

Friday, 2 August 2019

## 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)

**Liberation Developments Pty Ltd v Lomax Group Pty Ltd** (FCA) - patent - claim of infringement of patent - 'exclusive rights' - 'exclusive grant' - claim and cross-claim dismissed (I B)

**Wang v Australian Securities and Investments Commission** (FCA) - corporations - administrative law - appellant 'permanently banned' by respondent's delegate 'from providing financial services' - appeal dismissed (I B)

**Horswill v McClellan (No 2)** (NSWSC) - costs - contract - Court found plaintiffs 'entitled to specific performance of' oral agreement for purchase of part of adjoining property of defendants - first defendant to pay plaintiffs' costs on ordinary basis (I B)

**Re Tsaousis** (VSC) - costs - plaintiff sought grant of probate of deceased's will - plaintiff conceded deceased lacked testamentary capacity - proceedings dismissed - plaintiff to pay defendant's costs on indemnity basis - plaintiff to bear own costs without indemnity from deceased's estate (B)

**Rozenblit v Vainer** (VSCA) - freezing orders - security for costs - two applications - applicants granted freezing orders - respondents refused security for costs (I B)

**Conservation Council of WA Inc v The Hon Stephen Dawson MLC, Minister for**

**Environment; Disability Services (WASCA)** - environment and planning - statutory construction - appellants contended Minister's statement approving project's implementation invalid due to breach of s45(6)(a)(ii) *Environmental Protection Act 1986* (WA) - appeal dismissed (I B C G)

**Whithear v Australian Capital Territory (ACTSC)** - preliminary discovery - application for preliminary discovery order under r651 *Court Procedures Rules 2006* (ACT) granted to plaintiff against respondent (I)

## Summaries With Link (Five Minute Read)

### **Liberation Developments Pty Ltd v Lomax Group Pty Ltd [2019] FCA 1180**

Federal Court of Australia

Greenwood J

Patent - first applicant was patentee of patent - second applicant was first applicant's 'exclusive licensee' - applicants sought declaration that respondent infringed claims of patent - applicants contended infringement of 'exclusive rights' which s13 *Patents Act 1990* (Cth) conferred on patentee - applicants sought injunction to restrain respondents from 'exploiting and thus infringing' exclusive rights, delivery up of "Lomax Supported Hoarding" components 'and related materials', 'pecuniary remedies' and 'additional damages' - construction of claims of patent - identification of claims' 'essential integers' - whether 'Lomax Hoarding System' embodied claims' essential integers - held: claim and cross-claim dismissed.

[Liberation](#) (I B)

### **Wang v Australian Securities and Investments Commission [2019] FCA 1178**

Federal Court of Australia

Bromwich J

Corporations - appellant 'permanently banned' by respondent's delegate 'from providing financial services' - Administrative Appeals Tribunal affirmed delegate's decision - appellant appealed - whether 'illogical or irrational findings' - whether 'legal unreasonableness' - whether "no evidence" - whether appellant was 'of good fame or character' - whether 'dishonest act' - whether appellant's conduct 'in relation to a financial product or service' - *Corporations Act 2001* (Cth) - held: appeal dismissed.

[Wang](#) (I B)

### **Horswill v McClellan (No 2) [2019] NSWSC 964**

Supreme Court of New South Wales

Darke J

Costs - Court found plaintiffs 'entitled to specific performance of' an oral agreement for purchase of part of adjoining property of defendants - plaintiffs sought that first defendant pay their costs on indemnity basis, contending 'unreasonable conduct' by first defendant from proceedings'

outset, and that first defendant should have known 'he had no real prospect of success' in resistance of plaintiffs' claim - held: unreasonable conduct not established - first defendant to pay plaintiffs' costs on ordinary basis.

[View Decision](#) (I B)

## **Re Tsaousis [2019] VSC 511**

Supreme Court of Victoria

McMillan J

Costs - wills and estates - plaintiff sought grant of probate of deceased's will - defendant objected to grant - plaintiff conceded deceased lacked testamentary capacity - proceedings dismissed - determination of costs - plaintiff did not oppose order for payment of costs of defendant on standard basis, to be paid out of deceased's estate - defendant sought costs on indemnity basis and that plaintiff bear own costs without indemnity from deceased's estate - s24(1) *Supreme Court Act 1986* (Vic) - O 63 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: plaintiff to pay defendant's costs on indemnity basis - plaintiff to bear own costs without indemnity from deceased's estate.

[Re Tsaousis](#) (B)

## **Rozenblit v Vainer [2019] VSCA 164**

Court of Appeal of Victoria

McLeish & Niall JJA

Freezing orders - security for costs - two applications - applicant sought freezing order - respondents sought security for costs - O37A *Supreme Court (General Civil Procedure) Rules 2015* (Vic) (Rules) - r64.38(4) Rules - *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 - *Timbercorp Finance Pty Ltd (in liq) v Tomes* [2015] VSCA 322 - held: freezing orders granted - security for costs refused.

[Rozenblit](#) (I B)

## **Conservation Council of WA Inc v The Hon Stephen Dawson MLC, Minister for Environment; Disability Services [2019] WASCA 102**

Court of Appeal of Western Australia

Buss P; Beech & Pritchard JJA

Environment and planning - statutory construction - appellants contended statement of Minister which approved project's implementation was invalid due to breach of s45(6)(a)(ii) *Environmental Protection Act 1986* (WA) (EPA Act) - whether erroneous construction of EPA Act - whether to accept appellants' construction of s45(6)(a) EPA Act - challenges to fact-finding - held: appeal dismissed.

[Conservation Council](#) (I B C G)

## **Whithear v Australian Capital Territory [2019] ACTSC 195**

Supreme Court of the Australian Capital Territory

Crow AJ

# Benchmark

Preliminary discovery - cyclist injured while riding in park when kangaroo jumped into wheel - applicant, pursuant to s68(1)(a) *Civil Law (Wrongs) Act 2002 (ACT)* (CLWA), sought from respondent 'copies of certain documents' - alternatively applicant sought preliminary discovery order under r651 *Court Procedures Rules 2006 (ACT)* (Rules) - "about the accident" - whether proper basis for Court's exercise of discretion under r651(5) Rules - interests of justice - held: application under s68(1)(a) failed - Court satisfied to order respondent to produce documents pursuant to application under r651(5) Rules.

[Whithear \(I\)](#)

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

## **The Gardener 85**

**By:** Rabindranath Tagore

Who are you, reader, reading my poems an hundred years hence?

I cannot send you one single flower from this wealth of the spring, one single streak of gold from yonder clouds. Open your doors and look abroad.

From your blossoming garden gather fragrant memories of the vanished flowers of an hundred years before.

In the joy of your heart may you feel the living joy that sang one spring morning, sending its glad voice across an hundred years.

[https://en.wikipedia.org/wiki/Rabindranath\\_Tagore](https://en.wikipedia.org/wiki/Rabindranath_Tagore)

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