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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)

**Zibara v Ultra Management (Sports) Pty Ltd** (FCAFC) - corporations - fiduciary duties - equity - costs - no error in decision of primary judge or miscarriage of discretion concerning costs - appeal dismissed (B)

**Niardone v Clubb (No 2)** (FCA) - corporations - administrators sought 'orders fixing remuneration' - orders granted (B)

**Dacich v Commissioner of Corrective Services** (NSWCA) - habeas corpus - appellant appealed against judge's refusal to issue writ of habeas corpus and order appellant's 'immediate release from' prison - appeal dismissed (I B C G)

**Kanjian v Kanjian (No 2)** (NSWSC) - notices to produce - Receivers sought to set aside notices to produce - application granted (I B C G)

**Kachoui Didani v Downes-Brydon & Ors** (VSC) - judicial review - plaintiff sought judicial review of opinion of medical panel - proceeding dismissed (I G)

**Piper v Fraser & Ors** (SASC) - wills and estates - succession - trusts - family provision claim dismissed - trust varied - plaintiff to receive 'monthly stipend' (B)

**Re NTM Gold Ltd; Ex Parte NTM Gold Ltd** (WASC) - corporations - plaintiff sought orders

concerning 'proposed scheme of arrangement' - orders granted (B)

## Summaries With Link (Five Minute Read)

### **Zibara v Ultra Management (Sports) Pty Ltd [2021] FCAFC 4**

Full Court of the Federal Court of Australia

McKerracher, Derrington & Anderson JJ

Corporations - fiduciary duties - equity - costs - first and second appellants were directors of third appellant (Genesis) and held 50% of 'issued shares in' third appellant - appellants contended it was not open to trial judge to find Genesis 'liable to account to' respondent under Barnes v Addy's 'second limb' concerning 'breaches of fiduciary duties' that first and second appellants owed respondent - appellants also contended miscarriage of primary judge's discretion concerning costs - "dishonest and fraudulent design" - *Barnes v Addy* [1874] UKLawRpCh 20 - held: appeal dismissed.

[Zibara](#) (B)

### **Niardone v Clubb (No 2) [2021] FCA 54**

Federal Court of Australia

Colvin J

Corporations - Court made orders that administration would come to an end on 1/2/21 - administrators, pursuant to s447A *Corporations Act 2001* (Cth), sought 'orders fixing remuneration' - whether and in what manner administrators' work 'described and itemised' - whether remuneration reasonable - whether work which administrators had done was verified - whether making orders consistent with objects of Pt 5.3A *Corporations Act 2001* (Cth) - held: orders granted.

[Niardone](#) (B)

### **Dacich v Commissioner of Corrective Services [2020] NSWCA 359**

Court of Appeal of New South Wales

Bell P; Basten & Macfarlan JJA

Habeas corpus - appellant appealed against judge's refusal to issue writ of habeas corpus and order appellant's 'immediate release from' prison - appellant was serving non-parole period of sentence - appellant resisted conclusion that her non-parole period did not expire until August 2021 - 'onus of proof' - 'need for a valid warrant' - 'validity of warrant issued by the Registrar' - 'statutory stay when taken into custody' - 'failing to specify date on which sentence recommenced' - 'alteration of dates by Department of Corrective Services' - held: appeal dismissed.

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

### **Kanjian v Kanjian (No 2) [2021] NSWSC 14**

Supreme Court of New South Wales

Henry J

Notices to produce - Receivers, by notice of motion, sought to set aside two notices to produce which first defendant had issued - notices to produce sought 'production of legal advices' which were provided to Receivers' during Receivers' conduct of 'Senses proceedings' - whether 'disputed paragraphs' specified 'documents to be produced' - whether disputed paragraphs served 'any legitimate purpose' - privilege - waiver - s122 *Evidence Act 1995* (NSW) - r34.1 *Uniform Civil Procedure Rules 2005* (NSW) - held: notices to produce set aside.

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

## **Kachoui Didani v Downes-Brydon & Ors [2021] VSC 27**

Supreme Court of Victoria

Keogh J

Judicial review - plaintiff employed by fifth defendant - plaintiff made compensation claim under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - claim was accepted and weekly payments made - plaintiff sought review of opinion of Medical Panel - Panel's opinion was to effect that plaintiff was not entitled to continued weekly compensation payments - whether jurisdictional error - adequacy of reasons - held: proceeding dismissed.

[Kachoui](#) (I G)

## **Piper v Fraser & Ors [2020] SASC 239**

Supreme Court of South Australia

Peek J

Wills and estates - succession - family provision - applicant, pursuant to *Inheritance (Family Provision) Act 1972* (SA) and *Trustee Act 1936* (SA), sought further provision from testator's estate and 'revocation or variation of a trust over two thirds of the applicant's inheritance' established by testator's will - whether 'adequate and proper' provision - 'wise and just testator' - whether "moral claim" - whether 'good reason' to vary trust's terms - held: family provision claim dismissed - trust varied - plaintiff to receive 'monthly stipend'.

[Piper](#) (B)

## **Re NTM Gold Ltd; Ex Parte NTM Gold Ltd [2021] WASC 22**

Supreme Court of Western Australia

Vaughan J

Corporations - plaintiff, pursuant to s411(1) *Corporations Act 2001* (Cth) (Corporations Act), sought orders concerning 'proposed scheme of arrangement' - whether to grant orders for convening of plaintiff's members 'to consider and vote on the proposed scheme' - whether to make ancillary orders concerning meeting's 'convening and conduct' - whether to approve scheme booklet's distribution - s412(1)(a) Corporations Act - held: orders granted.

[Re NTM](#) (B)

## Summaries With Link



## **Sonnet 21**

**By:** William Shakespeare

So is it not with me as with that Muse  
Stirr'd by a painted beauty to his verse,  
Who heaven itself for ornament doth use  
And every fair with his fair doth rehearse,  
Making a couplement of proud compare,  
With sun and moon, with earth and sea's rich gems,  
With April's first-born flowers, and all things rare  
That heaven's air in this huge rondure hems.  
O, let me, true in love, but truly write,  
And then believe me, my love is as fair  
As any mother's child, though not so bright  
As those gold candles fix'd in heaven's air:  
Let them say more that like of hearsay well;  
I will not praise that purpose not to sell.

[https://en.wikipedia.org/wiki/Sonnet\\_21](https://en.wikipedia.org/wiki/Sonnet_21)

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