

JULY 2013

The Authorised Reports of Decisions of
the Federal Court of Australia

THE
FEDERAL COURT
REPORTS
2012-2013

EDITOR
VICTOR KLINE
Barrister-at-Law

CONSULTING EDITOR
DAVID CATTERNS QC

REPORTERS IN THIS PART

DR OREN BIGOS
VICTOR KLINE

RODEN PRITCHARD
SARAH SOMERSET

PRODUCTION EDITOR
MYUNG COLE

VOL 210 — PART 2

PAGES 149-298

The mode of citation of this part will be:
210 FCR

TABLE OF CASES REPORTED

Part 2 — Pages 149-298

Australian Competition and Consumer Commission; TPG Internet Pty Ltd v	277
Bradken Resources Pty Ltd v Lynx Engineering Consultants Pty Ltd	21
Herrmann; Nazdall Pty Ltd v	264
HP Distribution Pty Ltd; National Union of Workers (NSW) v	250
Lynx Engineering Consultants Pty Ltd; Bradken Resources Pty Ltd v	21
Macquarie Bank Ltd; Federal Commissioner of Taxation v	164
McCracken v Phoenix Constructions (Queensland) Pty Ltd	149
National Union of Workers (NSW) v HP Distribution Pty Ltd	250
Nazdall Pty Ltd v Herrmann	264
Parmalat Australia Pty Ltd v VIP Plastic Packaging Pty Ltd	1
Phoenix Constructions (Queensland) Pty Ltd; McCracken v	149
Taxation, Federal Commissioner of v Macquarie Bank Ltd	164
TPG Internet Pty Ltd v Australian Competition and Consumer Commission	277
VIP Plastic Packaging Pty Ltd; Parmalat Australia Pty Ltd v	1

(Cases in **bold** reported in this part)



THOMSON REUTERS

© 2013 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 0813-7803

INDEX

Part 2 — Pages 149-298

BANKRUPTCY

Proceedings — Creditor’s petition — Requirement that there be a debt owing by debtor to petitioning creditor — Proof that debt still owing at time of hearing of petition — Judgment debt following trial — Set aside by appellate court before hearing of petition — Whether jurisdiction to make sequestration order — Bankruptcy Act 1966 (Cth), ss 44, 52.

McCracken v Phoenix Constructions (Queensland) Pty Ltd 149

COMPETITION AND CONSUMER LAW

Advertising — Minimum charge — Specification of — Requirement that minimum charge specified in prominent way — Meaning of “prominent” — Trade Practices Act 1974 (Cth), s 53C.

TPG Internet Pty Ltd v Australian Competition and Consumer Commission 277

INDUSTRIAL LAW

Enterprise agreement — “Greenfields agreement” — Requirements — Where employer or its holding company has already taken significant preparatory steps to establish the business — Whether an agreement is a greenfields agreement is a jurisdictional fact — Fair Work Commission required to establish that greenfields agreement exists before it can approve it as such — Fair Work Act 2009 (Cth), ss 172, 186, 187.

National Union of Workers (NSW) and Another v HP Distribution Pty Ltd and Others 250

PRACTICE AND PROCEDURE

Pleading — Meaning of — Whether points of claim, defence and reply included in — Striking out — False issue — Defence plea not of, nor affecting, a party, nor advancing defendants’ interests, and likely to cause delay, costs, and waste of Court’s time and resources — Plea not in interests of justice nor efficient disposal of proceedings — Plea struck out — Federal Court Rules 2011 (Cth), r 16.21(d), (e), Sch 1.

Nazdall Pty Ltd v Herrmann and Others 264

INDEX

TAXATION

- Income tax — Capital gains tax — Consolidated groups — Interaction between Pt IVA of the Income Tax Assessment Act 1936 (Cth) and Pt 3-90 of the Income Tax Assessment Act 1997 (Cth) — Whether Pt IVA of the 1936 Act applies to schemes involving consolidated groups — Where tax benefit obtained by subsidiary member of group — Whether subsidiary member relevant “taxpayer” for purpose of Pt IVA — Clear connection required between taxpayer and tax benefit — Whether determination and amended assessment can be issued to subsidiary member — Consideration of application and operation of relevant provisions — Income Tax Assessment Act 1936 (Cth), ss 177B, 177C, 177D, 177F — Income Tax Assessment Act 1997 (Cth), Pt 3-90.
- Federal Commissioner of Taxation v Macquarie Bank Ltd and Another* 164

WORDS AND PHRASES

- “Prominent”.
- TPG Internet Pty Ltd v Australian Competition and Consumer Commission* 277