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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Pinnacle Runway Pty Ltd v Triangl Limited (FCA) - service - deemed service - orders granted pursuant to r10.48 *Federal Court Rules 2011* (Cth) (I B C G)

Maksacheff v Commonwealth Bank of Australia (NSWCA) - administrative law - constitutional law - challenges to dismissal of 'damages proceedings' and 'possession proceedings' failed - summonses dismissed (I B C G)

Prothonotary of the Supreme Court of New South Wales v Yau Hang Chan (No 23) (NSWSC) - contempt - procedural fairness - effect of decision in *Prothonotary of the Supreme Court of New South Wales v Dangerfield* [2016] NSWCA 277 - finding of contempt of Local Court by defendant revoked (I B C G)

In the matter of Hunter Valley Dental Surgery Pty Ltd (in liquidation) (NSWSC) - corporations - winding up - liquidator sought approval of remuneration - liquidator granted opportunity to seek leave to lead further evidence - matter stood over (I B C G)

Labruyere v Parsons Brinckerhoff Pty Limited (NSWSC) - discovery - subpoena - plaintiff granted orders giving parties leave to 'inspect, copy and otherwise utilise documents' which two companies, who were not parties to proceedings, had produced under subpoena (I B C G)

McDonald v Dods (VSCA) - defamation - scope of publication - no error in finding of sufficient evidence for jury to infer that publication was made 'to pool of unknown individuals' who would

have downloaded and read website - leave to appeal refused (I)

Barrett-Lennard v Reader Lawyers & Mediators (WASC) - costs - application for review of Taxing Officer's decision concerning assessment of respondent's solicitor/client bill of costs - application dismissed (I B C G)

Summaries With Link (Five Minute Read)

Pinnacle Runway Pty Ltd v Triangl Limited [2017] FCA 627

Federal Court of Australia

Murphy J

Service - deemed service - applicant sought pursuant to rr10.23 & 10.48 *Federal Court Rules 2011* (Cth) orders that originating process was deemed to have been served on respondent, extension of time for respondent to file notice of address for service and defence, and that service of documents in proceeding may be effected by sending documents to respondent by email - held: there was sufficient evidence that respondent could not be served by manner which Rules prescribed, and that respondent was aware of proceeding and application - it was not practicable to serve documents in accordance with Hague Convention - Court satisfied it was appropriate to make orders sought under r10.48 - orders granted.

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

Maksacheff v Commonwealth Bank of Australia [2017] NSWCA 126

Court of Appeal of New South Wales

McColl JA & Emmett AJA

Administrative law - constitutional law - respondent bank made advances to applicants on security of mortgage over land - default judgment entered in respondent's favour against applicants - applicants ordered to give possession of property to respondent ('possession proceedings') - applicants re-entered property after respondent took possession - orders made by judges 'to restore and maintain the Bank's possession' - applicants sought damages against respondent for breach of contract ('damages proceedings') - damages proceedings summarily dismissed - applicants challenged orders made in damages proceedings and possession proceedings by summons seeking judicial review and summons seeking leave to appeal - respondent sought summary dismissal of summonses on basis they did not demonstrate arguable basis for interference with orders - r13.4(1) *Supreme Court Act 1970* (NSW) - s78B *Judiciary Act 1903* (Cth) - held: no rational argument to support contention judicial officers erred in orders, warranting grant of leave to appeal - summonses dismissed.

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

Prothonotary of the Supreme Court of New South Wales v Yau Hang Chan (No 23) [2017] NSWSC 535

Supreme Court of New South Wales

Schmidt J

Contempt - Court found contempt of Local Court by defendant proved on basis of evidence of repeated failure to enter witness box for examination under notice pursuant to r38.1 *Uniform Civil Procedure Rules 2005* (NSW) - Prothonotary raised jurisdictional question arising from *Prothonotary of the Supreme Court of New South Wales v Dangerfield* [2016] NSWCA 277 (Dangerfield), which concluded Local Court must afford procedural fairness to proposed contemnor before exercise of power of referral under s24(4) *Local Court Act 2007* (NSW) - statutory construction - whether Local Court's referral in present case was relevantly different to that considered in Dangerfield - whether defendant had to be afforded procedural fairness before referral power exercise - held: Dangerfield compelled that finding of contempt by defendant must be revoked - it was for Local Court to determine how defendant's contempt should be dealt with.

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

In the matter of Hunter Valley Dental Surgery Pty Ltd (in liquidation) [2017] NSWSC 691

Supreme Court of New South Wales

Black J

Corporations - winding up - court-appointed liquidator of company sought pursuant to s473(3)(b)(ii) *Corporations Act 2001* (Cth) approval of remuneration in total sum of \$356,046.40 exclusive of GST - held: Court satisfied liquidator entitled to 'substantial amount' of remuneration but evidence did not satisfy Court that amount claimed was 'justifiable in full' or allow basis for determination of justifiable amount - liquidator granted opportunity to seek leave to lead further evidence - matter stood over.

[In the matter of Hunter Valley Dental Surgery](#) (I B C G)

Labruyere v Parsons Brinckerhoff Pty Limited [2017] NSWSC 690

Supreme Court of New South Wales

Schmidt J

Discovery - subpoena - plaintiff sought that parties be granted leave to 'inspect, copy and otherwise utilise' documents which two companies, who were not parties to proceedings, had produced under subpoena - s56 *Civil Procedure Act 2005* (NSW) - held: Court satisfied it should make orders sought - making orders would remove possibility of 'unintended difficulties' arising in litigation and was consistent with s56 *Civil Procedure Act* - orders made.

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

McDonald v Dods [2017] VSCA 129

Court of Appeal of Victoria

Warren CJ; Whelan JA & Cameron AJA

Defamation - scope of publication - primary judge found applicant had defamed respondent on website - applicant sought to appeal on basis there was insufficient evidence to infer publication made to 'a broad pool of people' and therefore damages should be reduced - primary judge had found there was sufficient inference for jury to infer publication made 'to pool of unknown

individuals who would have downloaded and read the website' ('Google inference') - held: no error in primary judge's ruling that evidence was sufficient for jury to find publication based on Google inference - leave to appeal refused.

[McDonald](#) (I)

Barrett-Lennard v Reader Lawyers & Mediators [2017] WASC 146

Supreme Court of Western Australia

Martino J

Costs - respondent sought pursuant to O66 r55 *Rules of the Supreme Court 1971 (WA)* review of Taxing Officer's decision concerning assessment of respondent's solicitor/client bill of costs - respondent also sought extension of time to make application, declaration that certificate of taxation issued did not include costs payable by applicant concerning costs of appeal under O60A, and consequential orders - whether costs of appeal were part of costs of costs assessment - whether certificate of taxation included any allowance for costs of appeal - whether denial of natural justice - held: no denial of natural justice - no error in regarding costs of interlocutory appeal as part of costs assessment's costs - there was proper basis to include costs of appeal as part of costs assessment's costs - application dismissed.

[Barrett-Lennard](#) (I B C G)

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