

Thursday, 12 November 2020

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Augusta Ventures Limited v Mt Arthur Coal Pty Limited (FCAFC) - security for costs - representative proceedings - applicant was litigation funder for representative proceedings - primary judge ordered that applicant provide security for respondents' costs - leave to appeal granted - appeal allowed (I B C G)

Stonehealth Pty Ltd v ZAA Ventures Pty Ltd as Trustee for the ZAA Investment Trust (FCAFC) - administrative law - second respondent Authority recommended that Secretary decline to approve first respondent's application - primary judge quashed decision - appeal allowed (I B C G)

State of Escape Accessories Pty Limited v Schwartz (FCA) - copyright - consumer law - passing off - claim by applicant assignee against first and second respondents - misleading and deceptive conduct and accessorial liability established (I B)

The Commissioner of the Australian Federal Police v Pharmacy Depot Hurstville Pty Ltd (in liq) (No 2) (NSWSC) - proceeds of crime - first defendant sought that Court allow 'debts incurred by; and remuneration, costs and disbursements of' first defendant's liquidators 'to be met out of funds held in' "Restrained Bank Account" - amended motion dismissed (I B C G)

BCS Infrastructure Support Pty Ltd v Jones Lang Lasalle (NSW) Pty Ltd (VSC) - contract - security of payments - plaintiff contended defendant failed to pay claimed amount and provide payment schedule 'in response to' payment claim - plaintiff sought payment of sum as 'debt due'

- originating motion dismissed (I B C G)

Pogorzelski v Latrobe City Council (VSC) - administrative law - Victorian Civil and Administrative Tribunal affirmed Council's refusal to extend planning permit - appeal dismissed (I B C G)

Song v South Beach Management Pty Ltd (WASC) - subpoena - plaintiffs sought to issue subpoena before pleadings' closure - application granted (I B C G)

Summaries With Link (Five Minute Read)

Augusta Ventures Limited v Mt Arthur Coal Pty Limited [2020] FCAFC 194

Full Court of the Federal Court of Australia

Allsop CJ, Middleton & White JJ

Security for costs - representative proceedings - industrial law - Mr Simon Turner brought 'two group proceedings' under Pt IVA *Federal Court of Australia Act 1976* (Cth) - applicant was litigation funder for the proceedings - primary judge ordered that applicant provide security for respondents' costs - applicant sought to appeal - s570 *Fair Work Act 2009* (Cth) - held: leave to appeal granted - appeal allowed.

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

Stonehealth Pty Ltd v ZAA Ventures Pty Ltd as Trustee for the ZAA Investment Trust [2020] FCAFC 188

Full Court of the Federal Court of Australia

Collier, Rangiah & Charlesworth JJ

Administrative law - first respondent sought approval from Secretary of Department of Health 'to supply pharmaceutical benefits from certain premises' - second respondent Authority recommended that Secretary decline to approve first respondent's application - primary judge quashed decision of Authority and compelled it to consider first respondent's application and make recommendation 'according to law' - appellant appealed - construction of 'criteria for approval' - Item 130 of Pt 2 of Sch 1 *National Health (Australian Community Pharmacy Authority Rules) Determination 2018* (Cth) - whether erroneous failure to construe "supermarket" - held: appeal allowed.

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

State of Escape Accessories Pty Limited v Schwartz [2020] FCA 1606

Federal Court of Australia

Davies J

Copyright - applicant was assignee of 'any copyright subsisting' in 'tote bag' which a director of applicant designed - applicant contended copyright subsisted in tote bag as "work of artistic craftsmanship" - applicant contended tote bags which second respondent 'imported and sold'

infringed copyright - applicant also contended second respondent 'engaged in misleading and deceptive conduct' and tort of passing off - first respondent was second respondent's sole director - applicant contended first respondent was joint tortfeasor with second respondent concerning copyright infringements and passing off, and was 'accessorily liable' concerning 'alleged contraventions of' Australian Consumer Law - *Copyright Act 1968* (Cth) - *Burge v Swarbrick* [2007] HCA 17 - held: misleading and deceptive conduct and accessorial liability established.

[State of Escape Accessories](#) (I B)

The Commissioner of the Australian Federal Police v Pharmacy Depot Hurstville Pty Ltd (in liq) (No 2) [2020] NSWSC 1571

Supreme Court of New South Wales

Walton J

Proceeds of crime - first defendant, by amended notice of motion, sought, pursuant to ss24(1)(c) & 24(1)(d) *Proceeds of Crime Act 2002* (Cth) (*Proceeds of Crime Act*), that Court allow 'debts incurred by; and remuneration, costs and disbursements of' first defendant's liquidators 'to be met out of funds held in' "Restrained Bank Account" - parties agreed that there was no authority which shared 'precise the factual scenario' of a liquidator's application under *Proceeds of Crime Act* for exclusion of company property 'subject of restraining orders' under *Proceeds of Crime Act - Corporations Act 2001* (Cth) - held: amended motion dismissed.

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

BCS Infrastructure Support Pty Ltd v Jones Lang Lasalle (NSW) Pty Ltd [2020] VSC 739

Supreme Court of Victoria

Stynes J

Contract - security of payments - proceeding concerned payment claim which plaintiff issued under contract between parties - plaintiff contended defendant failed to pay claimed amount and provide payment schedule 'in response to' payment claim - plaintiff sought payment of sum as 'debt due' - *Building and Construction Industry Security of Payment Act 2002* (Vic) - whether contract was a 'construction contract' and if so, time of service of payment claim - if payment claim served 11/2/20, whether payment schedule was 'served within 10 business days' - if payment claim served on 16/1/20, whether plaintiff's conduct prevented it from obtaining judgment - held: originating motion dismissed.

[BCS Infrastructure](#) (I B C G)

Pogorzelski v Latrobe City Council [2020] VSC 718

Supreme Court of Victoria

Kennedy J

Administrative law - Victorian Civil and Administrative Tribunal affirmed Council's refusal to extend planning permit - whether erroneous failure by Tribunal to accord natural justice to applicant - whether erroneous failure to 'have regard to relevant considerations' - s69(2) *Planning and Environment Act 1987* (Vic) - *ZBEL v Minister for Immigration and Multicultural*



and Indigenous Affairs [2006] HCA 63 - held: appeal dismissed.

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

Song v South Beach Management Pty Ltd [2020] WASC 402

Supreme Court of Western Australia

Allanson J

Subpoena - plaintiffs sought to issue subpoena before pleadings' closure - subpoena's purpose

- O36B r2 *Rules of the Supreme Court 1971* (WA) - consumer law - trust deed - *Australian*

Securities and Investments Commission Act 2001 (Cth) - held: application granted.

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



For the Fallen

By: Laurence Binyon

With proud thanksgiving, a mother for her children,
England mourns for her dead across the sea.
Flesh of her flesh they were, spirit of her spirit,
Fallen in the cause of the free.

Solemn the drums thrill; Death august and royal
Sings sorrow up into immortal spheres,
There is music in the midst of desolation
And a glory that shines upon our tears.

They went with songs to the battle, they were young,
Straight of limb, true of eye, steady and aglow.
They were staunch to the end against odds uncounted;
They fell with their faces to the foe.

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

They mingle not with their laughing comrades again;
They sit no more at familiar tables of home;
They have no lot in our labour of the day-time;
They sleep beyond England's foam.

But where our desires are and our hopes profound,
Felt as a well-spring that is hidden from sight,
To the innermost heart of their own land they are known
As the stars are known to the Night;

As the stars that shall be bright when we are dust,
Moving in marches upon the heavenly plain;
As the stars that are starry in the time of our darkness,
To the end, to the end, they remain.

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

[Click Here to access our Benchmark Search Engine](#)