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Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Neptune Hospitality Pty Ltd v Ozmen Entertainment Pty Ltd (costs) (FCAFC) - costs - Court dismissed appeal - appellant succeeded on 7 of 22 appeal grounds - respondents entirely successful 'in practical sense' and succeeded on 'all substantive issues' - appellant to pay respondents' costs on party/party basis (I B C G)

Motorola Solutions, Inc. v Hytera Communications Corporation Ltd (Adjournment) (FCA) - adjournment - patent - copyright - COVID-19 - respondents sought adjournment - hearing dates vacated (I B C G)

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (FCA) - industrial law - contraventions of s500 *Fair Work Act 2009* (Cth) and s46 *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) - determination of penalties (I B C G)

Metledge v Hopkins (FCA) - bankruptcy - determination of separate question - bankruptcy notice invalid - creditor's petition dismissed (B)

Cassarino v Cassarino (NSWSC) - wills and estates - probate - compromise - parties sought grant of probate in solemn form of '2015 Will' overlooking '2016 Will' - application granted (B)

WOTCH v VicForests (No 3) (VSC) - interlocutory injunction - plaintiff sought interlocutory

injunction in respect of 13 coupes - interlocutory injunction granted (I B C G)

Ryan v Zekas (WASC) - succession - family provision - de facto relationship - plaintiff sought provision from deceased's will - application granted - will 'redistributed to make adequate provision for plaintiff' (B)

Summaries With Link (Five Minute Read)

Neptune Hospitality Pty Ltd v Ozmen Entertainment Pty Ltd (costs) [2020] FCAFC 74

Full Court of the Federal Court of Australia

McKerracher, Markovic & Anastassiou JJ

Costs - Court dismissed appeal in proceedings - appellant did not fail 'on all issues' - appellant succeeded on 7 of 22 grounds of appeal - determination of costs - respondents sought costs of appeal 'proportionate to the extent to which it was successful' - respondents sought that costs should be apportioned one third to appellant and two thirds to respondents on party/party basis - s43 *Federal Court of Australia Act 1976* (Cth) - *N.V. Sumatra Tobacco Trading Company v British American Tobacco Services Limited* [2011] FCA 1295 - *Monie v Commonwealth (No 2)* [2008] NSWCA 15 - *The State of Victoria v Sportsbet Pty Ltd (No 2)* [2012] FCAFC 174 - whether to make 'small discount of costs' - held: respondents were entirely successful 'in practical sense' and succeeded on 'all substantive arguments' - appellant to pay respondents' costs on party/party basis.

[Neptune](#) (I B C G)

Motorola Solutions, Inc. v Hytera Communications Corporation Ltd (Adjournment) [2020] FCA 539

Federal Court of Australia

Perram J

Adjournment - patent - copyright - COVID-19 - respondents sought adjournment for 'principal reason' of 'difficulties associated with COVID-19' - location of witnesses in China - whether Chinese law prevented witnesses 'from being cross-examined via video-conferencing' while in China - applicant's intention to 'rely on other evidence' contradicting evidence of witnesses - whether exception to rule in *Browne v Dunn* - whether unfair to proceed with trial - weighing of prejudices - whether necessary to consider respondents' submission that witness had contracted COVID-29 - held: hearing dates vacated.

[Motorola](#) (I B C G)

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union [2020] FCA 549

Federal Court of Australia

Flick J

Industrial law - penalties - first and second respondents admitted contraventions of s500 *Fair*

Work Act 2009 (Cth) and s46 *Building and Construction Industry (Improving Productivity) Act 2016 (Cth)* - determination of penalties - agreement reached 'as to the appropriate range' - 'double jeopardy' - 'over-lapping conduct & inter-related contraventions' - whether an 'aggregated penalty' would be manifestly excessive - 'totality principle' - held: penalties imposed - declarations granted in form agreed.

[Australian Building and Construction Commissioner](#) (I B C G)

Metledge v Hopkins [2020] FCA 561

Federal Court of Australia

Lee J

Bankruptcy - determination of separate question - whether bankruptcy notice valid - *Kleinwort Benson Australia Limited v Crowl* [1988] HCA 34 - 'test of essentiality' - *The Australian Steel Company (Operations) Pty Ltd v Lewis* [2000] FCA 1915 - *Bonds Industries Ltd v Sing* [1999] FCA 1055 - whether address identified in bankruptcy notice 'was one at which, during the relevant period, it was reasonably practicable for the debtor to make payment or to offer to secure or compound the debt' - 'PO Box' - held: bankruptcy notice invalid - creditor's petition dismissed.

[Metledge](#) (B)

Cassarino v Cassarino [2020] NSWSC 454

Supreme Court of New South Wales

Hallen J

Wills and estates - proceedings concerned whether to grant probate of 'duly executed Will' of deceased (2015 Will), 'thereby overlooking' subsequent duly executed Will (2016 Will) - parties had reached compromise and sought order that there be grant of probate in solemn form of 2015 Will - 2015 Will's 'due execution' - testamentary capacity of deceased at time 2015 Will made - 'existence of a bona fide attack on the 2016 Will' - 'agreement of all those potentially affected' - held: Court satisfied that grant of probate in solemn form of 2015 Will should issue.

[View Decision](#) (B)

WOTCH v VicForests (No 3) [2020] VSC 220

Supreme Court of Victoria

McMillan J

Interlocutory injunction - plaintiff sought interlocutory injunction in respect of 13 coupes - plaintiff contended the coupes contained or were likely to contain a species, or habitat of species 'identified as threatened' under *Flora and Fauna Guarantee Act 1988 (Vic)* and bushfire-affected - plaintiff sought undertakings from defendant 'not to conduct harvesting operations in the subject coupes' before proceeding's hearing and determination - undertakings not provided - prima facie case - balance of convenience - held: interlocutory injunction granted.

[WOTCH](#) (I B C G)

Ryan v Zekas [2020] WASC 124

Supreme Court of Western Australia

Hill J

Succession - family provision - plaintiff contended he was in de facto relationship with deceased at time of death - deceased did not make provision for plaintiff in her will - plaintiff sought provision from deceased's estate pursuant to *Family Provision Act 1972 (WA)* (Family Provision Act) - whether plaintiff was deceased's de facto partner at time of deceased's death - whether to make family provision order under s6(1) Family Provision Act - whether adequate provision for plaintiff made in will - 'moral claim' - held: Court satisfied to make order for family provision - will 'redistributed to make adequate provision for plaintiff'.

[Ryan](#) (B)

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

A Garden Song

By: Henry Austin Dobson

HERE in this sequester'd close
Bloom the hyacinth and rose,
Here beside the modest stock
Flaunts the flaring hollyhock;
Here, without a pang, one sees 5
Ranks, conditions, and degrees.

All the seasons run their race
In this quiet resting-place;
Peach and apricot and fig
Here will ripen and grow big; 10
Here is store and overplus,—
More had not Alcinoüs!

Here, in alleys cool and green,
Far ahead the thrush is seen;
Here along the southern wall 15
Keeps the bee his festival;
All is quiet else—afar
Sounds of toil and turmoil are.

Here be shadows large and long;
Here be spaces meet for song; 20
Grant, O garden-god, that I,
Now that none profane is nigh,—
Now that mood and moment please,—
Find the fair Pierides!

https://en.wikipedia.org/wiki/Henry_Austin_Dobson

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