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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)

De Tocqueville, in the matter of Pacific Current Group Limited v Pacific Current Group Limited (No 2) (FCA) - costs - corporations - Court granted plaintiffs leave to bring proceeding on company's behalf - determination of costs of plaintiffs' interlocutory process and costs of proceeding's balance (I B C G)

Snell v Deputy Commissioner of Taxation (NSWCA) - taxation - judgment for respondent in claim against appellant director concerning 'unpaid tax liabilities' of company in liquidation - appeal dismissed (B)

In the matter of Newheadspace Pty Limited (in liq) (NSWSC) - corporations - examination summonses set aside for abuse of process (I B)

Rizzo v Head, Transport for Victoria (VSC) - planning and environment - acquisition of land - jurisdiction - applicants sought to 'file and serve an amended notice of claim and notice of referral' - summons dismissed (I B C G)

Fiore v Magistrates' Court of Victoria (VSC) - judicial review - applicant sought to set aside warrant - grounds of review not established - proceeding dismissed (I B C G)

Crossley v Sea Trek Dive Services Pty Ltd & Anor (QCA) - contract - loan - guarantee - respondents successfully claimed against appellant on basis appellant guaranteed company's

performance of obligations under loan agreement - appeal dismissed (I B)

Ulithorne Wines Pty Ltd v Ulithorne Vineyard Pty Ltd (SASC) - corporations - plaintiff sought to set aside statutory demand on basis of genuine dispute or improper purpose - application dismissed (I B C G)

Summaries With Link (Five Minute Read)

De Tocqueville, in the matter of Pacific Current Group Limited v Pacific Current Group Limited (No 2) [2020] FCA 229

Federal Court of Australia

Moshinsky J

Costs - corporations - Court granted plaintiffs leave to bring proceeding on company's behalf - determination of costs - costs of plaintiffs interlocutory process in which they had sought order under s247A *Corporations Act 2001* (Cth) (Corporations Act) - balance of proceeding's costs - s237 *Corporations Act* - s43 *Federal Court of Australia Act 1976* (Cth) - whether unreasonable conduct - 'resolution sum in respect of the substantive proceeding' - held: costs determined.

[De Tocqueville](#) (I B C G)

Snell v Deputy Commissioner of Taxation [2020] NSWCA 29

Court of Appeal of New South Wales

Gleeson & Brereton JJA; Barrett AJA

Taxation - primary judge gave judgment for respondent in claim against appellant concerning 'unpaid tax liabilities' of company in liquidation - appellant was found liable as director of company under s269-20 Sch 1 *Taxation Administration Act 1953* (Cth) (TAA) - liabilities comprised unremitted 'Pay As You Go Withholding' amounts and 'Superannuation Guarantee Charge' amounts - appellant appealed - whether proceedings maintainable - requirement for DPN - whether notice which s269-30(1) TAA required was given - whether liability's amount 'dependent on' or 'controlled by' what Commissioner "thinks" amount to be when DPN given - whether respondent required to commence proceedings within 'any particular time' after expiry of 21 day period after notice given - 'defence of justifiable non-participation in management' - held: appeal dismissed.

[View Decision](#) (B)

In the matter of Newheadspace Pty Limited (in liq) [2020] NSWSC 173

Supreme Court of New South Wales

Rees J

Corporations - first applicant sought to set aside examination summonses which liquidator of company (Newheadspace) issued to second and third applicants - first applicant contended Newheadspace's voluntary liquidation was 'a contrivance by those standing behind the company' to enable liquidator to request that summonses be issued and thus 'exert commercial

pressure' on first applicant to pay claims which Newheadspace asserted - whether liquidator entitled to conduct public examinations if liquidator considered it was necessary - purpose of those standing behind Newheadspace in placing it in liquidation - whether liquidator had 'independently turned his mind' to whether s596B *Corporations Act 2001* (Cth) or whether summonses were issued 'for a proper purpose' - whether abuse of process - held: examination summonses set aside for abuse of process.

[View Decision](#) (I B)

Rizzo v Head, Transport for Victoria [2020] VSC 89

Supreme Court of Victoria

Richards J

Planning and environment - acquisition of land - jurisdiction - applicants, under ss98(1) & 106 *Planning and Environment Act 1987* (Vic) (Planning Act), sought compensation for loss on sale of land, part of which was affected by Public Acquisition Overlay - applicants referred 'disputed claim' to Court under s80(b) *Land Acquisition and Compensation Act 1986* (Vic) (Compensation Act) - Authority sought proceeding's summary dismissal - Derham AsJ found claim did not have prospects of success 'as it was then framed' - Derham AsJ granted applicants permission to apply to amend referral notice - applicants filed summons seeking 'leave to file and serve an amended notice of claim and notice of referral' - Authority sought summary dismissal - *Plunkett v Roads Corporation* [2019] VSC 39 - held: applicants could not amend notice of claim or referral notice in proposed manner - notice of claim was 'created and served outside the Court's processes' - notice of claim was not 'document in a proceeding' - Court's jurisdiction limited to determination of 'disputed claim' in s80 Compensation Act - Court's jurisdiction could not 'be enlarged by amending a referral to include a claim that is not a 'disputed claim' - summons dismissed.

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

Fiore v Magistrates' Court of Victoria [2020] VSC 92

Supreme Court of Victoria

Niall JA

Judicial review - plaintiff lived in Western Australia - Detective 'member of Victoria Police' sought issue of warrant to arrest plaintiff under s12 *Criminal Procedure Act 2009* (Vic) (Criminal Procedure Act) - magistrate granted application - plaintiff, pursuant to warrant and *Service and Execution of Process Act 1992* (Cth), was arrested and brought before Western Australian magistrate - plaintiff 'bailed pending resolution' of application for plaintiff's extradition to Victoria - plaintiff sought that warrant be set aside - plaintiff contended magistrate 'was misled' - plaintiff contended warrant 'granted for the sole, and therefore impermissible, reason the plaintiff was resident interstate', that the warrant was 'legally unreasonable', and that the warrant was 'in an unauthorised form' due to being combined with charge sheet - 'for other good cause' - construction of s12(5)(c) *Criminal Procedure Act* - held: grounds of review not established - proceeding dismissed.

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

Crossley v Sea Trek Dive Services Pty Ltd & Anor [2020] QCA 35

Court of Appeal of Queensland

Sofronoff P; Morrison & Mullins JJA

Contract - loan - guarantee - appellant was director of company (Omega) - respondents sued appellant on basis appellant guaranteed Omega's performance of obligations under loan agreement with respondents which was varied by two more loan agreements (second loan agreement and third loan agreement) - second respondent was also a director of Omega when loan agreements entered - appellant appealed - whether loan agreement executed by 'appellant as guarantor' - whether loan agreement incorporated guarantee by appellant - whether guarantee 'void for uncertainty or want of consideration' - whether 'demand for repayment' breached 'essential term' of third loan agreement - whether second respondent's resignation as director and 'ceasing to have a major input into the running of Omega' from certain date varied third loan agreement - whether appellant had discharged liability as guarantor - held: appeal dismissed.

[Crossley](#) (I B)

Ulithorne Wines Pty Ltd v Ulithorne Vineyard Pty Ltd [2020] SASC 32

Supreme Court of South Australia

Doyle J

Corporations - statutory demand - parties were 'related companies' - defendant served statutory demand on plaintiff which sought payment of amount allegedly owing in respect of 'intercompany loan' - plaintiff, under s459G *Corporations Act 2001* (Cth), sought to set statutory demand aside on basis of genuine dispute concerning debt or improper purpose - held: Court not satisfied there was basis to set aside statutory demand - application dismissed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Phantasmion. A Fairy Tale (1837)

X. "I was a Brook"

By: Sarah Coleridge

I WAS a brook in straitest channel pent,
Foreing 'mid rocks and stones my toilsome way,
A scanty brook in wandering well-nigh spent;
But now with thee, rich stream, conjoin'd I stray,
Through golden meads the river sweeps along,
Murmuring its deep full joy in gentlest undersong.

5

I crept through desert moor and gloomy glade,
My waters ever vex'd, yet sad and slow,
My waters ever steep'd in baleful shade:
But, whilst with thee, rich stream, conjoined I flow,

E'en in swift course the river seems to rest,
Blue sky, bright bloom and verdure imag'd on its breast.

And, whilst with thee I roam through regions bright
Beneath kind love's serene and gladsome sky,
A thousand happy things that seek the light,
Till now in darkest shadow forc'd to lie,
Up through the illumin'd waters nimbly run,
To show their forms and hues in the all revealing sun.

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

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