

Thursday, 12 September 2019

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

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Executive Summary (1 minute read)

Minogue v Victoria (HCA) - constitutional law - questions for Court's determination - s74AB *Corrections Act 1986* (Vic) not invalid - validity of s74AAA *Corrections Act* did not arise - appellant to pay costs of Special Case

Inabu Pty Ltd as trustee for the Alidas Superannuation Fund v CIMIC Group Ltd (FCA) - corporations - pleadings - respondents sought to strike out five paragraphs of 'further amended statement of claim' - four paragraphs struck out with leave to replead

Martin v Norton Rose Fulbright Australia (No 5) (FCA) - bias - application for recusal of judge from proceedings' 'further management and conduct' - application refused - no costs order

Cadence (90) Investments Pty Ltd as trustee of the GDC Discretionary Trust v Simon Dougal Chalmers (NSWSC) - consumer law - misleading or deceptive conduct - judgment for first and second plaintiffs against first and second defendants

Re Emmins (VSC) - wills and estates - plaintiff sought 'grant of letters of administration ad litem' in deceased's estate - application dismissed

Deguisa & Anor v Lynn & Ors (SASCFC) - real property - appeal against two judgments upholding restrictive covenants' enforceability over land appellants owned and prohibiting appellants from erecting dwellings despite planning approval - appeal dismissed

The Honourable Will Hodgman v Tasmanian Industrial Commission (TASSC) - judicial review - application for review of Deputy President of Tasmanian Industrial Commission (TIC)'s

decision that TIC had jurisdiction to entertain application under s50(1)(b) *State Service Act 2000*
- decision quashed

Summaries With Link (Five Minute Read)

Minogue v Victoria 2019] HCA 31

High Court of Australia

Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - appellant convicted of murder and sentenced by Supreme Court of Victoria to life in prison with 28-year non-parole period - following expiry of non-parole period appellant sought parole - parole application as yet undetermined - appellant challenged 'constitutional validity' of s74AB *Corrections Act 1986* (Vic) (Corrections Act) and constitutional validity of 74AAA *Corrections Act* (if it applied) - appellant contended provisions 'impermissibly legislatively resentenced' appellant and Victorian Parliament did not have 'legislative resentencing' power - appellant contended provisions contrary to Ch III Constitution - four questions for Court's determination - whether 74AB *Corrections Act* invalid - whether s74AAA *Corrections Act*'s validity arose and if so, whether s74AAA was invalid - determination of who should pay costs of Special Case - held: s74AB *Corrections Act* was not invalid - s74AAA *Corrections Act*'s validity did not arise - appellant to pay costs of Special Case.

[Minogue](#)

Inabu Pty Ltd as trustee for the Alidas Superannuation Fund v CIMIC Group Ltd [2019] FCA 1480

Federal Court of Australia

Jagot J

Corporations - pleadings - respondent sought to strike out five paragraphs of 'further amended statement of claim' of applicant - r16.21(1) *Federal Court Rules 2011* (Cth) - ambiguity - prejudice - alleged "forest of contingencies" - whether paragraphs 'sufficiently clear' - whether paragraph contained 'same kind of defect' which was identified in *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia Ltd* [2018] FCA 659 - held: four paragraphs struck out with leave to replead - one paragraph not struck out.

[Inabu](#)

Martin v Norton Rose Fulbright Australia (No 5) [2019] FCA 1481

Federal Court of Australia

Kerr J

Bias - costs - industrial law - consumer law - deceit - Mr Martin sought recusal of judge from proceedings' 'further management and conduct' - whether 'fair minded lay observer might reasonably apprehend' judge 'might not bring an impartial mind' to outstanding issues' resolution - whether bias arising from 'email correspondence' - *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63 - held: recusal application refused - no costs order made.

[Martin](#)

Cadence (90) Investments Pty Ltd as trustee of the GDC Discretionary Trust v Simon Dougal Chalmers [2019] NSWSC 1168

Supreme Court of New South Wales

Hammerschlag J

Consumer law - first and second plaintiffs (plaintiffs) sued first and second defendant for damages for alleged conduct by first defendant which was 'misleading or deceptive or likely to mislead or deceive', contending second defendant involved in alleged conduct - alleged conduct concerned investments which plaintiffs had made by 'subscription for shares' in third defendant - s18 Australian Consumer Law - solicitors' duties and requirements - letter containing 'highly contentious argumentative material' improperly sent by solicitor to judge - *R v Fisher* (2009) 22 VR 343 - *Cronulla-Sutherland District Rugby League Football Club Limited v Nationwide News Pty Ltd* [2013] NSWSC 494 - held: judgment for first and second plaintiff against first and second defendant.

[View Decision](#)

Re Emmins [2019] VSC 605

Supreme Court of Victoria

McMillan J

Wills and estates - plaintiff was deceased's granddaughter and a residuary beneficiary of deceased's estate - plaintiff sought 'grant of letters of administration ad litem' in deceased's estate concerning shares in companies - *Re Estate of McGown* [1946] VLR 113 - *Greenway v McKay* [1911] HCA 25 - held: application dismissed.

[Re Emmins](#)

Deguisa & Anor v Lynn & Ors [2019] SASCF 107

Full Court of the Supreme Court of South Australia

Kourakis CJ; Peek & Hughes JJ

Real property - appeal against two District Court judgments which upheld restrictive covenants' enforceability over land which appellants owned, and prohibited appellants from erecting two dwellings ('proposed development') despite planning approval - whether the restrictive covenants bound appellants - whether respondents, or any respondent, had standing to enforce restrictive covenants - whether covenants prohibited proposed development - *Electronic Conveyancing National Law (South Australia) Act 2013* (SA) - *Real Property Act 1886* (SA) - *Town Planning Act 1929* (SA) - held: appeal dismissed.

[Deguisa](#)

The Honourable Will Hodgman v Tasmanian Industrial Commission [2019] TASSC 40

Supreme Court of Tasmania

Estcourt J

Judicial review - applicant sought review of order of Deputy President of Tasmanian Industrial



Commission (TIC) that TIC had jurisdiction to entertain application under s50(1)(b) *State Service Act 2000* (SSA) - application had been made in respect of decision of Indemnity and Legal Assistance Panel to refuse 'to grant indemnity or assistance' - whether decision was 'State Service Action' - held: order for review granted - decision quashed.

[The Honourable Will Hodgman](#)

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