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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)

Widjabul Wia-Bal v Attorney General of New South Wales (FCAFC) - native title - applicant sought that 'separate question be stated and answered and/or that declarations be granted' concerning first respondent's conduct - interlocutory application dismissed (I B C G)

Akibou Yacouba v Eurocars (Wholesale) Pty Ltd (FCA) - human rights - racial discrimination - respondents sought dismissal of proceeding on basis of failure comply with Court's orders and failure 'to prosecute the proceeding with diligence' - application dismissed (I B C G)

Westpac Life Insurance Services Limited v Mahony (No 3) (FCA) - insurance - life insurance - forfeiture rule - application under s215 *Life Insurance Act 1995* (Cth) - direction and orders made (I)

Parrwood Pty Ltd v Trinity Constructions (Aust) Pty Ltd (NSWSC) - security of payments - plaintiff sought declaration adjudication determination ('second determination') void - first defendant by sought declaration that 'earlier determination' ('first determination') void - first determination void - summons dismissed (I B C G)

Tasman Logistics Services Pty Ltd v Seaco Global Aust Pty Ltd & Ors (VSC) - personal property - contract - 'services agreement' - *Australian Consumer Law and Fair Trading Act 2012* (Vic) - plaintiff sought to sell containers of recyclables by public auction - orders granted (I B C G)

Gebrehiwot v McCutcheon (VSC) - judicial review - criminal procedure - limitations - statutory construction - *Fines Reform Act 2014* (Vic) - proceedings against appellant were brought within time - appeal dismissed (I B C G)

Clifford Stuart Rocke as administrator of Noahs Rosehill Waters Pty Ltd (Subject to Deed of Company Arrangement) v Rosehill Land Investments Pty Ltd (WASC) - corporations - defendant sought to adjourn plaintiffs' application for orders under ss444GA & 447A(1) *Corporations Act 2001* (Cth) and s90-15, sch 2 *Corporations Act 2001* (Cth) - adjournment refused (B)

Summaries With Link (Five Minute Read)

Widjabul Wia-Bal v Attorney General of New South Wales [2020] FCAFC 34

Full Court of the Federal Court of Australia

Reeves, Jagot & Mortimer JJ

Native title - applicant was 'native title claimant' - applicant, by amended interlocutory application, sought that 'separate question be stated and answered and/or that declarations be granted' concerning first respondent's conduct - applicant contended that first respondent could not 'lawfully require' application to agree to 'indigenous land use agreement' as condition of first respondent's willingness to agree to 'native title determination by consent' - applicant contended first respondent's conduct was in breach of 'obligation of good faith' to applicant - held: case made by applicant failed 'for lack of proof' - applicant did not prove 'sufficient factual foundation' for finding first respondent had 'acted other than in good faith' concerning negotiation of agreement for native title determination by consent - held: interlocutory application dismissed.

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

Akibou Yacouba v Eurocars (Wholesale) Pty Ltd [2020] FCA 317

Federal Court of Australia

Jackson J

Human rights - racial discrimination - respondents, under r5.23(1)(b)(i) *Federal Court Rules 2011* (Cth), sought dismissal of proceeding on basis applicant had failed to comply with Court's orders and failed 'to prosecute the proceeding with diligence' - ss9(1) & 18C(1) *Racial Discrimination Act 1975* (Cth) - whether discretion to dismiss proceeding enlivened - whether to exercise discretion to dismiss proceeding - interests of justice - held: Court not satisfied to dismiss proceeding - application dismissed.

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

Westpac Life Insurance Services Limited v Mahony (No 3) [2020] FCA 285

Federal Court of Australia

Allsop CJ

Insurance - applicant, under s215 *Life Insurance Act 1995* (Cth), sought declaration 'to protect itself in respect of a policy of life insurance' which it issued over life of 'primary life insured' (Ms Coldwell) - 'Life Benefit Amount' paid into Court upon application's filing - applicant had formed opinion 'no sufficient discharge could be obtained otherwise' - first respondent convicted of Ms Coldwell's murder - first respondent and second respondent executor of estate claimed proceeds of policy - forfeiture rule - held: Court directed that 'balance of funds' be paid to Ms Coldwell's estate - direction and orders made.

[Westpac](#) (I)

Parrwood Pty Ltd v Trinity Constructions (Aust) Pty Ltd [2020] NSWSC 208

Supreme Court of New South Wales

Ball J

Security of payments - plaintiff sought declaration that adjudication determination ('second determination') in first defendant's favour in respect of payment claim was void - first defendant by cross-summons sought declaration that 'earlier determination' ('first determination') which found 'no amount' owing concerning payment claim was void - *Building and Construction Industry Security of Payment Act 1999* (NSW) - *Briginshaw v Briginshaw* - whether open to first defendant to contend first determination void - whether first determination void - whether payment claim invalid due to being accompanied by supporting statement which first defendant knew to be 'false or misleading in a material particular' - held: first determination was void - summons dismissed.

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

Tasman Logistics Services Pty Ltd v Seaco Global Aust Pty Ltd & Ors [2020] VSC 100

Supreme Court of Victoria

Garde J

Personal property - consumer law - plaintiff was 'logistics services provider' - company (SKM) collected 'recyclable waste for disposal' - SKM wound up - plaintiff held containers of 'unsorted recyclables' which SKM had provided - applicant's 'unpaid storage fees' were in amount of \$3,712,542.25 and accruing - applicant, under s70 *Australian Consumer Law and Fair Trading Act 2012* (Vic) (ACLFTA) sought orders authorising applicant to sell the containers by public auction - plaintiff also sought to dispose of contents to landfill if sale unsuccessful - defendants were owners of containers - defendants opposed orders sought by plaintiff - *Personal Property Securities Act 2009* (Cth) (PPSA) - 'services agreement' between plaintiff and SKM - 'Terms and Conditions of Trade' (TCT) - whether plaintiff empowered under TCT to sell 'containers and contents' by 'public auction or private treaty' - application of ACLFTA to matters concerning disposal - whether to authorise contents' disposal to landfill if sale of contents unsuccessful - priority between plaintiff's interest in containers and 'holders of security interests' under PPSA - held: orders granted.

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

Gebrehiwot v McCutcheon [2020] VSC 109

Supreme Court of Victoria

Kennedy J

Judicial review - criminal procedure - limitations - statutory construction - appeal concerned question of law whether charges against appellant were 'brought within the statutory time limit' which *Fines Reform Act 2014* (Vic) (FRA) imposed - 'applicable time limit', after notice of enforcement cancellation served, within which proceedings could be brought - s37(2)(b)(ii) FRA - construction of ss38 & 39 FRA - whether error in Magistrate's decision - held: proceedings against appellant were within time - appeal dismissed.

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

Clifford Stuart Rocke as administrator of Noahs Rosehill Waters Pty Ltd (Subject to Deed of Company Arrangement) v Rosehill Land Investments Pty Ltd [2019] WASC 489

Supreme Court of Western Australia

Master Sanderson

Corporations - plaintiffs were liquidators of company (Noahs Rosehill Waters) - plaintiffs sought orders under ss444GA & 447A(1) *Corporations Act 2001* (Cth) and s90-15, sch 2 *Corporations Act 2001* (Cth) - plaintiffs sought to transfer issued shares in Noahs Rosehill which company (Rosehill Land Investments) held to company (Hartman No 1) - defendant sought to adjourn plaintiffs' application - *Centennial Mining Ltd* [2019] WASC 411 - held: adjournment refused.

[Clifford](#) (B)

CRIMINAL

Executive Summary

Summaries With Link

Benchmark

The Passionate Shepherd to His Love

By: Christopher Marlowe

COME live with me and be my Love,
And we will all the pleasures prove
That hills and valleys, dales and fields,
Or woods or steepy mountain yields.

And we will sit upon the rocks, 5
And see the shepherds feed their flocks
By shallow rivers, to whose falls
Melodious birds sing madrigals.

And I will make thee beds of roses
And a thousand fragrant posies; 10
A cap of flowers, and a kirtle
Embroidered all with leaves of myrtle.

A gown made of the finest wool
Which from our pretty lambs we pull;
Fair-lined slippers for the cold, 15
With buckles of the purest gold.

A belt of straw and ivy-buds
With coral clasps and amber studs:
And if these pleasures may thee move,
Come live with me and be my Love. 20

The shepherd swains shall dance and sing
For thy delight each May morning:
If these delights thy mind may move,
Then live with me and be my Love.

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

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