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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Rogers v MHM Metals Ltd (FCAFC) - corporations - dishonest and fraudulent design - knowing assistance - director and his company liable to pay compensation to respondent company

Jojeni Investments Pty Ltd v Mosman Municipal Council (NSWCA) - environment and planning - existing use of land was as a "building containing flats" - appeal allowed - declaration

Ikosidekas v Karkanis (VSCA) - administrative law - bias - procedural fairness - Tribunal's decision set aside - Tribunal to be reconstituted

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Summaries With Link (Five Minute Read)

Rogers v MHM Metals Ltd [2015] FCAFC 67

Full Court of the Federal Court of Australia

Middleton, Gilmour & Gleeson JJ

Corporations - appellants appealed from single judge's order that they pay compensation to respondent pursuant to s1317H *Corporations Act 2001* in sum comprising amounts spent by respondent to purchase and refit yacht although property in yacht never passed to respondent - judge found compensation payable by director of trustee of family trust for contraventions of ss181, 182 & 183 involving misappropriation of respondent company's funds, and trustee as it was "knowingly concerned" in misconduct - held: open to primary judge to conclude ownership never passed to respondent - no error in conclusion trustee of family trust liable by reason of having given knowing assistance to fiduciary with knowledge of dishonest and fraudulent design - appeal dismissed.

[Rogers](#)

Jojeni Investments Pty Ltd v Mosman Municipal Council [2015] NSWCA 147

Court of Appeal of New South Wales

Macfarlan, Gleeson & Leeming JJA

Environment and planning - Council approved building alteration works to convert a two storey house into two flats in 1933 - appellant sought to demolish existing building and construct building containing three flats - land zoned R2 - appellant's proposed development prohibited on land zone R2 - application turned on existing use rights - primary judge declared land "has the benefit of existing use rights as two flats in a house" - appellant appealed - held: In 1933 it was possible for owner of property to use property as two residences without Council's approval - use of building as modified for residential purposes answered description of "existing use" under s106(a) *Environmental Protection and Assessment Act 1979* - characterisation of determined by having regard to purpose served by activities undertaken on land - use of building for three flats is not "different in kind" from use as a building for two flats - appropriate declaration of existing use was as a "building containing flats" - appeal allowed.

[Jojeni](#)

Ikosidekas v Karkanis [2015] VSCA 121

Court of Appeal of Victoria

Mandie & Kyrou JJA

Administrative law - bias - procedural fairness - applicant instituted proceeding in Victorian Civil and Administrative Tribunal in relation to mother seeking appointment of administrator - applicant sought leave to appeal from dismissal of application for reconstitution of Tribunal on basis of reasonable apprehension of bias and denial of procedural fairness - held: VCAT's comments went beyond interlocutory application before it and constituted apparent pre-judgment of issues yet to be decided - fair minded lay observer might reasonably apprehend VCAT as presently constituted might not bring an impartial and unprejudiced mind to resolution

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of questions to be decided at substantive hearing - appeal allowed - VCAT's order set aside - VCAT to be reconstituted pursuant to s108(2)(a) *Victorian Civil and Administrative Tribunal Act 1998*.

[Ikosidekas](#)

On Virtue

By Phillis Wheatley

O thou bright jewel in my aim I strive
To comprehend thee. Thine own words declare
Wisdom is higher than a fool can reach.
I cease to wonder, and no more attempt
Thine height t'explore, or fathom thy profound.
But, O my soul, sink not into despair,
Virtue is near thee, and with gentle hand
Would now embrace thee, hovers o'er thine head.
Fain would the heaven-born soul with her converse,
Then seek, then court her for her promised bliss.

Auspicious queen, thine heavenly pinions spread,
And lead celestial Chastity along;
Lo! now her sacred retinue descends,
Arrayed in glory from the orbs above.
Attend me, Virtue, thro' my youthful years!
O leave me not to the false joys of time!
But guide my steps to endless life and bliss.
Greatness, or Goodness, say what I shall call thee,
To give an higher appellation still,
Teach me a better strain, a nobler lay,
O Thou, enthroned with Cherubs in the realms of day!

[Phillis Wheatley](#)

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