

Friday, 6 August 2021

## 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)

**KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (HCA) - migration law - Minister made 'personal decision' to refuse grant of Safe Haven Visa to applicant - applicant, in High Court's 'original jurisdiction', sought 'twelve different forms of relief, including writs of certiorari, declarations, an injunction, and extensions of time' - relief refused - application dismissed (I B C G)

**WorkPac Pty Ltd v Rossato** (HCA) - industrial law - Full Court of the Federal Court of Australia found first respondent was not a 'casual employee' of appellant and made declarations that first respondent was entitled to claimed payments - first respondent was a casual employee - appeal allowed (I B C G)

**Deputy Commissioner of Taxation v Shi** (HCA) - taxation - evidence - privilege - refusal to make order under s128A(6) *Evidence Act 1995* (Cth) that 'privilege affidavit be filed and served on' appellant - appellant appealed - appeal allowed (B C I)

**Frugtniet v Secretary, Department of Social Services** (FCAFC) - social security - appellant was indebted to Commonwealth in respect of 'parenting payments' - Secretary's delegate applied 'unpaid family tax benefit due to' appellant 'in partial discharge of' appellant's indebtedness - Administrative Appeals Tribunal affirmed delegate's decision - Federal Court of Australia dismissed appeal - appellant appealed - appeal dismissed (I B C G)

**Valmont Interiors Pty Ltd v Giorgio Armani Australia Pty Ltd (No 3)** (NSWCA) - costs - Court gave judgment for appellant on appeal and for respondent on cross-claim - determination of costs - Calderbank offer - determination of costs (B C I)

## Summaries With Link (Five Minute Read)

### **KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] HCA 24**

High Court of Australia

Edelman J

Migration law - delegate of Minister refused to grant applicant a Safe Haven Enterprise 'on character grounds' under s501 *Migration Act 1958* (Cth) ('s501 refusal') - Administrative Appeals Tribunal set 's501 refusal' aside - Minister made 'personal decision' to set Tribunal's decision aside - Minister substituted decision to refuse grant of visa - applicant claimed Minister 'failed to make a decision' 'within a reasonable time' and thus lacked power to refuse visa - Banks-Smith J, of Federal Court of Australia, dismissed application - Full Court of Federal Court (Bromberg, O'Callaghan & Steward JJ) dismissed appeal - applicant was refused special leave to appeal to High Court - following Full Court's dismissal of appeal applicant brought originating application in High Court's 'original jurisdiction', seeking 'twelve different forms of relief, including writs of certiorari, declarations, an injunction, and extensions of time' - originating application brought in September 2020 - whether to grant 'last minute application for further amendment' - explanation for lateness - whether abuse of process for applicant to bring originating application 'outside the statutory appeal process' - *Anshun* estoppel - whether 'issues could, and should, have been raised in the Federal Court proceedings' - whether misconceived application for declaration that applicant's detention unlawful - whether Minister's decision to exercise power under s501A(2) *Migration Act* was invalid - held: relief refused - application dismissed.

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

### **WorkPac Pty Ltd v Rossato [2021] HCA 23**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon, Edelman, Steward & Gleeson JJ

Industrial law - appellant was labour-hire company - first respondent was employed by appellant and was treated by appellant as a 'casual employee' - Full Court of the Federal Court of Australia gave judgment in *WorkPac Pty Ltd v Skene* (2018) 264 FCR 536 (Skene) - first respondent, in reliance on Skene, claimed he had not worked for appellant as a casual employee, and claimed entitlements to payments allegedly due under *Fair Work Act 2009* (Cth) and enterprise agreement - appellant sought declarations that first respondent was a casual employee and declarations concerning first respondent's entitlements to payments - Full Court of the Federal Court of Australia (Bromberg, White & Wheelahan JJ) found first respondent was not a casual employee and made declarations that first respondent was entitled to claimed payments - appellant's 'set off and restitution claims' were rejected - appellant appealed,

contending Full Court should have found first respondent was a casual employee and that Full Court erred in rejecting set off and restitution claims - held: first respondent was a casual employee - appeal allowed.

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

## **Deputy Commissioner of Taxation v Shi [2021] HCA 22**

High Court of Australia

Kiefel CJ; Gageler, Gordon, Edelman & Gleeson JJ

Taxation - evidence - privilege - Steward J of Federal Court of Australia refused to make order under s128A(6) *Evidence Act 1995* (Cth) that 'privilege affidavit be filed and served on' appellant - privilege affidavit had been prepared by respondent 'in support of an objection to compliance with a disclosure order' - Yates J, of Federal Court of Australia, made the disclosure order under r7.33 *Federal Court Rules 2011* (Cth) 'ancillary to a freezing order under' r7.32 Rules in civil proceeding which appellant had brought against respondent for tax recovery - Full Court of the Federal Court of Australia dismissed appeal by majority (Lee & Stewart JJ; Davies J dissenting) - *House v The King* (1936) 55 CLR 499 - 'privilege against self-incrimination' - whether 'irrelevant consideration' taken into account - interests of justice - held: appeal allowed.

[Deputy Commissioner of Taxation](#) (B C I)

## **Frugtniet v Secretary, Department of Social Services [2021] FCAFC 127**

Full Court of the Federal Court of Australia

O'Callaghan, Wheelahan & Snaden JJ

Social security - appellant was indebted to Commonwealth in respect of 'parenting payments' which appellant was not entitled to - Secretary's delegate applied 'unpaid family tax benefit due to' appellant 'in partial discharge of' appellant's indebtedness - Administrative Appeals Tribunal affirmed delegate's decision - Federal Court of Australia dismissed appeal - appellant appealed - s44 *Administrative Appeals Tribunal Act 1975* (Cth) - *Social Security Act 1991* (Cth) - ss84A & 86 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) - held: appeal dismissed.

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

## **Valmont Interiors Pty Ltd v Giorgio Armani Australia Pty Ltd (No 3) [2021] NSWCA 160**

Court of Appeal of New South Wales

Bell P; Macfarlan & Leeming JJA

Costs - Court gave judgment for appellant (Valmont) on appeal and for respondent (Armani) on cross-claim - determination of costs - Calderbank offer - rr42.1 & 42.2 *Uniform Civil Procedure Rules 2005* (NSW) - whether unreasonable for Valmont to refuse to accept Armani's 'Second Offer' - whether Armani's 'Second Offer' 'was significant' - whether, if Second Offer was accepted, Valmont would have secured 'a superior outcome' than it 'ultimately achieved' - whether Valmont's counter-offer of 13/07/20 represented a 'genuine attempt at compromise' - held: certain of primary judge's orders set aside - 'save for adverse costs orders made



against' defendant before 13/07/20, no order for costs at first instance 'up to and including' 13/07/20 - plaintiff to pay defendant's costs of proceedings at first instance 'up to and including' 13/07/20 and on indemnity basis after 13/07/20.

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

## Summaries With Link



**By: Anonymous**

There are things

You must say  
You may say  
You cannot say

And you may  
Decide  
Wrongly

Or never know

What then  
Perhaps

Silence

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