

Friday, 15 May 2020

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)

Mullen v Aged Care Quality and Safety Commissioner (FCAFC) - administrative law - freedom of information - refusal to provide documents to appellant - statutory construction - appeal dismissed (I B C G)

Hobbs on behalf of the Ngurrara D2 Claim Group v State of Western Australia (FCA) - native title - parties sought that Court make 'determination of native title by consent' over area - application granted (I B C G)

Vehicle Monitoring Systems Pty Limited v SARB Management Group Pty Ltd trading as Database Consultants Australia (No 3) (FCA) - subpoena - preliminary discovery - patent - applicant sought to set aside subpoena addressed to non-party - subpoena set aside (I B C G)

Steven Binetter as the representative of the Estate of the Late Ida Wolff v Ronald Binetter (NSWSC) - security for costs - wills and estates - executor resident overseas brought proceedings on behalf of estate - defendant sought security for costs - application granted (B)

Sutherland Shire Council v SportsCover Australia Pty Ltd on behalf of Certain Underwriters at Lloyds (NSWSC) - pleadings - costs - plaintiff granted leave to amend statement of claim - plaintiff to pay defendant's costs (I B C G)

International Management Group of America Pty Ltd v Media Niugini Ltd t/as

EMTV (NSWSC) - service - contract - estoppel - consumer law - defendant company incorporated in Papua New Guinea sought dismissal of Summons or to set aside Summons' service upon defendant - application dismissed (B C I G)

Gunnarsson-Wiener v Iles (TASFC) - summary dismissal - bias - appeal against refusal of recusal application - notice of appeal struck out - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

Mullen v Aged Care Quality and Safety Commissioner [2020] FCAFC 78

Full Court of the Federal Court of Australia

McKerracher, Colvin & Jackson JJ

Administrative law - freedom of information - appellant, under *Freedom of Information Act 1982* (Cth) (FOI Act), sought documents 'held by Commonwealth agencies' concerning care of appellant's mother in residential aged care facility and investigation of appellant's complaints concerning the care - Information Commissioner decided some documents exempt from 'statutory process' and unable to be provided to appellant - Administrative Appeals Tribunal dismissed appellant's review applications - appellant's appeal dismissed - appellant appealed - statutory construction - whether 'Listed Provisions' in Sch 3 *Aged Care Act 1997* (Cth) (*Aged Care Act*) prohibited documents' production - construction of s86-9 *Aged Care Act* - 'power under' s55K FOI Act - held: appeal dismissed.

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

Hobbs on behalf of the Nurrara D2 Claim Group v State of Western Australia [2020] FCA 624

Federal Court of Australia

Colvin J

Native title - parties sought that Court make 'determination of native title by consent' over area - claim advanced consequent on decision in *Tjungarrayi v Western Australia; KN (deceased) (Tjiwarl and Tjiwarl # 2) v Western Australia* [2019] HCA 12. - consideration of terms of 'proposed consent determination' - 'statutory requirements' - whether conditions under s87 *Native Title Act 1993* (Cth) satisfied - held: application granted.

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

Vehicle Monitoring Systems Pty Limited v SARB Management Group Pty Ltd trading as Database Consultants Australia (No 3) [2020] FCA 471

Federal Court of Australia

Yates J

Subpoena - preliminary discovery - patent - applicant, by interlocutory application, sought to set aside subpoena issued at first respondent's request addressed to non-party - r24.15(1) *Federal Court Rules 2011* (Cth) - whether relevance - whether improper purpose - whether "fishing" -

whether 'impermissible attempt to seek preliminary discovery from a non-party' - held: subpoena set aside.

[Vehicle Monitoring Systems](#) (I B C G)

Steven Binetter as the representative of the Estate of the Late Ida Wolff v Ronald Binetter [2020] NSWSC 552

Supreme Court of New South Wales

Beech-Jones J

Security for costs - wills and estates - plaintiff executor of deceased estate brought proceedings on estate's behalf 'to recover a loan' - defendant sought security of costs against executor - executor was resident overseas - estate's assets located in New South Wales - 'difficulty in the enforcement of any costs order' - whether plaintiff's 'residency in New York' enlivened power to grant security for costs under r42.21(1)(a) *Uniform Civil Procedure Rules 2005* (NSW) - whether the power 'not enlivened' due to effect of 'deeming provision' in s97(1) *Probate and Administration Act 1898* (NSW) - quantum - held: application granted - order for security for costs made.

[View Decision](#) (B)

Sutherland Shire Council v SportsCover Australia Pty Ltd on behalf of Certain Underwriters at Lloyds [2020] NSWSC 525

Supreme Court of New South Wales

Hoeben CJ at CL

Pleadings - costs - plaintiff, pursuant to s64 *Civil Procedure Act 2005* (NSW), sought orders granting it leave to amend statement of claim - plaintiff also sought that defendant pay its costs - plaintiff 'accepted in argument' it was 'seeking an indulgence' and submitted it should not have costs if successful - whether explanation for 'late amendment' - whether *Aon Risk Services Limited v Australian National University* [2009] HCA 2 applied - prejudice - whether 'factual substratum' remained the same - 'dictates of justice' - whether 'improper purpose' - held: leave to amend granted - plaintiff to pay defendant's costs.

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

International Management Group of America Pty Ltd v Media Niugini Ltd t/as EMTV [2020] NSWSC 559

Supreme Court of New South Wales

Stevenson J

Service - contract - estoppel - consumer law - defendant company ("EMTV") incorporated in Papua New Guinea - plaintiff, in reliance on r11.4 *Uniform Civil Procedure Rules 2005* (NSW) (Rules), caused 'Summons and Commercial List Statement' to be delivered to EMTV at its registered office in Port Moresby, purportedly by way of service' - plaintiff sought to justify service by reliance on Sch 6 Rules - defendant, under r11.6 Rules, sought dismissal of Summons or to set aside Summons' service - whether claims made by plaintiff fell within categories in Sch 6 Rules - whether claims had "insufficient prospects of success" - whether

court should dismiss proceedings or set service aside 'as a matter of discretion' - held: defendant's application dismissed.

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

Gunnarsson-Wiener v Iles [2020] TASFC 1

Full Court of the Supreme Court of Tasmania

Blow CJ; Brett & Geason JJ

Summary dismissal - bias - respondent was officer of Department of Primary Industries, Parks, Water and Environment - respondent issued instructions to appellant concerning appellant's goats pursuant to s14 *Animal Welfare Act 1993* - appellant sought review of respondent's decision to issue the instructions - magistrate laughed during adjournment application - appellant sought that magistrate recuse himself for apprehended bias - recusal application refused - appellant appealed - respondent, by interlocutory application, sought that notice of appeal be struck out and appeal summarily dismissed - whether grounds of appeal had merit - whether appeal frivolous - whether 'scandalous material' - held: notice of appeal struck out - appeal dismissed.

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

CRIMINAL

Executive Summary

Summaries With Link



A December Day

By: Sara Teasdale

Dawn turned on her purple pillow
— And late, late came the winter day,
Snow was curved to the boughs of the willow.
— The sunless world was white and grey.

At noon we heard a blue-jay scolding,
— At five the last thin light was lost
From snow-banked windows faintly holding
— The feathery filigree of frost.

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

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