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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)

Pipikos v Trayans (HCA) - equity - doctrine of part performance - Court not satisfied requirement of 'unequivocal referability' should be relaxed - appeal dismissed

Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited (HCA) - corporations - voluntary administration - deed of company arrangement void - appeals dismissed

Nobarani v Mariconte (HCA) - wills and estates - unrepresented appellant - claim of interest in Will - denial of procedural fairness - appeal allowed - new trial

LFDB v MS S M (FCA) - bankruptcy - bankruptcy notice used pseudonyms to describe creditor and debtor - bankruptcy notice was not a nullity - application to set aside bankruptcy notice dismissed

Ozmen Entertainment Pty Ltd v Neptune Hospitality Pty Ltd (No 3) (FCA) - judgments and orders - admiralty - joint venture - determination of four interlocutory applications in proceedings

Webster v Strang; Steiner v Strang [No 2] (NSWSC) - wills and estates - succession - six motions arising from process to determine final orders - resolution of motions - final orders determined

Romanoski v Clean Solutions Pty Ltd (VSC) - evidence - video evidence - negligence - 'unfair prejudice' - probative value - Court satisfied to show jury video evidence

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Summaries With Link (Five Minute Read)

Pipikos v Trayans [2018] HCA 39

High Court of Australia

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

Equity - doctrine of part performance - contract for sale of land - appeal concerned question whether doctrine of part performance applied where acts of part performance relied on were 'not unequivocally referable' to the 'kind of contract alleged' - whether Full Court of the Supreme Court of South Australia was correct to conclude the doctrine did not apply - whether Court should 'relax' the requirement of 'unequivocal referability' stated in *Maddison v Alderson* (1883) 8 App Cas 467 - held: Court rejected appellant's arguments - Court not satisfied to relax 'unequivocal referability' requirement in favour of 'some broader principle of equity' - appeal dismissed.

[Pipikos](#)

Mighty River International Limited v Hughes; Mighty River International Limited v Mineral Resources Limited [2018] HCA 38

High Court of Australia

Kiefel CJ, Gageler, Nettle, Gordon & Edelman JJ

Corporations - voluntary administration - appeals concerned validity of deed of company arrangement (DOCA) - DOCA provided for 'moratorium on creditors' claims' - DOCA also required administrators to 'conduct further investigations' and report, within six months, to creditors 'concerning possible variations' to DOCA - Court of Appeal of the Supreme Court of Western Australia declared DOCA void, finding it contrary to object of Pt 5.3A *Corporations Act 2001* (Cth) (Corporations Act), that it 'invalidly sought to circumvent or sidestep' requirement in s39A(6), and failed to comply with 'alleged requirement' in s444A(4)(b) Corporations Act - new submission on appeal contended that DOCA was void because administrators had not formed opinions required by s438A(b) Corporations Act at relevant time - held: appeals dismissed.

[Mighty River](#)

Nobarani v Mariconte [2018] HCA 36

High Court of Australia

Kiefel CJ; Gageler, Nettle, Gordon & Edelman JJ

Wills and estates - respondent claimed probate of will in solemn form - unrepresented appellant claimed interest in challenging handwritten will made by deceased - appeal concerned whether appellant should be granted new trial on basis of denial of procedural fairness in trial's conduct - on appeal to Court of Appeal of New South Wales, Ward JA concluded that appellant had been denied procedural fairness, but dismissed his appeal on basis a different outcome was not possible - Emmett AJA concluded appellant did not have interest in challenging Will and dismissed appeal on that basis - "substantial wrong or miscarriage" - r51.53(1) *Uniform Civil Procedure Rules 2005* (NSW) - held: appellant had interest in will and was denied procedural fairness at hearing - denial of procedural fairness was material because possibility of successful

outcome was denied to appellant - appeal allowed.

[Nobarani](#)

LFDB v MS S M [2018] FCA 1397

Federal Court of Australia

Markovic J

Bankruptcy - LFDB and SM were pseudonyms used by applicant and respondent - bankruptcy notice used the pseudonyms to describe debtor and creditor - LFDB sought to set aside the bankruptcy notice on basis it was a nullity on bases that it failed to name addressee or creditor, that its 'purported creditor' was ambiguously described, and that it could not support creditor's petition or fulfil bankruptcy's 'public interest objectives' - whether use of pseudonyms in bankruptcy notice rendered it a nullity due to 'public interest policy' - whether LFDB 'likely to be misled' as to identity of creditor - held: LFDB did not establish bankruptcy notice was a nullity - application dismissed.

[LFDB](#)

Ozmen Entertainment Pty Ltd v Neptune Hospitality Pty Ltd (No 3) [2018] FCA 1411

Federal Court of Australia

Burley J

Judgments and orders - interlocutory applications - admiralty - joint venture - four interlocutory applications in proceedings - plaintiffs renewed application for appointment of receiver and manager - second plaintiff sought payment by defendant of profits under joint venture agreement - if second plaintiff entitled to payment from profits, defendant sought that it be entitled to allowances under joint venture agreement for second plaintiff's payment of shared costs - defendant sought that plaintiffs pay security for costs - held: Court granted application for appointment of a receiver and manager, refused application for payment of profits application, refused application for payment of shared costs, and granted defendant's application for security for costs.

[Ozmen](#)

Webster v Strang; Steiner v Strang [No 2] [2018] NSWSC 1411

Supreme Court of New South Wales

Kunc J

Wills and estates - succession - six motions arising from process to determine final orders - resolution of motions - determination of final orders - provision to be made for plaintiff's accommodation - where 'burden of any additional provision should fall' - form of orders - whether to grant stays pending appeal - held: Court did not vary orders for additional provision's burden - stays granted 'on terms.

[View Decision](#)

Romanoski v Clean Solutions Pty Ltd [2018] VSC 526

Supreme Court of Victoria



Zammit J

Evidence - video evidence - negligence - plaintiff was employed by defendant - plaintiff sued defendant in negligence for alleged personal injury in course of employment - defendant filed notice of requirement for jury - plaintiff had 'significant criminal history' - defendant sought to show surveillance video of plaintiff - 'unfair prejudice' - whether video's probative value 'substantially outweighed' by danger to plaintiff of unfair prejudice - held: Court satisfied to show video evidence to jury.

[Romanoski](#)

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