timoshanko*

In the case of *Walton v ACN 004 410 833 Ltd* (in liq) (Walton), the High Court of Australia interpreted s 596A of the *Corporations Act 2001* (Cth) in a way that benefits shareholders and former shareholders. Before this ruling, it was believed that examining company officers could only be done for the benefit of the company, its creditors, or contributories. However, post-Walton, eligible applicants, including shareholders and former shareholders, can now examine certain company officers about the examinable affairs of the company for their own benefit. This includes uncovering information about misconduct to potentially reclaim financial losses. As a result, there may be an increase in applications for eligible applicant status received by Australian Securities and Investments Commission and an overall increase in the enforcement of the *Corporations Act*. 327

Effectiveness of Dispute Resolution Processes Conducted Online: Findings from Empirical Research with Implications for Small Business Providing Dispute Resolution Services – *Lola Akin Ojelabi, Fahimeh Abedi, Louis de Koker and John Zeleznikow*

Effective online dispute resolution (ODR) is important for small businesses, either as providers of the system or participants in these processes. The COVID-19 experiences gave small business ODR providers important needs and opportunities to engage online technologies and to prepare for a future where such engagement will be a significant part of their practice. This article presents some of the findings from qualitative empirical research about the use of online technologies including videoconferencing tools like Zoom, Microsoft Teams, Webex or Skype by dispute resolution practitioners during the COVID-19 pandemic. Effectiveness is considered in relation to process, communication within the process and the impact of trust on perceptions of procedural fairness by users of technology. While ODR processes hold many benefits there are complexities that dispute resolution practitioners have to navigate to support fair and effective processes. Practitioners had to navigate these challenges drawing on their past experiences. Going forward, guidelines on the choice of the most appropriate technology, codes of conduct on ODR management, and general ODR practitioner training should be considered to support the effectiveness of ODR. 345

Automation of the “Identical or Nearly Identical” Test in Business Names Registration – *Timothy Magarry*

This article suggests that it is impossible to register a business name. To register, a name must be “available” in that it is not “identical or nearly identical” to an existing name. ASIC claims that this “identical or nearly identical” test is both exhaustive and automated. However, this article argues that the test is incapable of automation: it fails to specify

an order of operations and omits guidance on several matters a computer requires. The author demonstrates how a computer would approach various limbs, and offers examples of ASIC Connect search queries showing how ASIC’s software cuts corners or ignores rules altogether. The problems identified in this article have immediate ramifications. If the author’s arguments are accepted, then it is not possible to objectively apply the “identical or nearly identical” test at all. It is therefore not possible for a name to be “available”, and therefore impossible to register one. 360

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