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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)

Australian Competition and Consumer Commission v viagogo AG (No 3) (FCA) - consumer law - misleading or deceptive conduct - respondent contravened s18(1), 29(1)(h), 29(1)(i), 34 & 48(1) Australian Consumer Law - determination of disputed aspects of orders (I B C G)

Howden Australia Pty Ltd v Minetek Pty Ltd (Forensic Imaging) (FCA) - discovery - applicants sought that respondents make available 'electronic storage devices' and related orders - orders granted (I B C G)

Ozito Industries Pty Ltd v Australian Securities and Investments Commission, in the matter of Ozito Industries Pty Ltd (FCA) - corporations - plaintiff sought 'relief from non-compliance with the financial reporting and lodging requirements' - relief granted (B)

The Checkout Pty Ltd & Ors v Cordell Jigsaw Productions Pty Ltd & Anor (No 2) (NSWSC) - Harman undertaking - defamation - plaintiffs sought release from Harman undertaking - application granted (I B C G)

Re Balmz Pty Ltd (in liq) (VSC) - corporations - liquidator of company sought that first and second defendants pay compensation for failure to prevent 'company from trading whilst insolvent' - first and second defendants each to pay compensation to company (B)

1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd [No 2] (VSCA) - costs - indemnity costs - Court dismissed appeal - rejection of Calderbank offer not unreasonable - appellant to pay first respondent's costs on standard basis (I B C G)

City of Kalamunda v A.C.N. 605 729 995 Pty Ltd (WASC) - planning and development - respondents acquitted of charge of offence under s218 *Planning and Development Act 2005* (WA) - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v viagogo AG (No 3) [2020] FCA 1423

Federal Court of Australia

Burley J

Consumer law - misleading or deceptive conduct - Court found respondent contravened s18(1), 29(1)(h), 29(1)(i), 34 & 48(1) Australian Consumer Law - parties disputed aspects of orders - pecuniary penalty - injunctions - publication of findings - 'compliance program' - held: Court determined to impose \$7 million penalty - injunction granted to restrain respondent 'from engaging in the impugned conduct' - respondent to participate in compliance program - respondent to pay applicant's costs.

[Australian Competition and Consumer Commission](#) (I B C G)

Howden Australia Pty Ltd v Minetek Pty Ltd (Forensic Imaging) [2020] FCA 1419

Federal Court of Australia

Perram J

Discovery - applicants, by interlocutory application, sought that respondents make available 'electronic storage devices' in respondents' possession - applicants sought that the devices be 'forensically imaged' and that images 'be searched for documents' - applicants also sought provision by respondents of 'any forensic images' which respondents had 'already made of the devices' - whether 'forensic imaging should occur' - adequacy of discovery - rr14.01(1)(a)(i) & (ii) *Federal Court Rules 2011* (Cth) - held: orders granted.

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

Ozito Industries Pty Ltd v Australian Securities and Investments Commission, in the matter of Ozito Industries Pty Ltd [2020] FCA 1432

Federal Court of Australia

O'Bryan J

Corporations - plaintiff, under ss1322(4)(c) & (d) *Corporations Act 2001* (Cth) (Corporations Act), sought 'relief from non-compliance with the financial reporting and lodging requirements of Part 2M.3' Corporations Act - *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* - whether non-compliance inadvertent - determination of appropriate orders - limit on relief - held: relief granted.

[Ozito](#) (B)

The Checkout Pty Ltd & Ors v Cordell Jigsaw Productions Pty Ltd & Anor (No 2) [2020] NSWSC 1364

Supreme Court of New South Wales

Stevenson J

Harman undertaking - defamation - plaintiffs sought to amend List Statement to incorporate defamation claim - plaintiffs accepted defamation proceedings 'should be pursued separately in the Defamation List' - plaintiffs sought release from Harman undertaking which they implied gave concerning document - "special circumstances" - held: application granted - plaintiffs released from 'implied undertaking' - plaintiffs permitted to use document for purpose of defamation proceedings.

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

Re Balmz Pty Ltd (in liq) [2020] VSC 652

Supreme Court of Victoria

Randall AsJ

Corporations - plaintiff liquidator of company sought that first and second defendants pay compensation for failure to prevent 'company from trading whilst insolvent' - whether company insolvent during 'relevant period' - whether first and second defendants had defence under s588H(2) *Corporations Act 2001* (Cth) - whether first and second defendants had 'reasonable grounds to expect, and did expect, that the company was solvent' - held: first and second defendants each to pay compensation to company.

[Re Balmz](#) (B)

1155 Nepean Highway Pty Ltd v Promax Buildings Pty Ltd [No 2] [2020] VSCA 263

Court of Appeal of Victoria

Beach, Kyrou & McLeish JJA

Costs - indemnity costs - security of payments - Court dismissed appeal - parties agreed appellant should pay first respondent's costs of application for leave to appeal and appeal - first respondent contended appellant unreasonably rejected its Calderbank offer - first respondent sought indemnity costs order - 'guiding factors' in *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority [No 2]* (2005) 13 VR 435 - whether rejection of Calderbank offer unreasonable - prospects of success - offer's size - held: rejection of Calderbank offer not unreasonable - appellant to pay first respondent's costs on standard basis.

[1155 Nepean Highway](#) (I B C G)

City of Kalamunda v A.C.N. 605 729 995 Pty Ltd [2020] WASC 341

Supreme Court of Western Australia

Curthoys J

Planning and development - respondents charged with offence under s218 *Planning and Development Act 2005* (WA) - respondents acquitted of charge - 'statutory obligation'



concerning 'bushfire risk' - *Bush Fires Act 1954* (WA) - s31(1)(b) Criminal Code - whether erroneous conclusion that 'removal of established trees' 'was not development per se' - whether erroneous finding concerning burden of proof - whether erroneous finding that actions were 'aspects of maintenance' - whether erroneous finding concerning evidence - held: appeal dismissed.

[City of Kalamunda](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



From: A Cosmic Outlook

By: Frederick William Henry Myers

BACKWARD!—beyond this momentary woe!—

Thine was the world's dim dawn, the prime emprise;

Eternal aeons gaze thro' these sad eyes,

And all the empyreal sphere hath shaped thee so.

Nay! all is living, all is plain to know! 5

This rock has drunk the ray from ancient skies;

Strike! and the sheen of that remote sunrise

Gleams in the marble's unforgetful glow.

Thus hath the cosmic light endured the same

Ere first that ray from Sun to Sirius flew; 10

Aye, and in heaven I heard the mystic Name

Sound, and a breathing of the Spirit blew;

Lit the long Past, bade shine the slumbering flame

And all the Cosmorama blaze anew.

[https://en.wikipedia.org/wiki/Frederic W. H. Myers](https://en.wikipedia.org/wiki/Frederic_W._H._Myers)

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