

Friday, 15 October 2021

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.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Naidenov (liquidator) v Davey, in the matter of Josa Civil Group Pty Ltd (in liq) (FCA) - corporations - plaintiff liquidator sought that District Registrar be directed to issue, warrants granting plaintiff permission 'to search for and seize the property or books and records of second plaintiff - plaintiff also sought 'related orders' - orders granted as sought (I B C G)

JKC Australia LNG Pty Ltd v AkzoNobel NV (No 3) (FCA) - 'Harman undertaking' - contract - insurance - arbitration - corporations - applicant sought release of 'implied undertaking' concerning use of documents - - orders granted as sought (I B C G)

Trentelman v The Owners – Strata Plan No 76700 (NSWCA) - easement - estoppel - 'doctrine of proprietary estoppel' - primary judge ordered appellant to grant easement in first respondent's favour - primary judge in 'separate proceedings' refused to order removal of 'pool notation' from Strata Plan - appeals dismissed (B C I)

Reuther & Anor v Wallace (SASC) - corporations - oppression - refusal to set aside two notices issued by respondent under s293 *Corporations Act 2001* (Cth) on basis respondent's conduct was 'not oppressive' - appeal dismissed (B)

Re Crafted Capitol Pty Ltd (In Liquidation) (ACTSC) - corporations - 'Crafted Holdings Pty Ltd' and 'Crafted Central Pty Ltd' sought to terminate winding up of company 'Crafted Capitol Pty Ltd (in liquidation)' - application refused (B)

Summaries With Link (Five Minute Read)

Naidenov (liquidator) v Davey, in the matter of Josa Civil Group Pty Ltd (in liq) [2021] FCA 1175

Federal Court of Australia

Halley J

Corporations - plaintiff liquidator sought that District Registrar be directed to issue warrants granting plaintiff permission 'to search for and seize the property or books and records of second plaintiff - plaintiff also sought 'related orders' - ss530C & 597A *Corporations Act 2001* (Cth) - *Brooks (Liquidator) v Bull, in the matter of DV Bull Pty Ltd (in liq)* [2021] FCA 967 - "persistent pattern of non-cooperation and evasion" - whether to grant 'confidentiality orders' and 'disclosure affidavits' - held: orders granted as sought.

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

JKC Australia LNG Pty Ltd v AkzoNobel NV (No 3) [2021] FCA 1217

Federal Court of Australia

Banks-Smith J

'Harman undertaking' - contract - insurance - arbitration - corporations - applicant sought release of 'implied undertaking' concerning use of documents - 'Harman undertaking' - documents 'proposed use', 'relevance to arbitration' and 'relevance to Insurance Proceedings' - *Liberty Funding Pty Ltd v Phoenix Capital Ltd* [2005] FCAFC 3 - 'overarching purpose' in s37M(1) *Federal Court of Australia Act 1976* (Cth) - interests of justice - held: orders granted as sought.

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

Trentelman v The Owners - Strata Plan No 76700 [2021] NSWCA 242

Court of Appeal of New South Wales

Bathurst CJ, Bell P & Leeming JA

Easement - estoppel - appellant appealed against judgment in which 'doctrine of proprietary estoppel' was invoked to order appellant to grant easement in first respondent's favour - easement allowed first respondent 'the right to use a swimming pool and associated structures on lot' owned by appellant - appellant also appealed against refusal to make order in 'separate proceedings' for removal of notation on Strata Plan ('pool notation') - whether representation was 'incapable of creating an expectation in' first respondent - whether reliance by first respondent on representation established - whether unconscionable of appellant to resile from her promise - whether primary judge erred in refusing to grant relief concerning pool notation - held: appeals dismissed.

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

Reuther & Anor v Wallace [2021] SASC 107

Supreme Court of South Australia

Parker J

Corporations - Master refused to set aside two notices issued by respondent under s293 *Corporations Act 2001* (Cth) (Corporations Act) on basis respondent's conduct was 'not oppressive' under s232 Corporations Act - respondent had issued the notices to company 'to prepare audited financial reports and a director's report' - appellant sought to appeal - whether notices' issue occurred in 'conduct of the company's affairs - whether there was 'proposed act' by company or on company's behalf - whether ss232(d) or 232(3) Corporations Act applied - whether to grant discretionary relief under s233 Corporations Act - r 213.1 *Uniform Civil Rules 2020* (SA) - held: appeal dismissed.

[Reuther](#) (B)

Re Crafted Capitol Pty Ltd (In Liquidation) [2021] ACTSC 190

Supreme Court of the Australian Capital Territory

Mossop J

Corporations - security of payments - 'Crafted Holdings Pty Ltd' and 'Crafted Central Pty Ltd' sought to terminate winding up of company 'Crafted Capitol Pty Ltd (in liquidation)' - s482 *Corporations Act 2001* (Cth) - *In the matter of MWM Sydney Pty Limited (in liquidation)* [2016] NSWSC 688 - *Re Warbler Pty Ltd* (1982) 6 ACLR 526 held: application refused.

[Re Crafted Capitol](#) (B)

Summaries With Link



Frost at Midnight

By: Samuel Taylor Coleridge

The Frost performs its secret ministry,
Unhelped by any wind. The owl's cry
Came loud—and hark, again! loud as before.
The inmates of my cottage, all at rest,
Have left me to that solitude, which suits
Abstruser musings: save that at my side
My cradled infant slumbers peacefully.
'Tis calm indeed! so calm, that it disturbs
And vexes meditation with its strange
And extreme silentness. Sea, hill, and wood,
This populous village! Sea, and hill, and wood,
With all the numberless goings-on of life,
Inaudible as dreams! the thin blue flame
Lies on my low-burnt fire, and quivers not;
Only that film, which fluttered on the grate,

Still flutters there, the sole unquiet thing.
Methinks, its motion in this hush of nature
Gives it dim sympathies with me who live,
Making it a companionable form,
Whose puny flaps and freaks the idling Spirit
By its own moods interprets, every where
Echo or mirror seeking of itself,
And makes a toy of Thought.

But O! how oft,
How oft, at school, with most believing mind,
Presageful, have I gazed upon the bars,
To watch that fluttering stranger ! and as oft
With unclosed lids, already had I dreamt
Of my sweet birth-place, and the old church-tower,
Whose bells, the poor man's only music, rang
From morn to evening, all the hot Fair-day,
So sweetly, that they stirred and haunted me
With a wild pleasure, falling on mine ear
Most like articulate sounds of things to come!
So gazed I, till the soothing things, I dreamt,
Lulled me to sleep, and sleep prolonged my dreams!



And so I brooded all the following morn,
Awed by the stern preceptor's face, mine eye
Fixed with mock study on my swimming book:
Save if the door half opened, and I snatched
A hasty glance, and still my heart leaped up,
For still I hoped to see the stranger's face,
Townsmen, or aunt, or sister more beloved,
My play-mate when we both were clothed alike!

Dear Babe, that sleepest cradled by my side,
Whose gentle breathings, heard in this deep calm,
Fill up the intersperséd vacancies
And momentary pauses of the thought!
My babe so beautiful! it thrills my heart
With tender gladness, thus to look at thee,
And think that thou shalt learn far other lore,
And in far other scenes! For I was reared
In the great city, pent 'mid cloisters dim,
And saw nought lovely but the sky and stars.
But thou, my babe! shalt wander like a breeze
By lakes and sandy shores, beneath the crags
Of ancient mountain, and beneath the clouds,
Which image in their bulk both lakes and shores
And mountain crags: so shalt thou see and hear
The lovely shapes and sounds intelligible
Of that eternal language, which thy God
Utters, who from eternity doth teach
Himself in all, and all things in himself.
Great universal Teacher! he shall mould
Thy spirit, and by giving make it ask.

Therefore all seasons shall be sweet to thee,
Whether the summer clothe the general earth
With greenness, or the redbreast sit and sing
Betwixt the tufts of snow on the bare branch
Of mossy apple-tree, while the night-thatch
Smokes in the sun-thaw; whether the eave-drops fall
Heard only in the trances of the blast,
Or if the secret ministry of frost
Shall hang them up in silent icicles,
Quietly shining to the quiet Moon.

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

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