

Friday, 15 February 2019

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)

Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (In liquidation) (NSWCA) - security of payments - contractor appealed against rectification of contract and finding that adjudication determination was valid - appeal allowed (B C I G)

Briggs v Aboriginal Heritage Council (VSC) - administrative law - first defendant determined that second defendant would be a 'registered Aboriginal party' - application for judicial review dismissed (I B C G)

Trkulja v Google LLC (VSC) - pleadings - defamation - application to file and serve further amended statement of claim refused - leave to further amend granted (I B C G)

Parker v Mitchell (QCA) - administrative law - leases and tenancies - proceedings arising from termination of residential tenancy agreement on basis applicant 'engaged in objectionable behaviour' - application for orders refused (I B C G)

Thomson v Tremco Pty Limited (QCA) - corporations - respondent succeeded on claim against appellant under s588M(3) *Corporations Act 2001* (Cth) - appeal dismissed (I B C G)

Ferrier v WorkCover Queensland (No 2) (QSC) - costs - application succeeded in seeking extension of limitation period - costs to follow event (I B C G)

In the Estate of Gwendoline Katherine Wilkinson (Deceased) (SASC) - wills and estates - executors passed over - Public Trustee granted administration of estate with will annexed (B)

Summaries With Link (Five Minute Read)

Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (In liquidation) [2019] NSWCA 11

Court of Appeal of New South Wales

Leeming, Payne & White JJA; Sackville & Emmett AJJA

Security of payments - proceedings arising from claim for progress payments under 'Works Subcontract' (contract) between appellant Contractor and first respondent Subcontractor in liquidation - adjudicator made adjudication determination in first respondent's favour against appellant - appellant did not pay amount to first respondent - appellant contended adjudication determination invalid because first respondent made application outside time limit *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payment Act) - first respondent cross-claimed seeking contract's rectification altering dates on which progress payments required to be made - primary judge found contract should be rectified and that adjudication determination was valid - whether primary judge erred in rectifying contract - whether erroneous finding first respondent not out of time in purporting to make application - whether Security of Payment Act could operate for benefit of builder or subcontractor when builder or subcontractor had 'gone into liquidation in insolvency' - held: appeal allowed.

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

Briggs v Aboriginal Heritage Council [2019] VSC 25

Supreme Court of Victoria

Bell J

Administrative law - first defendant determined second defendant would be registered Aboriginal party - plaintiffs sought judicial review, seeking that determination be set aside - *Aboriginal Heritage Act 2006* (Vic) - whether error established - 'wrong question' - 'no evidence' - whether denial of natural justice arising from procedure which first defendant adopted - whether failure to take mandatory consideration into account - held: grounds of review not made out - application for judicial review dismissed.

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

Trkulja v Google LLC [2019] VSC 38

Supreme Court of Victoria

John Dixon J

Pleadings - defamation - plaintiff sought to file and serve further amended statement of claim in proceedings - whether pleading disclosed cause of action - whether pleading may 'prejudice, embarrass or delay the fair trial' - held: pleading 'unnecessarily confusing and imprecise' - plaintiff refused leave to amend pleading - leave to submit 'proposed further amended

statement of claim' granted.

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

Parker v Mitchell [2019] QCA 2

Court of Appeal of Queensland

Fraser JA

Administrative law - leases and tenancies - proceedings arising from adjudicator's decision, following hearing in Queensland Civil & Administrative Tribunal (QCAT), to terminate residential tenancy agreement on basis applicant 'engaged in objectionable behaviour' - applicant sought order in recognition of implied tenancy agreement, and order that he was entitled to remain in accommodation - applicant also sought stay of order directing QCAT's principal registrar to reject application under s35 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) - s297 *Residential Tenancies and Rooming Accommodation Act 2008* (Vic) - orders refused.

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

Thomson v Tremco Pty Limited [2019] QCA 18

Court of Appeal of Queensland

Sofronoff P; Gotterson & Morrison JJA

Corporations - appellant and husband set up company to conduct waterproofing business (Kadoe) - appellant's husband was sole director - respondent supplied Kadoe with products - respondent sought payment of debts - judgment given in respondent's favour - Kadoe wound up on application by respondent - judgment in respondent's favour unsatisfied - respondent, under s588M(3) *Corporations Act 2001* (Cth), sought compensation from appellant as 'de facto director of Kadoe' - trial judge gave judgment in respondent's favour, and determined interest and costs in a separate decision - appellant appealed - whether apprehended bias - 'proof of debt' - whether decision not made on cases which trial judge referred to - whether invoices delivered - whether trial judge should have called ATO officers as witnesses - held: appeal dismissed.

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

Ferrier v WorkCover Queensland (No 2) [2019] QSC 19

Supreme Court of Queensland

Crow J

Costs - applicant successfully sought extension of limitation period - applicant sought costs - r681 *Uniform Civil Procedure Rules 1999* (Qld) - "with the court however having a discretion to order otherwise." - whether to depart from rule that costs follow event - respondent sought to reserve costs or make 'costs in the cause' on basis that dispute between parties could not be resolved prior to proceedings' commencement - held: Court satisfied costs should follow event.

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

In the Estate of Gwendoline Katherine Wilkinson (Deceased) [2018] SASC 200

Supreme Court of South Australia



Stanley J

Wills and estates - deceased appointed her three sons as executors - two sons sought grant of probate of will - one son opposed grant of probate and sought, pursuant to s67 *Testamentary Causes Act 1867* (SA), passing over of other two brothers as executors and that Public Trustee be granted estate's administration with will annexed - s9 *Public Trustee Act 1995* (SA) - whether executors in 'position of conflict' arising from transfer of money - whether 'duty to investigate transactions' - whether 'proper basis' to pass over executors and authorise administration of estate by Public Trustee - interests of beneficiaries - 'conflict between executors' held: executors passed over - Public Trustee granted administration of estate with will annexed.

[In the Estate](#) (B)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

A Sonnet to the Noble Lady, the Lady Mary Wroth

By: Ben Jonson

I that have been a lover, and could show it,
Though not in these, in rithmes not wholly dumb,
Since I exscribe your sonnets, am become
A better lover, and much better poet.
Nor is my Muse or I ashamed to owe it
To those true numerous graces, whereof some
But charm the senses, others overcome
Both brains and hearts; and mine now best do know it:
For in your verse all Cupid's armory,
His flames, his shafts, his quiver, and his bow,
His very eyes are yours to overthrow.
But then his mother's sweets you so apply,
Her joys, her smiles, her loves, as readers take
For Venus' ceston every line you make.

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

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