

Friday, 16 April 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)

Monarch Advisory Group Pty Ltd v Puxty (FCA) - security for costs - corporations - respondents sought provision of security for costs by applicant - application dismissed (I B C G)

Doyle's Farm Produce Pty Ltd as trustee for Claredale Family Trust v Murray Darling Basin Authority (NSWSC) - pleadings - negligence - plaintiffs sought strike out of paragraphs of defence which relied on provisions of Pt 5 *Civil Liability Act 2002* (NSW) - paragraphs struck out (I B C G)

Rathswohl v Court (NSWSC) - wills and estates - succession - family provision - plaintiff sought provision from deceased father's estate - family provision order granted (B)

Wang & Ors v HSBC Bank Australia Ltd & Ors (QCA) - real property - caveat - application for stay of Chief Justice's order for removal of caveat which appellants lodged over property - stay refused (I B C G)

Hauraki v Steinhoff Asia Pacific Limited trading as Freedom Furniture (ACTSC) - damages - negligence - statutory duty - work injury - determination of damages - judgment for plaintiff in sum of \$5,624,298.00 (I B C G)

Summaries With Link (Five Minute Read)

Monarch Advisory Group Pty Ltd v Puxty [2021] FCA 341

Federal Court of Australia

Markovic J

Security for costs - corporations - respondents, under s56 *Federal Court of Australia Act 1976* (Cth) and r19.01 *Federal Court Rules 2011* (Cth), or s1335 *Corporations Act 2001* (Cth), sought provision of security for costs by applicant - whether respondents had led evidence of 'financial position' of applicant - *All Class Insurance Brokers Pty Ltd (in liq) v Chubb Insurance Australia Limited* [2020] FCA 840 - onus - held: application dismissed.

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

Doyle's Farm Produce Pty Ltd as trustee for Claredale Family Trust v Murray Darling Basin Authority [2021] NSWSC 369

Supreme Court of New South Wales

Adamson J

Pleadings - negligence - plaintiffs, by noticed of motion, sought strike out of paragraphs of defence which relied on provisions of Pt 5 *Civil Liability Act 2002* (NSW) (Civil Liability Act) - whether defendants entitled to benefit of provisions - whether matter should be determined at trial - construction of s41 Civil Liability Act - whether Murray Darling Basin Authority (Authority), Authority's delegates and Commonwealth fell within s41 Civil Liability Act - whether 'no reasonable defence disclosed' - r14.28(1)(a) *Uniform Civil Procedure Rules 2005* (NSW) - constitutional law - *Water Act 2007* (Cth) - held: paragraphs of statement of claim struck out.

[Doyle's](#) (I B C G)

Rathswohl v Court [2021] NSWSC 356

Supreme Court of New South Wales

Rees J

Wills and estates - succession - family provision - plaintiff sought provision from deceased father's estate - *Page v Hull-Moody* [2020] NSWSC 411 - *Shelley v Prager* [2020] NSWSC 1393 - ss59 & 60(2) *Succession Act 2006* (NSW) - whether 'last will' of deceased made 'adequate provision' for plaintiff - held: family provision order granted.

[Rathswohl](#) (B)

Wang & Ors v HSBC Bank Australia Ltd & Ors [2021] QCA 63

Court of Appeal of Queensland

McMurdo JA

Real property - caveat - application for stay of Chief Justice's order for removal of caveat which appellants lodged over property - respondent mortgagee had sold property 'to the other respondents' - contract 'yet to settle' due to caveat - appellants contended respondent had not acted 'in good faith' - *Hawkesbury Valley Developments Pty Ltd v Custom Credit Corporation Ltd* (1994) 8 BPR 15 - *West v Secure Funding Pty Ltd* [2020] QCA 296 - whether 'good

arguable case' in appeal - held: stay refused.

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

Hauraki v Steinhoff Asia Pacific Limited trading as Freedom Furniture [2021] ACTSC 54

Supreme Court of the Australian Capital Territory

Crowe AJ

Damages - negligence - statutory duty - work injury - plaintiff claimed damages against defendant employer in negligence and/or for 'breach of statutory duty' - 'denial of liability' and contributory negligence claim 'effectively abandoned' by defendant - 'denial of causation' also abandoned - defendant challenged 'plaintiff's case' concerning damages - *Work Health and Safety Regulation 2011* (ACT) - *Civil Law (Wrongs) Act 2002* (ACT) - determination of damages - held: judgment for plaintiff in sum of \$5,624,298.00.

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

Summaries With Link

Benchmark

Up in the Hills From “Autumn Leaves”

By: Helen Louise Birch

THE EARTH smells old and warm and mellow, and all things lie at peace.

I too serenely lie here under the white-oak tree, and know the splendid flight of hours all blue and gay, sun-drenched and still.

The dogs chase rabbits through the hazel-brush;
I hear now close at hand their eager cries, now swift
receding into the distance, leaving a-trail behind them in the
clear sweet air shrill bursts of joy.

There's something almost drowsy in that waning
clamor; 5

It brings the stillness nearer and a sense of being bodily at
one with the old warm earth,

Blessedly at one with the fragrant laughing sun-baked
earth,

At one with its sly delightful wicked old laughter.

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