

Friday, 4 December 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)

Waco Kwikform Ltd v Complete Access Scaffolding (NSW) Pty Ltd (NSWSC) - security of payments - challenge to adjudication determination under *Building and Construction Industry Security of Payment Act 1999* (NSW) - summons dismissed (I B C G)

In the matter of HPack Investments Pty Ltd (NSWSC) - corporations - superannuation - freezing orders - 'current freezing orders' extended (B)

Re MHC Pathology Pty Ltd (VSC) - corporations - statutory demand - plaintiff sought to set aside statutory demand served on it by defendant - genuine dispute established - dispute set aside (I B C G)

Ivankovic v West Australian Planning Commission (WASC) - planning and development - arbitration - 'two applications' challenging award of arbitrator - applications dismissed (I B C G)

Summaries With Link (Five Minute Read)

Waco Kwikform Ltd v Complete Access Scaffolding (NSW) Pty Ltd [2020] NSWSC 1702
Supreme Court of New South Wales
Stevenson J

Security of payments - plaintiff challenged adjudication determination under *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payments Act) that plaintiff pay amount to defendant - plaintiff contended payment claim was "not a valid claim as there was no reference date" - whether construction contract between parties 'made "express provision" with respect to "the date on which a claim for a progress payment may be made"' for purpose of s8(2)(a) Security of Payments Act - held: summons dismissed.

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

In the matter of HPack Investments Pty Ltd [2020] NSWSC 1638

Supreme Court of New South Wales

Black J

Freezing orders - corporations - superannuation - plaintiff sought to wind up "HPack" on basis it was 'actually insolvent, by reason of a substantial tax debt' - plaintiff granted freezing order against HPack and others - freezing 'continued by consent' - proceedings concerned delivery of judgment on merits - whether jurisdiction 'to make or continue the freezing order' - whether 'good arguable case' - whether danger of assets' disposal - whether plaintiff might not able to have judgment satisfied if successful - held: Court satisfied to extend 'current freezing orders'.

[View Decision](#) (B)

Re MHC Pathology Pty Ltd [2020] VSC 789

Supreme Court of Victoria

Hetyey AsJ

Corporations - statutory demand - defendant served statutory demand on plaintiff seeking payment for 'agistment fees and feed' allegedly owing under arrangement with plaintiff - plaintiff sought to set statutory demand on basis of genuine dispute concerning alleged debt's existence or amount - plaintiff also contended demand defective by erroneously requiring compliance by plaintiff 'within 21 days' and failure to refer to 'statutory period for compliance set by' *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) - plaintiff also contended demand should be set aside for failure to nominate 'address for service within the same State in which the demand was served' - held: genuine dispute established - demand set aside.

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

Ivankovic v West Australian Planning Commission [2020] WASC 401

Supreme Court of Western Australia

Kenneth Martin J

Planning and development - arbitration - arbitration was conducted between applicants and respondent - proceedings concerned 'two applications' challenging award of arbitrator arbitration - s176(2) *Planning and Development Act 2005* (WA) - s34 *Commercial Arbitration Act 2012* (WA) - 'public or private arbitration' - 'compensation calculation' - 'limited scope of the arbitration exercise' - 'public policy' - held: applications dismissed.

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

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Summaries With Link



**A Stormy November Evening, Gradually Clearing up in
a Mountainous Country**

By: Anna Seward

CEASED is the rain, but heavy drops yet fall
From the drenched roof; yet murmurs the sunk wind
Round the dim hills; can yet a passage find
Whistling through yon cleft rock, and ruined wall.
Loud roar the angry torrents, and appall, 5
Though distant. A few stars, emerging kind,
With green rays tremble through their misty shrouds;
And the moon gleams between the sailing clouds
On half the darkened hill. Now blasts remove
The shadowing clouds, and on the mountain's brow,
10
Full-orbed she shines. Half sunk within its cove
Heaves the lone boat, with gulping sound:—and lo!
Bright rolls the settling lake, and brimming rove
The vale's blue rills, and glitter as they flow!

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

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