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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (in liquidation) (No 3) (FCA) - consumer law - misleading or deceptive conduct - false or misleading representations - unconscionable conduct - imposition of pecuniary penalties and disqualification order - declarations and orders made (I B C G)

Quickway Constructions Pty Ltd v Electrical Energy Pty Ltd (NSWSC) - security of payments - challenge to two adjudications on basis of assignment of rights failed - challenge to one of the adjudications on basis of denial of natural justice succeeded (I B C G)

Anderson v Hill (NSWSC) - succession - family provision - deceased left estate to husband - son of deceased from previous marriage refused provision from deceased's estate (B)

Beumaris Football Club v Hart & Ors and Bayside City Council v Hart & Ors (VSCA) - negligence - footballer injured on boundary fence - boundary line marked at less than 'safe prescribed measurement' from fence - Club, League and Council liable - appeal dismissed (I B C G)

R George Investments Pty Ltd v Andagali & Ors (QSC) - summary judgment - third defendant contended debt claimed against it by plaintiffs extinguished by Deed of Company Arrangement - issues raised should be dealt with at trial - summary judgment refused (I B C G)

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Deputy Commissioner of Taxation v Lafferty (WASC) - summary judgment - Deputy Commissioner of Taxation granted summary judgment in respect of debt claimed against defendant (I B C G)

Palmer v Citic Ltd (WASC) - stay - application for stay of action until 21 days after delivery of reasons in related matter - stay granted (I B C G)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (in liquidation) (No 3) [2017] FCA 1018

Federal Court of Australia

Beach J

Consumer law - Court made liability findings against first respondent and second respondent - Court found first respondent engaged in misleading or deceptive conduct under s18 Australian Consumer Law (ACL), made false or misleading representations under s29(1)(m) of the ACL and engaged in unconscionable conduct - '100% money back guarantee representation' - 'skills review representation' - 'eligibility representation' - 'refund ineligibility representation' - 'unsolicited consumer agreements' not in form required by s79 ACL or in compliance with ss86(1)(b) & (c) ACL - determination of relief and penalties - held: pecuniary penalty of \$8 million imposed on first respondent - pecuniary penalty of \$500,000 imposed on second respondent - second respondent disqualified from managing corporations seven years - declarations and orders made.

[Australian Competition and Consumer Commission](#) (I B C G)

Quickway Constructions Pty Ltd v Electrical Energy Pty Ltd [2017] NSWSC 1140

Supreme Court of New South Wales

Parker J

Security of payments - plaintiff engaged first defendant to undertake works at two substations - proceedings concerned two adjudication determinations pursuant to *Building and Construction Industry Security of Payment Act 1999* (NSW) - first defendant sent two invoices to plaintiff - first respondent had earlier entered factoring agreement with company (Bibby) pursuant to which each invoice contained notation it "had been assigned" to Bibby and asking for payment to be made to Bibby - first defendant obtained adjudication determinations - plaintiff contended factoring agreement and notations assigned first defendant's rights to Bibby such that the Act's procedure was unavailable to first defendant - plaintiff also contended adjudicator did not afford it natural justice in dealing with adjudication for one invoice - held: plaintiff's challenge to adjudications on basis of assignment failed - challenge on basis of denial of natural justice succeeded - adjudicator's decision based on view of case which plaintiff 'did not have a proper opportunity to address' - determination set aside.

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

Anderson v Hill [2017] NSWSC 1149

Supreme Court of New South Wales
Hallen J

Succession - family provision - deceased died leaving estate to defendant husband - plaintiff was son of deceased from previous marriage - plaintiff sought family provision from estate and notional estate pursuant *Succession Act 2006* (NSW) - testamentary intentions - eligibility - whether Will made adequate provision for plaintiff - competing claims - relationship of plaintiff with deceased - sizes of estate and notional estate - defendant's age and capacity - 'relation between adequacy and propriety' - held: Court satisfied deceased did not fail make adequate provision for plaintiff's proper maintenance and advancement in life - provision order refused.

[Anderson](#) (B)

Beaumaris Football Club v Hart & Ors and Bayside City Council v Hart & Ors [2017] VSCA 226

Court of Appeal of Victoria
Osborne, Beach & Kaye JJ

Negligence - first respondent footballer injured on boundary fence 'when he flew for a mark in the forward pocket of the ground' - first respondent sued applicant Club which his team was part of, applicant League in which team competed, and applicant Council, which owned and occupied reserve - team and Club occupied reserve by agreement with Council - judge found in favour of first respondent against Club, League and Council, ordering Club and League to contribute 60% of damages, and Council to contribute 40% - Club and League sought to appeal against finding of negligence, and against obligation to contribute to Council's liability - Council sought to appeal against finding of negligence and against obligation to contribute to liability of Club and League - s14B *Wrongs Act 1958* (Vic) - applicants' submissions concerned trial judge's finding that distance between boundary line marked on oval and fence failed to comply with Victorian Amateur Football Association's minimum requirement - Club was member of the Association - held: boundary line was marked at less than the 'safe prescribed measurement' from fence - failure of the Club, League, and Council to take reasonable care to ensure boundary line marked at sufficiently safe distance from fence caused first respondent's accident - appeal dismissed.

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

R George Investments Pty Ltd v Andagali & Ors [2017] QSC 116

Supreme Court of Queensland
Douglas J

Summary judgment - corporations - third defendant contended that debt amount which plaintiffs claimed against it was extinguished by a Deed of Company Arrangement - plaintiffs intended that debt be secured - however plaintiffs did not register proposed security interest under s588FL *Corporations Act 2001* (Cth) 'by the end of 20 business days after the security agreement came into force' or within six months before company (AAG), which owed the

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amount to first plaintiff, entered voluntary administration - third defendant sought summary judgment for this part of claim on basis it had no reasonable prospects of success - plaintiffs contended third defendant bound itself in separate agreement to pay AAG's debt to first plaintiff - held: matters raised should be dealt with at trial - Court not satisfied, in absence of 'clearly binding authority' and possible evidence, to decide matters summarily - summary judgment refused.

[R George Investments](#) (I B C G)

Deputy Commissioner of Taxation v Lafferty [2017] WASC 257

Supreme Court of Western Australia

Tottle J

Summary judgment - plaintiff sought summary judgment in respect of claim against defendant for tax debt - plaintiff contended debt arose due to disallowance of deductions claimed by defendant, failure to pay income tax and failure to lodge income tax return - *Income Tax Assessment Act 1936* (Cth) - *Income Tax Assessment Act 1997* (Cth) - *Taxation Administration Act 1953* (Cth) - O14 r1, O14 r2 & O14 r4 *Rules of the Supreme Court 1971* (Cth) - estoppel - unconscionability - held: defendant had no defence to plaintiff's claim - no triable issue - summary judgment granted.

[Deputy Commissioner of Taxation](#) (I B C G)

Palmer v Citic Ltd [2017] WASC 253

Supreme Court of Western Australia

Le Miere J

Stay - plaintiff was beneficial owner of all shares in Mineralogy Pty Ltd and companies (Queensland Nickel Group) - defendant was holding company of Sino Iron Pty Ltd and Korean Steel Pty Ltd - Mineralogy claimed against Sino, Korean and defendant in proceedings (CIV 1808 of 2013) - Mineralogy claimed specific performance of agreements (MRSLAs) against Sino and Korean or damages for breach of agreements - Mineralogy claimed payment of sums against defendant under guarantee or indemnity in agreement (Fortescue Co-ordination Deed) - in present action plaintiff claimed amount against defendant of loss of value in shareholding in Queensland Nickel Group caused by failure of Sino and/or Korean 'to perform their obligations under the MRSLAs' and defendant's failure to cause Sino and/or Korean to perform the obligations - plaintiff claimed defendant obliged to indemnify him in accordance with Fortescue Co-ordination Deed - defendant sought stay of present action to until 21 days after delivery of reasons in (CIV 1808 of 2013) - held: on balance of all matters Court satisfied it should grant stay as sought until 21 days after delivery of judgment in CIV 1808 of 2013

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

CRIMINAL

Executive Summary

R v SG (NSWCCA) - criminal law - assault and sexual assault - erroneous exclusion of evidence - appeal allowed

Bell v Regina (NSWCCA) - criminal law - sexual offences - real doubt that applicant committed offences - convictions quashed - acquittal verdicts entered - appeal allowed

Summaries With Link

R v SG [2017] NSWCCA 202

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; McCallum & Bellew JJ

Criminal law - respondent pleaded not guilty indictment containing counts of assault and sexual assault against wife contrary to *Crimes Act 1900* (NSW) - respondent objected to evidence of his two children - trial judge excluded the evidence - Crown appealed pursuant to s. 5F(3A) *Criminal Appeal Act 1912* (NSW) against trial judge's decision to exclude the evidence of one of the children - held: trial judge erred in finding evidence inadmissible on grounds it was not relevant, and in finding that the evidence's probative value was outweighed by danger of unfair prejudice to respondent - appeal allowed - evidence was admissible.

[R v SG](#)

Bell v Regina [2017] NSWCCA 207

Court of Criminal Appeal of New South Wales

Bathurst CJ; McCallum & N Adams JJ

Criminal law - after trial by judge alone applicant convicted of three sexual offences - applicant appealed against convictions and sentences' severity - only issue was whether trial judge's verdict was unreasonable or unsupportable by evidence - ss61I, 61L & 344A(1) *Crimes Act 1900* (NSW) - ss133(1), 159 & 293 *Criminal Procedure Act 1986* (NSW) - ss38, 39, 42 & 81(1) *Evidence Act 1995* (NSW) - inconsistencies in evidence - neighbour's evidence - admissions - intellectual impairment - held: Court concluded there was 'real doubt that the applicant committed the offence' - trial judge should have shared Court's doubt - consideration of trial judge's reasons fortified doubt - convictions quashed - acquittal verdicts entered.

[Bell](#)



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from Endymion

BY [JOHN KEATS](#)

A Poetic Romance

(excerpt)

BOOK I

A thing of beauty is a joy for ever:
Its loveliness increases; it will never
Pass into nothingness; but still will keep
A bower quiet for us, and a sleep
Full of sweet dreams, and health, and quiet breathing.
Therefore, on every morrow, are we wreathing
A flowery band to bind us to the earth,
Spite of despondence, of the inhuman dearth
Of noble natures, of the gloomy days,
Of all the unhealthy and o'er-darkened ways
Made for our searching: yes, in spite of all,
Some shape of beauty moves away the pall
From our dark spirits. Such the sun, the moon,
Trees old and young, sprouting a shady boon
For simple sheep; and such are daffodils
With the green world they live in; and clear rills
That for themselves a cooling covert make
'Gainst the hot season; the mid forest brake,
Rich with a sprinkling of fair musk-rose blooms:
And such too is the grandeur of the dooms
We have imagined for the mighty dead;
All lovely tales that we have heard or read:
An endless fountain of immortal drink,
Pouring unto us from the heaven's brink.

<https://www.poetryfoundation.org/poets/john-keats?>

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