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

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Executive Summary (1 minute read)

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate; Construction, Forestry, Mining and Energy Union v Director, Fair Work Building Industry Inspectorate (HCA) - civil penalties - adjournment of proceedings - Court not precluded from receiving and accepting civil penalty submission - appeals allowed

HelensburghProperty Management Pty Ltd v Brady (NSWSC) - contract - rectification - restraint of trade - breach of employment agreement - rectification to include post-employment restraint - matter listed for hearing on damages

Actrol Parts Pty Ltd v Coppi (No 1) (VSC) - pleadings - employment contract - confidentiality agreement - leave to amend pleadings refused

Actrol Parts Pty Ltd v Coppi (No 2) (VSC) - employment contract - confidentiality agreement - repudiation of contract of employment - breach of duty of fidelity and loyalty - further hearing to determine relief, if any, to be awarded

Summaries With Link (Five Minute Read)

Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate; Construction, Forestry, Mining and Energy Union v Director, Fair Work Building Industry Inspectorate [2015] HCA 46

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Civil penalties - appeals from Full Court of the Federal Court's adjournment of civil penalty proceedings under *Building and Construction Industry Improvement Act 2005* (Cth) in which parties sought imposition of agreed penalties - whether Full Court erred in adjourning proceedings on basis decision in *Barbaro v The Queen* [2014] HCA 2. applied to civil penalty proceeding - whether *Barbaro* precluded court from receiving submission as to pecuniary penalty to be imposed - held: *Barbaro* did not apply to civil penalty proceedings - Court not precluded from receiving and accepting agreed or other civil penalty submission - appeal allowed.

[Commonwealth of Australia](#)

Helensburgh Property Management Pty Ltd v Brady [2015] NSWSC 1861

Supreme Court of New South Wales

Bergin CJ in Eq

Contract - rectification - restraint of trade - plaintiff provided property management services - first defendant employed by plaintiff as property manager until September 2015- second defendant company established by defendant in competition with plaintiff - plaintiff sought declaratory relief regarding confidential information obligations and restraint of trade covenant pursuant to employment agreement - plaintiff also sought to restrain second defendant from using confidential information provided to it by first defendant - *Restraints of Trade Act 1976* (NSW) - held: agreement to be rectified to include post-employment restraint - plaintiff established defendant breached employment agreement - matter listed for hearing on damages.

[Helensburgh](#)

Actrol Parts Pty Ltd v Coppi (No 1) [2015] VSC 670

Supreme Court of Victoria

Bell J

Pleadings - employment contract - confidentiality agreement - plaintiff sought to file further amended statement of claim in proceedings - defendant opposed most amendments - ss7, 8 & 24. *Civil Procedure Act 2010* (Vic) - held: application to amend pleadings refused - application to amend made at very late stage - explanation for lateness unsatisfactory - amendment would impose added, unfair stress and financial strain on defendant - plaintiff only claiming nominal damages in proceedings - application dismissed.

[Actrol](#)

Actrol Parts Pty Ltd v Coppi (No 2) [2015] VSC 694

Supreme Court of Victoria

Bell J

Employment contract - confidentiality agreement - plaintiff alleged defendant breached employment agreement and separate confidentiality agreement - plaintiff claimed damages against defendant - determination whether plaintiff established any causes of action - directions in relation to interpretation and application of ss28 and 29 *Civil Procedure Act 2010 (Vic)* - held: plaintiff entitled to direct defendant to take leave with pay during period of resignation notice - defendant established plaintiff repudiated contract of employment by directing him to return motor vehicle and telephone available under contract during that period - plaintiff established defendant breached his duty of loyalty and fidelity as an employee on one day because he took employment with company without communicating acceptance of repudiation until second day of employment - further hearing required to determine relief, if any, to be granted to plaintiff.

[Actrol](#)

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The Mower to the Glow-Worms

BY ANDREW MARVELL

Ye living lamps, by whose dear light
The nightingale does sit so late,
And studying all the summer night,
Her matchless songs does meditate;

Ye country comets, that portend
No war nor prince's funeral,
Shining unto no higher end
Than to presage the grass's fall;

Ye glow-worms, whose officious flame
To wand'ring mowers shows the way,
That in the night have lost their aim,
And after foolish fires do stray;

Your courteous lights in vain you waste,
Since Juliana here is come,
For she my mind hath so displac'd
That I shall never find my home.

[ANDREW MARVELL](#)

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