



Friday, 1 December 2017

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)

Seiko Epson Corporation v Caridad Pty Ltd (FCA) - patents - Seiko's patent infringement action succeeded in respect of certain products - Caridad parties were joint tortfeasors - Caridad parties breached settlement deed - balance of claims dismissed (I B)

Yee v Yee (NSWCA) - succession - family provision - no error in primary judge's finding that appellant failed to establish factors warranting application - appeal dismissed (B)

Collier v Country Women's Association of New South Wales (NSWCA) - stay - application for stay of costs order made in dismissal of appeal against interlocutory decision - no basis for stay - notice of motion dismissed (I B C G)

Mortgage Results Pty Ltd v Mill save Holdings Pty Ltd (Legal Privilege) (NSWSC) - subpoena - client legal privilege not established over documents - plaintiff to have access to documents (I B C G)

Cahill v Iverson Pty Ltd; Molonglo Group (Australia) Pty Ltd v Cahill (VSC) - contract - trade and commerce - caveat - two proceedings - sale of commercial land - binding 'Agreement to Purchase' in respect of property (I B C G)

Cheshire Contractors Pty Ltd v Everett (QSC) - contract - building contract - statutory interpretation - separate question - identification of works which were 'building work' as defined

in *Queensland Building Services Authority Act 1991* (Qld) - finding made (I B C G)

Arakkal v Medical Board of Australia (WASCA) - Health Practitioner National Law - appeal against refusal to renew registration as specialist orthopaedic surgeon dismissed (I B C G)

Summaries With Link (Five Minute Read)

Seiko Epson Corporation v Caridad Pty Ltd [2017] FCA 1403

Federal Court of Australia

Burley J

Patents - trademark - consumer law - misleading or deceptive conduct - contract - Seiko commenced proceedings against third respondent and three related companies (Caridad) - Seiko contended Caridad infringed its patents' claims by importation and sale of Caridad products, infringed 'Epson' trademark, breached statutory duty, engaged in misleading and deceptive conduct, and breached settlement deed - patentee's right 'to control or limit what may be done with a patented product after it has been sold' - whether a trade mark's registered owner could bring civil proceedings for breach of 'criminal offence section' of *Trade Marks Act 1995* (Cth) - held: Seiko's patent infringement action succeeded in respect of Caridad products in certain categories - Caridad parties were liable as joint tortfeasors - Caridad had sold infringing products - appropriate to make injunctive orders - Caridad settlement parties breached settlement deed - Court rejected balance of Seiko's claims - directions

[Seiko](#) (I B)

Yee v Yee [2017] NSWCA 305

Court of Appeal of New South Wales

McColl, Gleeson & Simpson JJA

Succession - family provision - appellant was deceased's nephew - appellant commenced proceedings against respondent executors of deceased's estate, seeking family provision under Ch 3 *Succession Act 2006* (NSW) from estate and/or notional estate - appellant contended he was deceased's foster son both due to periods of joint cohabitation and relationship with deceased after the periods of cohabitation - primary judge dismissed claim, finding appellant had failed to establish factors warranting application - whether miscarriage of discretion - held: appellant failed to establish any *House v King* error in primary judge's decision - appeal dismissed

[View Decision](#) (B)

Collier v Country Women's Association of New South Wales [2017] NSWCA 303

Court of Appeal of New South Wales

Gleeson JA

Stay - application for stay of costs order made in dismissing summons seeking leave to appeal an interlocutory decision - applicant contended that if the appeal was successful, there would be

a costs order in her favour against respondent in Common Law proceedings and Equity proceedings - balance of convenience - prejudice - whether arguable grounds - held: arguability of appeal not identified - applicant did not demonstrate that costs assessment process would prevent her pursuing appeal - applicant did not establish that her appeal would be stifled due to bankruptcy if costs order not stayed - applicant did not demonstrate basis for stay - inappropriate to grant stay - notice of motion dismissed.

[View Decision](#) (I B C G)

Mortgage Results Pty Ltd v Mill save Holdings Pty Ltd (Legal Privilege) [2017] VSC 704

Supreme Court of Victoria

Derham AsJ

Subpoena - client legal privilege - two companies (Connective) objected to plaintiff's inspection of documents produced in response to three subpoenas issued to non-parties - whether documents attracted client legal privilege - whether Court should inspect documents under s133 *Evidence Act 2008* (Vic) (Evidence Act) - ss118 & 119 Evidence Act - waiver - held: privilege not established in respect of disputed documents - Court declined to inspect the documents - plaintiff granted access to documents.

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

Cahill v Iverson Pty Ltd; Molonglo Group (Australia) Pty Ltd v Cahill [2017] VSC 641

Supreme Court of Victoria

Kennedy J

Contract - trade and commerce - two proceedings concerning purported sale of commercial land to two purchasers: one purchaser was Mr Cahill, the other was Molonglo Group (Australia) Pty Ltd (Molonglo) - both purchasers claimed company (Iverson) was bound to sell them property - both purchasers had lodged caveats over property - in the 'Cahill Proceeding', Mr Cahill sought specific performance of agreement in reliance on 'Agreement to Purchase' document - in the alternative Mr Cahill sought damages for alleged misrepresentations under Australian Consumer Law), or specific performance of Agreement to Purchase - in 'Molonglo Proceeding', Molonglo sought removal of Mr Cahill's caveat and Mr Cahill counterclaimed for removal of Molonglo caveat - whether 'binding and specifically enforceable contract' for property's sale to Mr Cahill - whether Mr Cahill failed to comply with condition - whether Iverson 'disabled compliance' with condition - whether alleged representations made - whether alleged representations false - whether reliance - held: misleading and deceptive conduct claim not established - in Cahill Proceeding, Court found there was binding 'Agreement to Purchase' between parties - subject to payment of amount, Iverson to convey to Mr Cahill title in property - in Molonglo Proceeding, Molonglo's claim dismissed.

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

Cheshire Contractors Pty Ltd v Everett [2017] QSC 287

Supreme Court of Queensland

Henry J

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Contract - building contract - separate question - dispute concerning money owing in relation to plaintiff's works on defendant's property - works were preparatory to subdivision - separate question was: 'which, if any, of the alleged works referred to in the pleadings were "building work" as defined in the *Queensland Building Services Authority Act 1991* (Qld)?' - statutory interpretation - 'building' - 'structure' - 'work that is not building work' - held: finding on separate question made.

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

Arakkal v Medical Board of Australia [2017] WASCA 219

Court of Appeal of Western Australia

Murphy, Mitchell & Beech JJA

Health Practitioner National Law - appellant purportedly registered as specialist surgeon under *Medical Practitioners Act 2008* (WA) (Act) - Act repealed and replaced by National Law - Medical Board of Australia found appellant not qualified for registration under National Law and refused to renew appellant's specialist registration as orthopaedic surgeon - State Administrative Tribunal affirmed Board's decision - Tribunal found appellant was not validly registered under the Act - appellant appealed - held: Tribunal erred in construing reference to 'qualification' in National Law - however appellant's purported registration under the Act was invalid - National Law provisions relied on for asserted entitlement to registration's renewal were not engaged - appellant was not qualified for registration at time of renewal decision - appeal dismissed.

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

CRIMINAL

Executive Summary

West, Trent v R (NSWCCA) - criminal law - drug offences - supplying prohibited drug - sentencing judged erred in constraining sentencing discretion - sentence quashed - applicant resentenced

Kada v The Queen (VSCA) - criminal law - drug offences - trafficking in drug of dependence - contravention of parity principle - applicant resentenced

Summaries With Link

West, Trent v R [2017] NSWCCA 271

Court of Criminal Appeal of New South Wales

Gleeson JA; Rothman & Hamill JJ

Criminal law - supplying prohibited drug - applicant pleaded guilty to supplying prohibited drug contrary to s25(1) *Drug Misuse and Trafficking Act 1985* (NSW) - applicant filed Form 1 - applicant sentenced to head sentence of 2 years and 6 months and 1 year and 4 months non-parole period - applicant contended judge erroneously limited relevance of his 'subjective features' in respect of finding special circumstances, to determination of non-parole period, that sentence was manifestly excessive, and that sentencing judge 'erroneously constrained' sentencing discretion - 'appropriate penalty' - 'the only proper sentence' - held: the sentencing judge erred in exercise of sentencing discretion - sentencing judge erred in finding that, unless exceptional circumstances shown, a full-time custodial sentence was the only appropriate sentence - sentence quashed - applicant resentenced 18 months head sentence with non-parole period of 8 months.

[View Decision](#)

Kada v The Queen [2017] VSCA 339

Court of Appeal of Victoria

Tate & Kyrou JJA; Beale AJA

Criminal law - drug offences - trafficking in drug of dependence - applicants pleaded guilty to charges *Drugs, Poisons and Controlled Substances Act 1981* (Vic) - applicants sought leave to appeal against sentences - whether erroneous finding as to gravity of offending - whether failure to take into account that offending may not have occurred by for 'covert police operative' - whether sentences manifestly excessive - whether contravention of parity principle - held: one applicant's appeal allowed on ground of contravention of parity principle - applicant resentenced.

[Kada](#)



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Cock-Crow

By: Edward Thomas

Out of the wood of thoughts that grows by night
To be cut down by the sharp axe of light,—
Out of the night, two cocks together crow,
Cleaving the darkness with a silver blow:
And bright before my eyes twin trumpeters stand,
Heralds of splendour, one at either hand,
Each facing each as in a coat of arms:
The milkers lace their boots up at the farms.

[https://en.wikipedia.org/wiki/Edward_Thomas_\(poet\)](https://en.wikipedia.org/wiki/Edward_Thomas_(poet))

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