




Friday, 3 July 2020

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)

All Class Insurance Brokers Pty Ltd (in liquidation) v Chubb Insurance Australia Limited (FCA) - security for costs - insurance - respondent sought that applicant provide security for its costs of proceedings - interlocutory application granted (I B)

Bondi Road Development Pty Ltd v Selected Properties Pty Ltd (NSWSC) - settlement agreement - joint venture - plaintiff sought declaration Notice of Termination 'void and of no effect' and declarations of entitlement to specific performance of Settlement Agreement - plaintiff also sought damages - plaintiff entitled to relief sought (B C I G)

G v G (No. 2) (NSWSC) - mental health - orders confirming NSW Trustee's power to invest or authorise investment of a 'protected estate' in 'Regulated ("Retail") Superannuation Fund' governed by SISA (B)

Defteros v Google LLC (Costs) (VSC) - costs - defamation - two proceedings - 'mixed success' - apportionment - costs orders made (I B C G)

Whitelaw & Ors v Hookey & Anor (QCA) - security for costs - stay - leases and tenancies - applicants to pay security for costs - stay refused - orders made (I B C G)

Takhar v Commissioner of State Taxation (SASC) - taxation - Minister disallowed objection to land tax assessment - 'primary production exceptions' in *Land Tax Act 1936* (SA) - appeal

allowed (I B C G)

Re Magistrate Martin Crawford; Ex Parte McCormack (WASC) - judicial review - leases and tenancies - applicant sought review of decision to terminate lease and require delivery of vacant possession - application dismissed (I B C G)

Summaries With Link (Five Minute Read)

All Class Insurance Brokers Pty Ltd (in liquidation) v Chubb Insurance Australia Limited [2020] FCA 840

Federal Court of Australia

Allsop CJ

Security for costs - insurance - applicant sought that respondent indemnify it under insurance policy which respondent issued 'in relation to theft by employees' - respondent, by interlocutory application, sought that applicant provide security for its costs - s1335(1) *Corporations Act 2001* (Cth) - s56(1) *Federal Court of Australia Act 1976* (Cth) - r19.01 *Federal Court Rules 2011* (Cth) - claim's strength - impecuniosity - delay - 'good faith' - quantum - held: security for costs granted.

[All Class Insurance](#) (I B)

Bondi Road Development Pty Ltd v Selected Properties Pty Ltd [2020] NSWSC 845

Supreme Court of New South Wales

Stevenson J

Settlement agreement - joint venture - specific performance - parties entered going venture agreement concerning development of 'residential unit building' - plaintiff sought specific performance of joint venture agreement - parties settled - first and second defendants 'purported to terminate 'Settlement Agreement' by service of "Notice of Termination of Settlement Agreement of 10 March 2020" on plaintiff - plaintiff sought declaration Notice of Termination was 'void and of no effect', declaration of entitlement to specific performance of Settlement Agreement, declaration of entitled to have first and second defendants 'specifically perform their obligations under' Settlement Agreement', and damages - held: plaintiff entitled to relief sought.

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

G v G (No. 2) [2020] NSWSC 818

Supreme Court of New South Wales

Lindsay J

Mental health - plaintiffs were managers of first defendant's 'protected estate' - plaintiffs, by notice of motion, sought confirmation whether NSW Trustee had 'power to authorise' plaintiffs to invest protected estate in "Regulated Superannuation Fund", as defined in s19 *Superannuation Industry (Supervision) Act 1993* (Cth) (SISA) - "Retail Superannuation

Fund" - "protected person" - s38 *NSW Trustee and Guardian Act 2009* (NSW) - held: orders made confirming NSW Trustee's power to invest or authorise investment of a protected estate in 'Regulated ("Retail") Superannuation Fund' governed by SISA.

[View Decision](#) (B)

Defteros v Google LLC (Costs) [2020] VSC 324

Supreme Court of Victoria

Richards J

Costs - defamation - two proceedings - Court gave judgment for plaintiff in '2016 proceeding' and dismissed '2017 proceeding' - determination of costs - parties accepted they had 'mixed success' - principles in *Chen v Chan* [2009] VSCA 233 - 'apportionment of costs to achieve substantial justice' - whether indemnity costs appropriate - whether unreasonable failure to make settlement offer - *Hockey v Fairfax Media Publications Pty Ltd (No 2)* [2015] FCA 750 - s40 *Defamation Act 2005* (Vic) - held: costs orders made.

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

Whitelaw & Ors v Hookey & Anor [2020] QCA 145

Court of Appeal of Queensland

Morrison JA

Security for costs - stay - leases and tenancies - proceedings concerning 'ownership and operation of a child care centre' - respondents sought that applicants pay security for costs of appeal proceedings, and stay of proceedings if applicants did not pay, pursuant to undertaking, 'arrears of rent under' lease - whether contempt - whether breach of trust - impecuniosity - stultification - 'overlap between' appellants - quantum - *COVID-19 Emergency Response Act 2020* (Qld) - *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Qld) - held: applicants to pay security for costs - stay refused - orders made.

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

Takhar v Commissioner of State Taxation [2020] SASC 119

Supreme Court of South Australia

Blue J

Taxation - Minister disallowed objection to land tax assessment - appellants contended land exempt under 'primary production exceptions' in *Land Tax Act 1936* (SA) - three lots - 'Burton land' - whether lot or lots and/or Burton land used for 'business of primary production' in relevant assessment years - held: appeal allowed - Court to hear parties concerning 'substitute assessment'.

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

Re Magistrate Martin Crawford; Ex Parte McCormack [2020] WASC 236

Supreme Court of Western Australia

Hill J

Judicial review - leases and tenancies - applicant sought review of decision to terminate lease and require delivery of vacant possession - s36 *Magistrates Court Act 2004 (WA)* - O56A *Rules of the Supreme Court 1971 (WA)* - whether jurisdiction under s71(2)(b) *Residential Tenancies Act 1987 (WA)* (RTA) was misconstrued - whether erroneous finding that applicant did not satisfy requirements of s32 RTA when applicant had not brought application under s32 RTA - held: application dismissed.

[Re Magistrate](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Motor Bus

By: Alfred Denis Godley

What is this that roareth thus?

Can it be a Motor Bus?

Yes, the smell and hideous hum

Indicat Motorem Bum!

Implet in the Corn and High

Terror me Motoris Bi:

Bo Motori clamitabo

Ne Motore caedar a Bo—

Dative be or Ablative

So thou only let us live:

Whither shall thy victims flee?

Spare us, spare us, Motor Be!

Thus I sang; and still anigh

Came in hordes Motores Bi,

Et complebat omne forum

Copia Motorum Borum.

How shall wretches live like us

Cincti Bis Motoribus?

Domine, defende nos

Contra hos Motores Bos!

[https://en.wikipedia.org/wiki/A. D. Godley](https://en.wikipedia.org/wiki/A._D._Godley)

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