

Friday, 2 July 2021

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)

Tregidga v Pasma Holdings Pty Limited (FCA) - admiralty - negligence - contract - consumer law - proceedings arising from damage by fire to 'sailing motor yacht' - applicants sued respondent, contending fire caused by respondent's contractual breach or breach of 'statutory guarantee' and/or negligence of respondent's employee for which respondent was vicariously liable - originating application dismissed (I B C G)

Lansen on behalf of the Gyal Manaburru, Burdal Mingkanyi, Burdal Riley, Murrungun Wunubari, Murrungun Baluganda/Langgabany, Mambali Walangara, Mambali Ngubayin and Mambali Nangguya Estate Groups v Northern Territory of Australia (FCA) - native title - parties, under s87 *Native Title Act 1993* (Cth), sought that Court make native title determination by consent - determination made (I B C G)

Capilano Honey Ltd v Dowling (No 4) (NSWSC) - defamation - injurious falsehood - first plaintiff sued defendant for injurious falsehood, seeking damages and 'permanent restraining orders' - second plaintiff CEO of first plaintiff sued defendant for defamation or, alternatively, injurious falsehood, seeking damages and permanent restraining orders - 'verdict and judgment' for both first plaintiff and second plaintiff (I B)

Sydney Tools Pty Ltd v Neicho & Ors (NSWSC) - discovery - separate determination - plaintiff sought that defendants disclose 'categories of documents' - defendants sought 'separate determination of questions of "liability" and "relief"' - orders for disclosure granted -

defendant's application dismissed (I B C G)

Re Franks (QSC) - wills and estates - application for 'removal of the two remaining executors of deceased's will, and grant of letters of administration with will 'to an independent administrator - orders granted (B)

Summaries With Link (Five Minute Read)

Tregidga v Pasma Holdings Pty Limited [2021] FCA 721

Federal Court of Australia

Reeves J

Admiralty - negligence - contract - consumer law - proceedings arising from damage by fire to 'sailing motor yacht' - electrician employed by respondent was 'undertaking work on' sailing motor yacht's 'electrical system' during day of fire - applicants sued respondent, contending fire caused by respondent's contractual breach or breach of 'statutory guarantee' and/or negligence of respondent's employee for which respondent was vicariously liable - liability dealt with as separate question - balance of probabilities - s60 Consumer Law - whether applicants established respondent was liable for damage to sailing motor yacht - whether damage to sailing motor yacht caused by employee's negligence - held: originating application dismissed.

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

Lansen on behalf of the Guyal Manaburru, Burdal Mingkanyi, Burdal Riley, Murrungun Wunubari, Murrungun Baluganda/Langgabany, Mambali Walangara, Mambali Ngubayin and Mambali Nangguya Estate Groups v Northern Territory of Australia [2021] FCA 718

Federal Court of Australia

White J

Native title - applicant sought native title determination in respect of land and waters within boundaries of the former Nathan River Pastoral Lease (Perpetual Pastoral Lease No. 756 - parties agreed that native title determination be made by consent - parties, under s87 *Native Title Act 1993* (Cth), sought that Court make native title determination - whether Court satisfied to make native title determination as sought by parties - held: native title determination made.

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

Capilano Honey Ltd v Dowling (No 4) [2021] NSWSC 264

Supreme Court of New South Wales

Button J

Defamation - injurious falsehood - first plaintiff sued defendant for injurious falsehood, seeking damages and 'permanent restraining orders' - second plaintiff was CEO of first plaintiff - second plaintiff sued defendant for defamation or injurious falsehood, seeking damages and permanent restraining orders - if defamation established by second plaintiff against defendant, second plaintiff would not press injurious falsehood claim - publications on website - repostings on

Facebook and Twitter - "toxic and poisonous honey" - 'elements of defamation' - 'elements of injurious falsehood' - quantum - whether to grant restraining orders - *Defamation Act 2005* (NSW) - held: 'verdict and judgment' for both first plaintiff and second plaintiff.

[View Decision](#) (I B)

Sydney Tools Pty Ltd v Neicho & Ors [2021] NSWSC 752

Supreme Court of New South Wales

Lindsay J

Discovery - separate determination - plaintiff claimed, 'inter alia', 'damages, equitable compensation or an account of profits arising from' defendants' use of plaintiff's confidential information - proceedings concerned determination of 'two competing notices of motion' - plaintiff sought that defendants disclose 'categories of documents' - defendants sought 'separate determination of questions of "liability" and "relief"' - held: orders for disclosure granted - defendant's application dismissed.

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

Re Franks [2021] QSC 134

Supreme Court of Queensland

Jackson J

Wills and estates - application for 'removal of the two remaining executors of' deceased's will, and grant of letters of administration with will 'to an independent administrator - s6 *Succession Act 1981* (Qld) - conflict - 'differing personal interests' - 'counter-veiling factor of the testator's wishes' - held: orders granted.

[Re Franks](#) (B)

Summaries With Link



Inscription for a Fountain on a Heath

By: Samuel Taylor Coleridge

This Sycamore, oft musical with bees,—
Such tents the Patriarchs loved! O long unharmed
May all its agèd boughs o'er-canopy
The small round basin, which this jutting stone
Keeps pure from falling leaves! Long may the Spring,
Quietly as a sleeping infant's breath,
Send up cold waters to the traveller
With soft and even pulse! Nor ever cease
Yon tiny cone of sand its soundless dance,
Which at the bottom, like a Fairy's Page,
As merry and no taller, dances still,
Nor wrinkles the smooth surface of the Fount.
Here Twilight is and Coolness: here is moss,
A soft seat, and a deep and ample shade.
Thou may'st toil far and find no second tree.
Drink, Pilgrim, here; Here rest! and if thy heart
Be innocent, here too shalt thou refresh
Thy spirit, listening to some gentle sound,
Or passing gale or hum of murmuring bees!

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

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