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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)

Hegarty v Keogh (SASCA) - solicitors' costs - summary judgment - appellant's proceedings seeking recovery of legal fees and disbursements dismissed, with summary judgment granted in respondent's favour - appellant sought 'further time' to file 'written outline of submissions' - extension of time granted (I B C G)

Koka v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCAFC) - migration law - citizenship by descent - primary judge set aside Tribunal's decision that appellant was 'eligible to become an Australian citizen - no error in construction of s16(2)(a) *Australian Citizenship Act 2007* (Cth) - appeal dismissed. ()

Board of Professional Engineers of Queensland v Gardner (FCA) - administrative law - *Mutual Recognition Act 1992* (Cth) - Tribunal set aside Board's refusal to register respondent in alleged 'equivalent occupation of Registered Professional Engineer Queensland in the area of Fire Safety' - statutory interpretation - appeal allowed - Board's refusal to grant registration affirmed (I B C G)

Falkenhagen v West (FCA) - patent - pleadings - applicant, by interlocutory application, sought 'to file and serve an amended originating application and an amended statement of claim' - first and second respondents sought to strike out 'originating application and statement of claim' - applications refused (I B C G)

In the matter of Integrated Green Energy Solutions Ltd (administrators

appointed) (NSWSC) - corporations - plaintiff sought that defendant be wound up in insolvency - defendant, by interlocutory process, sought proceedings' adjournment - adjournment refused - winding up application granted (B)

R v Smith (QCA) - criminal law - fraud - attempt to pervert course of justice - applicant sought to appeal against sentence - application to adduce further evidence refused - leave to appeal refused. ()

Pesec v Consolidated Builders Ltd (No 3) (ACTSC) - corporations - plaintiff, pursuant to ss236 & 237 *Corporations Act 2001* (Cth), sought to bring derivative action defendant's behalf - application dismissed (B)

Summaries With Link (Five Minute Read)

Hegarty v Keogh [2021] SASCA 46

Court of Appeal of South Australia

Livesey J

Solicitors' costs - summary judgment - respondent convicted of murder - appellant acted for respondent in relation to 'attempts to challenge' conviction - appellant retained Mr Borick QC - later, respondent represented by 'different legal team' - Court of Criminal Appeal set aside conviction and directed retrial - Director of Public Prosecutions entered 'nolle prosequi' - respondent imprisoned - respondent received 'ex gratia payment' from State government - appellant's proceedings seeking recovery of legal fees and disbursements dismissed, with summary judgment granted in respondent's favour on basis appellant's evidence demonstrated he had "no reasonable basis for prosecuting the claim" - appellant contended there was 'retainer to secure' release of respondent and 'obtain compensation' and, if successful, for respondent to pay fees and disbursements to appellant - appellant sought 'further time' to file 'written outline of submissions' - respondent contended there was 'no point granting' extension on basis appeal was to be 'taken to be discontinued' and had lapsed - effect of order at call-over - held: extension of time granted.

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

Koka v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 82

Full Court of the Federal Court of Australia

Nicholas, Mortimer & Murphy JJ

Migration law - citizenship by descent - appellant was born in Albania - appellant's biological parents were not Australian citizens - biological mother formed relationship with Mr Pullumb Koka (Mr Koka) - appellant adopted - Mr Koka 'obtained Australian citizenship by conferral in 1955' - primary judge set aside Administrative Appeals' Tribunal's decision that appellant was

'eligible to become an Australian citizen - whether primary judge erred in construing s16(2)(a) *Australian Citizenship Act 2007* (Cth) - 'a parent of the person was an Australian citizen at the time of the birth' - held: appeal dismissed.

[Koka](#) ()

Board of Professional Engineers of Queensland v Gardner [2021] FCA 564

Federal Court Australia

Logan J

Administrative law - respondent sought registration under *Professional Engineers Act 2002* (Qld) in alleged 'equivalent occupation of Registered Professional Engineer Queensland in the area of Fire Safety' - Board invoked power under s21 *Mutual Recognition Act 1992* (Cth) to decline registration on basis respondent's 'NSW registered occupation' 'was not equivalent' to 'Registered Professional Engineer Queensland in the area of Fire Safety' - Administrative Appeals Tribunal set decision of Board aside and registered respondent on condition - *Building and Development Certifiers Act 2018* (NSW) - 'transitional provision' - Board appealed - statutory construction - held: appeal allowed - Board's refusal to grant registration affirmed.

[Board of Professional Engineers](#) (I B C G)

Falkenhagen v West [2021] FCA 575

Federal Court of Australia

Greenwood J

Patent - pleadings - applicant, by interlocutory application, sought 'to file and serve an amended originating application and an amended statement of claim' - first and second respondents sought to strike out 'originating application and statement of claim' - applicant no longer sought to rely on the originating application and statement of claim - *Patents Act 1990* (Cth) - *Competition and Consumer Act 2010* (Cth) - *Corporations Act 2001* (Cth) - utility - held: applications refused.

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

In the matter of Integrated Green Energy Solutions Ltd (administrators appointed) [2021] NSWSC 620

Supreme Court of New South Wales

Williams J

Corporations - plaintiff sought that defendant be wound up in insolvency - defendant, by interlocutory process, sought proceedings' adjournment - creditors' interests - ss440A(2) & 459C *Corporations Act 2001* (Cth) - *In the matter of Australian Tailings Group Pty Ltd* [2020] NSWSC 1543 - *In the matter of Glenvine Pty Ltd* [2020] NSWSC 642 - held: adjournment refused - winding up application granted.

[In the matter of Integrated](#) (B)

R v Smith [2021] QCA 116

Court of Appeal of Queensland

Morrison and McMurdo JJA; Bradley J

Criminal law - fraud - attempt to pervert course of justice - appellant pleaded guilty to one count fraud and one count 'attempting to pervert the course of justice' - appellant received sentences, 'to be served concurrently' - for fraud, appellant sentenced to 3 years in prison for fraud, 'suspended after serving nine months', with five-year 'operational period' - for attempting to pervert course of justice, appellant sentenced to 2 years in prison, 'suspended after nine months', with five-year operational period - appellant sought to appeal against sentence - whether sentence 'manifestly excessive' - whether sentence 'within proper exercise of sentencing discretion' - whether offences' combination justified 'actual custody' - whether to grant application to adduce further evidence - held: application to adduce further evidence refused - leave to appeal refused.

[R v Smith](#) ()

Pesec v Consolidated Builders Ltd (No 3) [2021] ACTSC 105

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Corporations - plaintiff, pursuant to ss236 & 237 *Corporations Act 2001* (Cth), sought to bring derivative action defendant's behalf - *Huang v Wang* [2016] NSWCA 164 - *Swansson v RA Pratt Properties Pty Ltd* [2002] NSWSC 583 - whether plaintiff 'acting in good faith' - whether in company's best interests that Court grant leave - whether serious question to be tried - held: application dismissed.

[Pesec](#) (B)

Summaries With Link



Autumn

By: Alexander Posey

In the dreamy silence
Of the afternoon, a
Cloth of gold is woven
Over wood and prairie;
And the jaybird, newly
Fallen from the heaven,
Scatters cordial greetings,
And the air is filled with
Scarlet leaves, that, dropping,
Rise again, as ever,
With a useless sigh for
Rest—and it is Autumn.

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

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