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

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Executive Summary (1 minute read)

Lindsay-Owen v Winton Partners Funds Management Pty Ltd (NSWCA) - contract - construction of Advisory Mandate - calculation of remuneration to be paid to respondent by appellants for services - appeal dismissed (I B C G)

Binge-Grose v State of New South Wales (NSWSC) - costs - indemnity costs - liability admitted by defendant in proceedings - successful plaintiff refused costs of liability proceedings on indemnity basis (I B C G)

In the matter of Bellafountain Pty Ltd (NSWSC) - corporations - liquidator granted approval to enter into two retainers of more than three months duration - orders made (I B C G)

Hatziplis v Photios (NSWSC) - guarantee and indemnity - loan - guarantor obliged to repay amount owing under Convertible Note Deed (I B C G)

Bettar Holdings Pty Ltd v Amelia 1822 Pty Ltd as trustee for the Waterloo Trust (NSWSC) - bias - referee - reference of proceedings to referee set aside (I B C G)

Victorian WorkCover Authority v Roska Nedelkovska (VSC) - administrative law - workplace injury - Magistrate's refusal to include reports in documents referred to medical panel quashed (I B C G)

Medical Board of Australia v Woollard (WASCA) - administrative law - erroneous dismissal of

certain claims on basis of abuse of process and lack of public interest - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Lindsay-Owen v Winton Partners Funds Management Pty Ltd [2017] NSWCA 78

Court of Appeal of New South Wales

Macfarlan & Payne JJA; Emmett AJA

Contract - appellants and respondent entered ('Advisory Mandate') which concerned terms of provision of services to appellants by respondent in connection with joint venture arrangement between appellants and company (Schofields) - dispute concerned calculation of remuneration to be paid to respondent by appellants for the services - proper construction of Advisory Mandate - held: appeal dismissed - primary judge erred in construction of 'The Property' in Advisory Mandate - respondent's Notice of Contention upheld - amount of remuneration paid to respondent remained the same - no error in declaration that amount paid to respondent was due and payable pursuant to Advisory Mandate's terms.

[Lindsay-Owen](#) (I B C G)

Binge-Grose v State of New South Wales [2017] NSWSC 388

Supreme Court of New South Wales

Adamson J

Costs - indemnity costs - plaintiff by tutor claimed damages against defendant for injuries suffered in care of foster parents - defendant admitted liability - plaintiff sought costs of liability proceedings on indemnity basis - conduct - Model Litigant Policy - whether failure by defendant to provide documents, or make admissions on pleadings, in timely way - alleged failure to admit liability before certain date - Calderbank letter - prejudice - held: Court not persuaded it was appropriate to award costs on indemnity basis - amended notice of motion dismissed.

[Binge-Grose](#) (I B C G)

In the matter of Bellafountain Pty Ltd [2017] NSWSC 391

Supreme Court of New South Wales

Gleeson JA

Corporations - plaintiff liquidator of company (Bellafountain Pty Ltd) sought approval of two retainers under s477(2B) *Corporations Act 2001* (Cth) - retainers were for more than three months duration - interests of creditors - liquidator's commercial judgment - whether lack of good faith, error, or 'real and substantial ground for doubting the prudence of the liquidator's proposal' - 'objection by interested persons' - 'test for independence' - whether retention of solicitors compromised liquidator's independence - held: approval of retainers granted.

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

Hatziplis v Photios [2017] NSWSC 397

Supreme Court of New South Wales

Stevenson J

Guarantee and indemnity - second plaintiff agreed to lend borrower amount pursuant to Convertible Note Deed - money not repaid - borrower deregistered - defendant was director of borrower - pursuant to deed, defendant agreed to guarantee repayment - whether representation by creditor's director to defendant that lender would 'never call on the guarantee' - held: no basis to conclude guarantee not enforceable due to anything said by creditor's director to defendant - deed was not a 'mortgage' for purposes of s205 *Duties Act 1997* (NSW) - judgment for second plaintiff against defendant.

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

Bettar Holdings Pty Ltd v Amelia 1822 Pty Ltd as trustee for the Waterloo Trust [2017] NSWSC 382

Supreme Court of New South Wales

Stevenson J

Bias - referee - Court ordered referral of proceedings to referee for inquiry and report - plaintiff sought to set aside reference to referee pursuant to r20.22 *Uniform Civil Procedure Rules 2005* (NSW) on basis of referee's 'apprehended unconscious bias' arising from his cross-examination of plaintiff's witness in unrelated proceedings - whether fair minded observer might reasonably apprehend referee might not bring impartial mind to resolution of the questions he was required to decide - held: bias established - reference of proceedings to referee set aside.

[Bettar Holdings](#) (I B C G)

Victorian WorkCover Authority v Roska Nedelkovska [2017] VSC 186

Supreme Court of Victoria

Macaulay J

Administrative law - first defendant suffered workplace injury - first defendant sought compensation and payment of physiotherapy expenses from plaintiff - plaintiff sought judicial review of Magistrate's refusal to include reports concerning suitability of employment role for first defendant in documents referred to a medical panel under s304(b) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - first defendant conceded decision involved jurisdictional error - whether Court should grant relief - whether plaintiff involved in misleading Magistrate - reports' evidential quality - whether inability to counter reports - held: Court not persuaded to refuse relief on basis of first defendant's arguments - Magistrate's decision quashed.

[Victorian WorkCover](#) (I B C G)

Medical Board of Australia v Woollard [2017] WASCA 64

Court of Appeal of Western Australia

Newnes, Murphy & Mitchell JJA

Administrative law - State Administrative Tribunal dismissed certain claims in proceedings brought by appellant against respondent under *Health Practitioner Regulation National Law (WA) Act 2010* - appellant had alleged professional misconduct, unprofessional conduct or



unsatisfactory professional performance by respondent - whether prejudice resulting from delay - double jeopardy - public interest - held: it was not open to Tribunal to find abuse of process in relation to claims or that there was no public interest in certain claims - appeal allowed.

[Medical Board of Australia](#) (I B C G)



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It was a Lover and his Lass

By [William Shakespeare](#)

It was a lover and his lass,
With a hey, and a ho, and a hey nonino,
That o'er the green cornfield did pass,
*In springtime, the only pretty ring time,
When birds do sing, hey ding a ding, ding;
Sweet lovers love the spring.*

Between the acres of the rye,
With a hey, and a ho, and a hey nonino,
Those pretty country folks would lie,
*In springtime, the only pretty ring time,
When birds do sing, hey ding a ding, ding;
Sweet lovers love the spring.*

This carol they began that hour,
With a hey, and a ho, and a hey nonino,
How that a life was but a flower
*In springtime, the only pretty ring time,
When birds do sing, hey ding a ding, ding;
Sweet lovers love the spring.*

And therefore take the present time,
With a hey, and a ho, and a hey nonino,
For love is crownèd with the prime
*In springtime, the only pretty ring time,
When birds do sing, hey ding a ding, ding;
Sweet lovers love the spring.*

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