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

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CIVIL (Banking)

Executive Summary (1 minute read)

HC Foods Pty Ltd v Carmichael (FCA) - pre-action discovery - reasonable for prospective applicant to believe it may have right to obtain relief - pre-action discovery granted

Caird Seven Pty Ltd v Mina Attia and Shopsmart Pharmacy Franchising Pty Ltd (No 3) (NSWSC) - judgment and orders - enforcement - specific performance - deferral of appointment of receiver on basis of regime which combined two alternatives to immediate appointment

Belle Corp Equity Pty Ltd v Defined Properties Pty Ltd (NSWSC) - real property - possession - defence disclosed no defence to claim - defence struck out

Trenberth v Trenberth (SASC) - wills and estates - succession - application for advice or directions on construction of Will and Deed of Family Arrangement

Wang v HACCP Cleaning Australia Pty Ltd (SASC) - corporations - appeal against liquidator's partial rejection of proof of debt dismissed

Summaries With Link (Five Minute Read)

[HC Foods Pty Ltd v Carmichael](#) [2016] FCA 1214
Federal Court of Australia

Gilmour J

Pre-action discovery - prospective applicant in proceedings sought pre-action discovery - respondent was formerly employed by prospective applicant and had registered own company in competition with prospective applicant after being made redundant - s183(1) *Corporations Act 2001* (Cth) - O15A r6 *Federal Court Rules 1979* (Cth) - rr6, 7.23, 7.23(1), 7.23(1)(a), 7.23(1)(b), 7.25 & 20.17 *Federal Court Rules 2011* (Cth) - held: there was 'cogent foundation' in evidence that respondent used information confidential to prospective applicant - it was reasonable for prospective applicant to believe it may have right to obtain relief against respondent - granting relief would not be nugatory - Court exercised discretion to make orders sought by prospective applicant.

[HC Foods](#)

Caird Seven Pty Ltd v Mina Attia and Shopsmart Pharmacy Franchising Pty Ltd (No 3) [2016] NSWSC 1452

Supreme Court of New South Wales

Emmett AJA

Judgments and orders - enforcement - specific performance - applicant sought appointment of receiver over defendants' property for purpose of satisfying Court orders for performance of contract - defendants contended Court did not have power to appoint receiver and even if it did, the circumstances would not justify appointment of a receiver - s106 *Civil Procedure Act 2005* (NSW) - s66G *Conveyancing Act 1919* (NSW) - s420 *Corporations Act 2001* (Cth) - s57 *Equity Act 1880* (NSW) - s57(2) *Real Property Act 1900* (NSW) - s67 *Supreme Court Act 1970* (NSW) - 25(8) *Supreme Court of Judicature Act 1873* (Imp) - held: Court satisfied it had jurisdiction and power to appoint a receiver to aid orders' enforcement - Court concluded it was appropriate to defer appointment of receiver on basis of a regime combining two alternatives to immediate appointment.

[Caird](#)

Belle Corp Equity Pty Ltd v Defined Properties Pty Ltd [2016] NSWSC 1454

Supreme Court of New South Wales

Davies J

Real property - possession - plaintiff claimed possession of property on basis of default under loan agreement and mortgage - plaintiff claimed there were breaches of obligation to pay interest and repay principal sum - held: defence did not disclose defence to claim - defence struck out - amended defence to be filed and served - any evidence which defendant intended to rely on in response to plaintiff's motion for summary judgment to be served by 26 October 2016.

[Bell Corp](#)

Trenberth v Trenberth [2016] SASC 150

Supreme Court of South Australia

Bampton J

Wills and estates - succession - plaintiffs sought advice or direction pursuant to s69 *Administration and Probate Act 1919* (SA) and r131 *Supreme Court Civil Rules 2006* (SA) as to construction of words of father's Will: "my real property at John Street Tumbly Bay" and construction of words in Deed of Family Arrangement: "John Street properties" - terms of Will - terms of Deed - held: references to property or properties in Will and Deed referred to all three disputed properties which were the subject of the application - parties to be heard as to consequential orders.

[Trenberth](#)

Wang v HACCP Cleaning Australia Pty Ltd [2016] SASC 161

Supreme Court of South Australia

Doyle J

Corporations - plaintiff entered franchise agreement with first defendant for provision by plaintiff of cleaning services to company and hotel - first defendant went into liquidation - third defendant was appointed liquidator and then became administrator and subsequently Deed Administrator of the Deed of Company Arrangement - plaintiff lodged a proof of debt - liquidator partially allowed proof of debt - plaintiff appealed against rejection of proof pursuant to s1321 *Corporations Act 2001* (Cth) - held: plaintiff did not establish cause of action against first defendant - no entitlement to recover franchise fees or entitlement to damages or monetary award - appeal dismissed.

[Wang](#)

CRIMINAL

Executive Summary

Kim v The Queen (VSCA) - criminal law - Commonwealth offence - entitlement to utilitarian benefit following guilty pleas - aiding and abetting dealing with proceeds of crime - appeal against sentences dismissed

DPP (Cth) v Thomas (VSCA) - criminal law - Commonwealth offence - drug offences - entitlement to utilitarian benefit following guilty pleas - Director's appeal against sentences allowed on grounds of manifest inadequacy

Summaries With Link

DPP (Cth) v Thomas [2016] VSCA 237

Court of Appeal of Victoria

Redlich, Santamaria & McLeish JJA

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Criminal law - Commonwealth offence - one respondent pleaded guilty to attempted possession of commercial quantity of border controlled drug - other respondent pleaded guilty to importation of commercial quantity of border controlled drug - appeal concerned whether discount for utilitarian benefit of plea of guilty attracted for Commonwealth offence - Director of Public Prosecutions submitted it was not - respondents submitted discount available under s16A(2)(g) *Crimes Act 1914* (NSW) in same way as it was for State offences - whether discount to be allowed for objective utilitarian benefit of guilty plea - whether material difference between 'discount for a willingness to facilitate the course of justice' and discount for utilitarian benefit of guilty plea - effect of decision in *Cameron v The Queen* (2002) 209 CLR 339 - whether discount for guilty plea to Commonwealth offences confined to the three subjective factors stated in *Cameron* - held: Court accepted respondents' submissions that discount was available under s16A(2)(g) in same way as it was available for State offences - Director's appeals against sentences allowed on grounds of manifest inadequacy.

[DPP](#)

Kim v The Queen [2016] VSCA 238

Court of Appeal of Victoria

Redlich, Santamaria & McLeish JJA

Criminal law - Commonwealth offence - applicants pleaded guilty to 'aiding and abetting dealing with proceeds of crime worth \$50,000 or more, contrary to s400.5(1) of the Criminal Code (Cth)' - applicants sought to appeal against sentences - respondents entitled to reduced sentences due to utilitarian benefit following guilty pleas for reasons given in *DPP (Cth) v Thomas* [2016] VSCA 237 but submitted sentencing judge failed to afford them that benefit - whether sentencing judge failed to did not afford them of benefit of reduced sentences by virtue of utilitarian benefit following guilty pleas - whether failure to take into account lack of prior convictions - whether sentences offended parity principle and/or were manifestly excessive - held: no error in decision of sentencing judge - appeal dismissed.

[Kim](#)



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Scorn not the Sonnet ?

By [William Wordsworth](#)

Scorn not the Sonnet; Critic, you have frowned,
Mindless of its just honours; with this key
Shakespeare unlocked his heart; the melody
Of this small lute gave ease to Petrarch's wound;
A thousand times this pipe did Tasso sound;
With it Camöens soothed an exile's grief;
The Sonnet glittered a gay myrtle leaf
Amid the cypress with which Dante crowned
His visionary brow: a glow-worm lamp,
It cheered mild Spenser, called from Faery-land
To struggle through dark ways; and, when a damp
Fell round the path of Milton, in his hand
The Thing became a trumpet; whence he blew
Soul-animating strains—alas, too few!

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