

Monday, 10 May 2021

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

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Executive Summary (1 minute read)

Andre Lakomy as Liquidator for Energylink Holdings Pty Ltd (In Liquidation) v Charles Maxwell (NSWSC) - bankruptcy - second plaintiff obtained judgment against defendant - defendant sought order under r36.16(2)(b) *Uniform Civil Procedure Rules 2005* (NSW) to set judgment aside - no 'credible excuse for' delay - plaintiff had obtained judgment 'entirely regularly' - plaintiff had complied with directions of Court - motion dismissed

Burghley Pty Ltd v Soames & Anor (VSC) - real property - caveat - plaintiff sold property under contract of sale - first defendant lodged caveat on property's title claiming 'implied, resulting or constructive trust' - plaintiff sought caveat's removal - no basis for caveat to remain on property's title - application granted

Re Sheehan (QSC) - wills and estates - probate - COVID-19 - application for probate of informal will - 'altered regime for the execution and witnessing of wills during the COVID-19 pandemic' - testamentary capacity - probate granted

Ashton Valley Fresh Pty Ltd v Dolan (SASC) - environment and planning - statutory interpretation - pollutant discovered flowing from appellant's land into waterway - appellant was convicted of two counts of contravention of 'mandatory provisions of an environmental protection policy' - appeal dismissed

Sedgman v Kenly (WA) Pty Ltd (WASC) - liquor licensing - statutory construction - appellant sought to appeal against respondent's acquittal in respect of three charges under' *Liquor Control Act 1988* (WA) - construction of s121(4) of the Act - appeal allowed

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Summaries With Link (Five Minute Read)

Andre Lakomy as Liquidator for Energylink Holdings Pty Ltd (In Liquidation) v Charles Maxwell [2021] NSWSC 465

Supreme Court of New South Wales

Hammerschlag J

Bankruptcy - second plaintiff obtained judgment against defendant - second plaintiff 'went into liquidation' - defendant had been 'validly personally served' with second plaintiff's Summons and Commercial List Statement - defendant had not appeared hearing - Official Receiver issued bankruptcy notice to defendant - second plaintiff's liquidator filed creditor's petition 'seeking sequestration of' defendant's estate - defendant filed notice opposing petition - defendant, 'more than a year after' judgment, sought order under r36.16(2)(b) *Uniform Civil Procedure Rules 2005* (NSW) to set judgment aside - held: no 'credible excuse for' delay - plaintiff had obtained judgment 'entirely regularly' - plaintiff had complied with directions of Court - held: motion dismissed.

[Andre](#)

Burghley Pty Ltd v Soames & Anor [2021] VSC 236

Supreme Court of Victoria

McMillan J

Real property - caveat - registered proprietor was plaintiff's 'sole director and secretary' - plaintiff sold property under contract of sale - first defendant lodged caveat on property's title claiming 'implied, resulting or constructive trust' - plaintiff sought removal of caveat - whether serious question to be tried - prima facie case - onus - balance of convenience - whether proper basis for caveat's lodgement - s90(3) *Transfer of Land Act 1958* (Vic) - held: no basis for caveat to remain on property's title - application granted.

[Burghley](#)

Re Sheehan [2021] QSC 89

Supreme Court of Queensland

Burns J

Wills and estates - probate - COVID-19 - application for probate of informal will - 'altered regime for the execution and witnessing of wills during the COVID-19 pandemic' - 'audio visual link' - 'remedial power' - testamentary capacity - *COVID-19 Emergency Response Act 2020* (Qld) - ss10 & 18 *Succession Act 1981* (Qld) - *Briginshaw v Briginshaw* [1938] HCA 34 - held: probate granted.

[Re Sheehan](#)

Ashton Valley Fresh Pty Ltd v Dolan [2021] SASC 44

Supreme Court of South Australia

Lovell J

Environment and planning - pollutant discovered flowing from appellant's land into waterway -

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appellant charged with two counts of contravention of 'mandatory provisions of an environmental protection policy' ('policy') - appellant pleaded not guilty - appellant appealed under s30 *Environment, Resources and Development Court Act 1993* (SA) - s34(2) *Environmental Protection Act 1993* (SA) (EPA) - whether correct interpretation of policy - statutory construction - 'relationship between' ss124 & 127 EPA) - 'factual findings' - "frolic of his own" - scope of employment - balance of probabilities - held: appeal dismissed.

[Ashton](#)

Sedgman v Kenly (WA) Pty Ltd [2021] WASC 107

Supreme Court of Western Australia

Tottle J

Liquor licensing - statutory construction - respondent convicted of 'five offences under' *Liquor Control Act 1988* (WA) (LCA) - appellant sought to appeal against respondent's acquittal in respect of three charges under LCA - construction of s121(4) LCA - whether magistrate erred in finding respondent should be acquitted because 'the juveniles had not been 'permitted' to enter or remain on the Premises' - whether magistrate erred in finding that a person only contravened s121(4) LCA 'where a minor enters and remains on licensed premises' 'as opposed to' merely entering the premises - held: appeal allowed.

[Sedgman](#)

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