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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)

Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International B.V. (Permanent Stay) (FCA) - stay - trade mark - abuse of process - failure by non-party to give discovery concerning allegations in Third Further Amended Cross-Claim - Third Further Amended Cross-Claim permanently stayed (I B C G)

Tate v Australian Broadcasting Corporation (FCA) - defamation - pleadings - plaintiff granted leave to file further amended statement of claim - first respondent granted leave to file amended defence (I B C G)

Hanson-Young v Leyonhjelm (No 3) (FCA) - defamation - applicant sought that evidence of two witness be taken by videolink - application allowed with respect to one witness (I B C G)

Officeworks Ltd v Christopher (No 2) (NSWCA) - costs - negligence - dispute concerning first instance costs - appellant granted indemnity costs order on basis of offer of compromise - orders made (B C I G)

RebelMH Neutral Bay Pty Limited v North Sydney Council (NSWCA) - environment and planning - refusal of development consent in respect of proposed building - appeal dismissed (B C I G)

Lake Laurel Pty Ltd & Ors v Nichols Constructions Pty Ltd & Ors (QSC) - loan agreement -

mortgage - determination of two separate questions concerning outstanding claim for amount owing under loan agreement (I B C G)

United Petroleum Pty Ltd v Alice Springs Town Council (NTSC) - costs - plaintiff sought review of defendant's purported refusal to approve 'Traffic Impact Assessment Report' - proceedings discontinued - no order as to costs (I B C G)

Summaries With Link (Five Minute Read)

Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International B.V. (Permanent Stay) [2019] FCA 802

Federal Court of Australia

Perram J

Stay - trade mark - 'Third Further Amended Cross-Claim' ('Cross-Claim') had been stayed since 20/11/17 - cross-respondent sought Cross-Claim's dismissal or permanent stay - Cross-Claimants sought lift of stay - stay had been placed due to non-party Russian Federation's failure 'to give adequate discovery' of material pertaining to Cross-Claim's subject matter - s88 *Trade Marks Act 1995* (Cth) - whether to dismiss proceeding for want of prosecution - whether abuse of process - held: Third Further Amended Cross-Claim permanently stayed as abuse of process insofar as its allegations concerned topics on which Russian Federation had 'failed to give discovery'.

[Federal Treasury Enterprise](#) (I B C G)

Tate v Australian Broadcasting Corporation [2019] FCA 610

Federal Court of Australia

Bromwich J

Defamation - pleadings - plaintiff sought to amend further amended statement of claim - plaintiff sought to amend 'Imputation A' - first respondent objected to amendment of 'Imputation A' - plaintiff objected to defence's truth pleadings - plaintiff sought that Court strike out or disallow 'certain categories' of 'truth particulars' - whether imputation 'fit to proceed to a factual determination' - whether particulars 'too imprecise' - whether particulars could prove imputations' truth - consideration of defence to certain imputations - held: plaintiff granted leave to file further amended statement claim with amendment to 'Imputation A' - first respondent granted leave to file amended defence - parties to submit orders to reflect reasons.

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

Hanson-Young v Leyonhjelm (No 3) [2019] FCA 645

Federal Court of Australia

White J

Defamation - interlocutory application - applicant sought that the taking of evidence of two of applicant's 'proposed witnesses' be by videolink - respondent opposed order - s47A *Federal*

Court of Australia Act 1976 (Cth) - whether applicant showed it was appropriate for Court to exercise discretion - strength of application - interests of justice - held: application allowed with respect to one witness.

[Hanson-Young](#) (I B C G)

Officeworks Ltd v Christopher (No 2) [2019] NSWCA 131

Court of Appeal of New South Wales

Meagher, Gleeson & Leeming JJA

Costs - negligence - Court allowed appeal in proceedings - 'common ground' respondent should pay appellant's costs of appeal and that respondent should be granted certificate under *Suitors' Fund Act 1951* (NSW) - dispute concerned 'costs at first instance' - appellant sought indemnity costs order in reliance on offer of compromise, contending judgment in respondent's favour was "no more favourable to the plaintiff than the terms of the offer" - rr20.26(5), 42.13A(2) & 42.15(2) *Uniform Civil Procedure Rules 2005* (NSW) - held: appellant granted indemnity costs order - costs orders made.

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

RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130

Court of Appeal of New South Wales

Gleeson & Payne JJA; Preston CJ of LEC

Environment and planning - appellant sought development consent in respect of proposed building - respondent refused application - appellant revised plans and submitted 'revised request' - Land and Environment Court refused revised request and dismissed appeal - appellant contended primary judge misconstrued and misapplied cl 4.6(3) & (4)(a)(i) North Sydney Local Environmental Plan 2013, misconstrued and misapplied objectives of 'height development standard', misconstrued and misapplied 'objective (f)' of 'height development standard' and denied appellant procedural fairness by 'not affording' "amber light approach" to appellant - held: grounds of appeal not established - appeal dismissed.

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

Lake Laurel Pty Ltd & Ors v Nichols Constructions Pty Ltd & Ors [2019] QSC 129

Supreme Court of Queensland

Bowskill J

Separate questions - loan - mortgage - outstanding matter for determination concerned third plaintiff's claim for payment allegedly owed by first defendant under loan agreement - separate questions for determination - whether effect of loan agreement's clause and/or item in 'schedule to the loan agreement' (schedule) was that 'principal sum' was 'payable upon demand' whether plan of subdivision's registration was "registration of the plan(s) of the Ziebarth Subdivision" within meaning of item in schedule, such that 'obligation to repay the principal sum 'within 12 months of registration' was triggered - held: separate questions answered in the negative.

[Lake Laurel](#) (I B C G)



United Petroleum Pty Ltd v Alice Springs Town Council [2019] NTSC 41

Supreme Court of the Northern Territory

Grant CJ

Costs - plaintiff sought review of defendant's purported refusal to approve 'Traffic Impact Assessment Report' which plaintiff submitted pursuant to Development Permit's condition - plaintiff contended it had not been provided with 'expert advice' which defendant had taken into account - after proceedings commenced the advice was provided to plaintiff - parties agreed there was 'no further point to the litigation' - determination of costs - *Parap Hotel Pty Ltd v NT Planning Authority* [1993] NTSC 37 - *United Super Investments Pty Ltd & Ors v Randazzo Investments Pty Ltd & Ors* [2010] NTSC 31 - rr25.05, 63.03 & 63.11 *Supreme Court Rules 1987* (NT) - held: no order made as to costs.

[United Petroleum](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

To a Locomotive in Winter

By: Walt Whitman

Thee for my recitative,
Thee in the driving storm even as now, the snow, the winter-
day declining,
Thee in thy panoply, thy measur'd dual throbbing and thy
beat convulsive,
Thy black cylindric body, golden brass, and silvery steel,
Thy ponderous side-bars, parallel and connecting rods,
gyrating, shuttling at thy sides,
Thy metrical, now swelling pant and roar, now tapering in
the distance,
Thy great protruding head-light fix'd in front,
Thy long, pale, floating vapor-pennants, tinged with delicate
purple,
The dense and murky clouds out-belching from thy smoke-
stack,
Thy knitted frame, thy springs and valves, the tremulous
twinkle of thy wheels,
Thy train of cars behind, obedient, merrily following,
Through gale or calm, now swift, now slack, yet steadily
careering;
Type of the modern—emblem of motion and power—pulse of
the continent,
For once come serve the Muse and merge in verse, even
as here I see thee,
With storm and buffeting gusts of wind and falling
snow,
By day thy warning ringing bell to sound its notes,
By night thy silent signal lamps to swing.

Fierce-throated beauty!
Roll through my chant with all thy lawless music, thy
swinging lamps at night,
Thy madly-whistled laughter, echoing, rumbling like an
earthquake, rousing all,
Law of thyself complete, thine own track firmly holding,
(No sweetness debonair of tearful harp or glib piano thine,)
Thy trills of shrieks by rocks and hills return'd,
Launch'd o'er the prairies wide, across the lakes,
To the free skies unpent and glad and strong.



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

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