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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)

Sovereign Point Pty Ltd v Gu (No 2) (FCA) - default judgment - joint venture - first respondent sought to set aside default judgment - application dismissed (I B C G)

Habrok (Dalgara) Pty Ltd v Gascoyne Resources Ltd (FCA) - corporations - plaintiff sought termination of deed of company arrangement - proceeding dismissed (B C I)

Storey v Commissioner of Police, NSW Police Force (NSWCA) - judicial review - interrogatories - applicant sought to appeal against refusal of application 'to administer interrogatories' - applicant sought stay pending matter's determination - notice of motion and summons dismissed (I B C G)

Jonval Builders Pty Ltd v Commissioner for Fair Trading (NSWCA) - consumer law - proceedings concerning purchases of dwellings - respondent granted 'declaratory and compensatory orders' - appeal dismissed (B C I)

Acciona Infrastructure Australia Pty Ltd v Holcim (Australia) Pty Ltd (NSWSC) - security of payments - plaintiff challenged second defendant's adjudication determination - adjudication void and quashed (I B C G)

Midson & Anor v State of Victoria (VSC) - 'unlawful arrest and detention' - trespass - malicious prosecution - 'collateral abuse of the legal process' - separate determination of liability

and damages refused - police diary discoverable (I B C G)

Withers v Chalmers Industries Pty Ltd (VSC) - administrative law - judicial review - plaintiff sought to quash opinion of Medical Panel - decision quashed (I B G)

Summaries With Link (Five Minute Read)

Sovereign Point Pty Ltd v Gu (No 2) [2020] FCA 1377

Federal Court of Australia

Davies J

Default judgment - joint venture - shareholder agreement - default judgment entered against first and second respondents under r5.23(2)(c) *Federal Court Rules 2011* (Cth) (Rules) for failure 'to attend case management hearings' and failure to file and serve defence by certain date - first respondent, pursuant to r39.05 Rules, sought to set default judgment aside - whether 'defence of sufficient merit' disclosed by evidence - explanation for default - whether application promptly made - whether prejudice to plaintiff if judgment set aside 'which could not be adequately compensated for' by costs award and provision of security - held: application dismissed.

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

Habrok (Dalgara) Pty Ltd v Gascoyne Resources Ltd [2020] FCA 1395

Federal Court of Australia

Beach J

Corporations - plaintiff sought termination of deed of company arrangement (DOCA) - DOCS executed by 'first to seventh defendants' ('GCY Group') and eighth defendant (administrators) - plaintiff also sought liquidators' appointment - ss445D & 447A *Corporations Act 2001* (Cth) - whether power to terminate DOCA enlivened and, if so, whether to exercise discretion to terminate DOCA - held: proceeding dismissed.

[Habrok](#) (B C I)

Storey v Commissioner of Police, NSW Police Force [2020] NSWCA 225

Court of Appeal of New South Wales

Basten JA

Judicial review - interrogatories - applicant 'former police officer' removed by respondent - applicant sought review of removal under s181E *Police Act 1990* (NSW) - proceedings dismissed - applicant, in Common Law Division, challenged proceedings' dismissal - applicant, by interlocutory application, sought permission 'to administer interrogatories' - application dismissed - applicant sought to appeal against dismissal of application - proceedings in Common Law Division had been heard and judgment reserved - applicant sought stay of proceedings in Common Law Division pending matter's determination - held: notice of motion and summons seeking stay dismissed.

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

Jonval Builders Pty Ltd v Commissioner for Fair Trading [2020] NSWCA 233

Court of Appeal of New South Wales

Bathurst CJ; Meagher & Leeming JJA

Consumer law - respondent sought relief and "other orders" under former s72 *Fair Trading Act* 1987 (NSW) and s237 Australian Consumer Law for compensation of 'named consumers' - respondent contended consumers purchased '(so called) moveable dwelling' from first appellant on basis of appellants' 'misleading or deceptive or unconscionable conduct' - primary judge made 'declaratory and compensatory orders' - appellants appealed - 'rescission in equity for fraudulent misrepresentation' - whether orders within requirement of s237(2) Australian Consumer Law - whether quantification of loss a precondition to making of orders under s237 Australian Consumer Law - whether unconscionable conduct by third appellant - held: appeal dismissed.

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

Acciona Infrastructure Australia Pty Ltd v Holcim (Australia) Pty Ltd [2020] NSWSC 1330

Supreme Court of New South Wales

Hammerschlag J

Security of payments - plaintiff challenged second defendant's adjudication determination concerning defendant's 'Payment Claim' 'for concrete allegedly supplied to' plaintiff 'but not paid for' - whether there was 'valid payment claim or valid adjudication application' - whether lack of jurisdiction - whether failure to afford procedural fairness - whether misapprehension of nature of task - whether failure to discharge statutory task to be satisfied defendant had substantiated claims - natural justice - *Building and Construction Industry Security of Payment Act 1999* (NSW) - held: adjudication void and quashed.

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

Midson & Anor v State of Victoria [2020] VSC 624

Supreme Court of Victoria

Forbes J

'Unlawful arrest and detention' - trespass - malicious prosecution - 'collateral abuse of the legal process' - plaintiffs sought damages for 'psychiatric injuries' - defendant sought that trial be split - defendant sought determination of liability in one hearing and determination of damages at 'later hearing if required' - defendant also objected on basis of relevance to discovery of 'police diary' of first plaintiff - rr29 & 47.04 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: separate determination of liability and damages refused - police diary discoverable.

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

Withers v Chalmers Industries Pty Ltd [2020] VSC 635

Supreme Court of Victoria

Richards J

Administrative law - judicial review - plaintiff sought to quash opinion of Medical Panel that he



was 'not entitled to compensation' concerning injury (January 2016 injury) - plaintiff contended Panel had 'assessed the wrong injury' - plaintiff also contended Panel 'did not appreciate' defendant's admission of January 2016 injury - plaintiff also contended Panel did not afford procedural fairness, and that Panel's reasons were inadequate - s304 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - held: Panel did not answer questions referred to it, did not have regard to defendant's admission of 'claimed injuries', and was 'procedurally unfair' in departure from admission - opinion quashed - questions remitted to 'differently constituted' Panel.

[Withers](#) (I B G)

CRIMINAL

Executive Summary

Summaries With Link



Fragment of an Ode to Maia

By: John Keats

MOTHER of Hermes! and still youthful Maia!
 May I sing to thee
As thou wast hymnèd on the shores of Baiæ?
 Or may I woo thee
In earlier Sicilian? or thy smiles 5
Seek as they once were sought, in Grecian isles,
By bards who died content on pleasant sward,
 Leaving great verse unto a little clan?
O give me their old vigour! and unheard
 Save of the quiet primrose, and the span 10
 Of heaven, and few ears,
Rounded by thee, my song should die away
 Content as theirs,
Rich in the simple worship of a day.

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