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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)

Guildford International Group Pty Ltd, in the matter of Aviation 3030 Pty Ltd v Aviation 3030 Pty Ltd (FCA) - security for costs - oppression - judicial review - security for costs ordered in second defendant's favour (I B C G)

Multisteps Pty Ltd v Specialty Packaging Aust Pty Ltd (FCA) - intellectual property - first and second respondents infringed applicant's patents and designs in respect of containers (I B C G)

John James McNicholas v Triada Sarandopoulos (NSWSC) - partnership - joint venture - taking of accounts in respect of partnership was barred by *Limitation Act 1969* (NSW) (I B C G)

Commissioner of Police v Cole (No. 2) (NSWSC) - judgments and orders - portions of closed court section of transcript suppressed pursuant to s7 *Courts Suppression and Non-Publication Orders Act 2010* (NSW) (I B C G)

ACE Demolition & Excavation Pty Ltd v Mehajer (NSWSC) - judgment and orders - serious question to be tried whether defence to claim on basis signatures on documents were not genuine - application to vacate hearing date granted (I B C G)

Karam v Palmone Shoes Pty Ltd (VSC) - vexatious proceedings - application to revoke or vary 'extended litigation restraint order' dismissed (I B C G)

Reliance Franchise Partners Pty Ltd v Ford Kinter & Associates Pty Ltd (VSCA) - contract - sale agreement - contractual construction - appellant obliged to pay instalments under sale agreement - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Guildford International Group Pty Ltd, in the matter of Aviation 3030 Pty Ltd v Aviation 3030 Pty Ltd [2018] FCA 600

Federal Court of Australia

O'Callaghan J

Security for costs - oppression - plaintiff sought judicial review of Registrar's order that plaintiff pay security for second defendant's costs - second defendant contended pursuant to s1335 *Corporations Act 2011* (Cth) and s56 *Federal Court of Australia Act 1976* (Cth) that plaintiff should be ordered to pay security for costs in sum greater than that which was ordered by Registrar - plaintiff had no assets, and accepted it would be unable to pay costs of second defendant if successful - held: second defendant had correctly identified 'critical considerations': plaintiff's impecuniosity, lack of evidence of 'financial position' of persons standing behind plaintiff and failure of undertaking by plaintiff to provide 'meaningful security' - security granted in second defendant's favour in amount ordered by Registrar.

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

Multisteps Pty Ltd v Specialty Packaging Aust Pty Ltd [2018] FCA 587

Federal Court of Australia

Jagot J

Intellectual property - patents - plaintiff claimed that first respondent infringed its patents and designs by supply of containers - whether patents and designs were valid - whether first respondent infringed patents and designs - whether second respondent 'authorised and thus infringed' the patents and designs - novelty - innovative step - distinctiveness of design - second respondent's role in relation to first respondent - whether evidence of second respondent's role in alleged infringement by first respondent - whether basis for Court to conclude second respondent 'sanctioned, approved or countenanced' alleged infringement by first respondent - *Designs Act 2003* (Cth) - *Evidence Act 1995* (Cth) - *Intellectual Laws Amendment (Raising the Bar) Act 2012* (Cth) - *Patents Act 1990* (Cth) - held: patents and designs were valid - first respondent infringed patents and designs - second respondent infringed patents and designs by authorising first respondent's infringement.

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

John James McNicholas v Triada Sarandopoulos [2018] NSWSC 576

Supreme Court of New South Wales

Emmett AJA

Partnership - joint venture - limitations - plaintiff sought pursuant to s35 *Partnership Act 1892*

(NSW) dissolution of partnership between him and defendant or order that partnership was dissolved - plaintiff also sought taking of accounts and an enquiry into aspects of partnership - plaintiff also sought certain declarations - statement of claim contended that parties had orally agreed to enter partnership on certain alleged terms - whether there was a partnership agreement - if there was a partnership agreement, whether partnership dissolved prior to 15 August 2010 such that taking of accounts was barred by s15 *Limitation Act 1969* (NSW) (Limitation Act) - held: partnership came into existence, but taking of accounts was barred by Limitation Act - unclear whether any utility in other relief claimed.

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

Commissioner of Police v Cole (No. 2) [2018] NSWSC 561

Supreme Court of New South Wales

Davies J

Judgments and orders - suppression - non-publication - confidential affidavit of police officer read during hearing in proceedings - Court made order under s7 *Courts Suppression and Non-Publication Orders Act 2010* (NSW) in respect of material annexed to affidavit - Court also closed the Court during counsel's submissions dealing with the annexed material - Commissioner sought to 'suppress the whole of the closed court section of the transcript' on basis there could be a 'reprisal attack' against person whose identity was disclosed by the annexure - analogies of public interest immunity and private informers - whether to release portions of close court transcript - whether suppression should be limited to matters identified in application's supporting affidavit - held: portions of transcript suppressed pursuant to s7 *Courts Suppression and Non-Publication Orders Act 2010* (NSW).

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

ACE Demolition & Excavation Pty Ltd v Mehajer [2018] NSWSC 579

Supreme Court of New South Wales

Stevenson J

Judgments and orders - vacation of hearing date - plaintiff sought judgment against three defendants pursuant to documents alleged to be guarantees, which defendants allegedly signed - second and third defendants sought vacation of hearing dates on basis that signatures on documents were not genuine - held: Court satisfied that signatures of second and third defendants on documents appeared 'to be different' from signatures on affidavits - Court satisfied there was serious question to be tried whether second and third defendants had a defence to claim - justice of the case required vacation of hearing date.

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

Karam v Palmone Shoes Pty Ltd [2018] VSC 206

Supreme Court of Victoria

Ginnane J

Vexatious proceedings - 'extended litigation restraint order' - application sought to vary or restrain extended litigation restraint order - regime under *Vexatious Proceedings Act 2014* (Vic)

Benchmark

- whether restraint order 'illegal' - whether applicant had sufficient time to file material - whether restraint order in violation of s24 *Victorian Charter of Human Rights and Responsibilities 2006* - whether new evidence justifying order's revocation - held: application dismissed.

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

Reliance Franchise Partners Pty Ltd v Ford Kinter & Associates Pty Ltd [2018] VSCA 106

Court of Appeal of Victoria

Whelan, Niall & Hargrave JJA

Contract - respondent conducted 'general insurance brokerage business' - by sale agreement respondent sold 'client book' to appellant - 'purchase price' payable in three instalments - first instalment paid - appellant refused to pay second instalment, or to engage in 'contractual process' for determination of 'adjusted amount' of second instalment - respondent treated appellant's refusal to pay as repudiation of sale agreement, which it accepted - respondent brought proceedings against appellant, claiming second and third instalments as debt under sale agreement - Court found in respondent's favour, rejecting appellant's defence based on construction of contract, and defence on basis that instalments' amounts should be adjusted to zero or an amount less than that claimed by respondent - appellant sought to appeal against County Court's findings in respect of its defence based on construction of sale agreement - whether 'adjustment process' under contract had been completed - whether Court should undertake adjustment process - whether, in the absence of adjustment of purchase price under sale agreement, instalments must be paid - held: Court preferred respondent's construction of contract to appellant's - appeal dismissed.

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

CRIMINAL

Executive Summary

Huang v R (NSWCCA) - criminal law - sentencing - proceeds of crime - erroneous failure to take into account guilty plea's utilitarian value - appeal against sentence allowed - appellant resentenced

Stocco, Gino v R; Stocco, Mark v R (NSWCCA) - criminal law - sentencing - destroying or damaging property - murder - unlawfully discharging firearm - appeals against sentences dismissed

Summaries With Link

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Huang v R [2018] NSWCCA 57

Court of Criminal Appeal of New South Wales

Bathurst CJ, Beazley P, Hoeben CJ at CL; McCallum & Bellew JJ

Criminal law - sentencing - proceeds of crime - appellant sentence to 8 years in prison with 5 year non-parole period following plea of guilty for dealing in proceeds of crime contrary to s400.3(1) Criminal Code (Cth) - sentencing judge, in sentencing appellant, took into account 9 more offences under *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (s16BA offences) - appellant sought to appeal against sentence, contending judge erred in consideration of s16BA offences, and erred in approach to guilty plea - appellant also contended sentence manifestly excessive - appeal heard at same time as *Xiao v R [2018] NSWCCA 4 n* which Court found that plea's utilitarian value was a relevant consideration in sentencing for Commonwealth offence - whether erroneous consideration of s16BA offences - held: sentencing judge erred by not taking plea's utilitarian value into account - no error in the taking into account of s16BA offences - appeal allowed - appellant resentenced.

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Stocco, Gino v R; Stocco, Mark v R [2018] NSWCCA 77

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Johnson & Schmidt JJ

Criminal law - sentencing - destroying or damaging property - murder - unlawfully discharging firearm - applicants were father and son - applicants pleaded guilty to recklessly destroying property in company, murder and two counts of discharging firearm with intent to prevent lawful apprehension - additional offences included on Form 1 also dealt with in respect of each applicant - applicant (Gino Stocco) sentenced to 28 years in prison with 12 year balance - applicant (Mark Stocco) sentenced to 30 years in prison with 10 year balance - Gino Stocco contended sentencing judge failed to take into account totality principles, and that aggregate sentence was manifestly excessive - Mark Stocco contended sentencing judge failed to take into account his assistance to law enforcement authorities, prospects of rehabilitation, principles of totality, and disparity between non-parole periods imposed on applicants - Gino also contended sentence was manifestly excessive - held: held: Mark Stocco refused leave to appeal in respect of ground alleging failure to take into account his assistance to law enforcement authorities - appeals dismissed.

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By the Stream

By: Paul Laurence Dunbar

By the stream I dream in calm delight, and watch as in a
glass,
How the clouds like crowds of snowy-hued and white-robed
maidens
pass,
And the water into ripples breaks and sparkles as it
spreads,
Like a host of armored knights with silver helmets on their
heads.
And I deem the stream an emblem fit of human life may go,
For I find a mind may sparkle much and yet but shallows
show,
And a soul may glow with myriad lights and wondrous
mysteries,
When it only lies a dormant thing and mirrors what it sees.

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

Paul Laurence Dunbar - Wikipedia
en.wikipedia.org

Paul Laurence Dunbar (June 27, 1872 – February 9, 1906) was an American poet, novelist, and playwright of the late 19th and early 20th centuries. Born in Dayton, Ohio, to parents who had been enslaved in Kentucky before the American Civil War, Dunbar began to write stories and verse when still a child; he was president of his high school's ...

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