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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)

Bhagwan Marine Pty Ltd v The Ship "Teras Bandicoot" (No 2) (FCA) - admiralty - plaintiff sought 'valuation and sale' in respect of defendant arrested ship 'pendente lite' - relief granted (I B C G)

Parke v Rubenstein (FCA) - defamation - interlocutory application - applicant sought 'order giving effect' to acceptance by applicant of third respondent's 'Notice of offer to compromise' - order granted (B C I)

BCEG Australia v Yu Xiao & Ors (No 2) [2020] (NSWSC) - discovery - subpoena - defendants sought to set aside subpoenas issued by plaintiff - application dismissed (I B C G)

Charoen Pokphand Foods Public Company Ltd v Aqua Star Pty Ltd (NSWSC) - pleadings - cross-vesting - defendant sought to strike out statement of claim, or permanent stay of proceedings, or proceedings' transfer to Supreme Court of Victoria - motion dismissed (I B C G)

Pitard v One Managed Investment Funds Ltd (VSC) - trusts - plaintiff sought declarations that debts were not 'Collateral' under 'security deeds' - application dismissed (B)

Mirabela Nickel Ltd (In Liquidation) (Receivers and Managers Appointed) v Mining Standards International Pty Ltd [No 3] (WASC) - pleadings - sale agreement - defendant sought to amend defence - amendments allowed subject to vacation of trial dates and relisting

of proceedings (I B C G)

Archibald v Field (WASC) - wills and estates - plaintiff by writ of summons sought grant of letters of administration of deceased's will - orders sought in writ of summons granted - application of 'proposed interveners' dismissed (B)

Summaries With Link (Five Minute Read)

Bhagwan Marine Pty Ltd v The Ship "Teras Bandicoot" (No 2) [2020] FCA 1481

Federal Court of Australia

McKerracher J

Admiralty - plaintiff sought 'valuation and sale' in respect of defendant arrested ship 'pendente lite' - r69(1) *Admiralty Rules 1988* (Cth) - *The "Myrto"* [1977] 2 Lloyd's Rep 243 - *Bayside Air Conditioning Pty Ltd v The Owners of the Ship Cape Don* [1997] FCA 690 - held: relief granted.

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

Parke v Rubenstein [2020] FCA 1466

Federal Court of Australia

Besanko J

Defamation - interlocutory application - applicant, under r 25.10 *Federal Court Rules 2011* (Cth), sought 'order giving effect' to acceptance by applicant of third respondent's 'Notice of offer to compromise' - third respondent contended offer was incapable of acceptance or that Court should exercise discretion to refuse to give effect to 'purported acceptance' - whether applicant's acceptance was 'valid and effective' - held: order granted.

[Parke](#) (B C I)

BCEG Australia v Yu Xiao & Ors (No 2) [2020] NSWSC 1403

Supreme Court of New South Wales

Stevenson J

Discovery - subpoena - defendants sought to set aside subpoenas issued by plaintiff - defendants contended subpoenas' service constituted abuse of process by attempting to 'sidestep Practice Note SC Eq 11' - whether plaintiff established 'exceptional circumstances' of kind which Practice Note referred to - held: exceptional circumstances established - application dismissed.

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

Charoen Pokphand Foods Public Company Ltd v Aqua Star Pty Ltd [2020] NSWSC 1373

Supreme Court of New South Wales

Schmidt AJ

Jurisdiction - cross-vesting - plaintiff was 'public company registered in Thailand' - plaintiff sought amount allegedly owed by defendant for goods plaintiff shipped to Victoria from Thailand

by consignee - defendant contended proceedings had 'no nexus' with New South Wales and that Court lacked jurisdiction - defendant further contended an off-setting claim - defendant sought to strike out statement of claim, or permanent stay of proceedings, or proceedings' transfer to Supreme Court of Victoria - held: motion dismissed.

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

Pitard v One Managed Investment Funds Ltd [2020] VSC 666

Supreme Court of Victoria

McDonald J

Trusts - plaintiff was beneficiary of discretionary trust - parties had lodged proofs of debt with liquidators of trust's 'former trustee' - proofs of debt concerned balance of plaintiff's loan account with trustee and 'unpaid present entitlements from' trustee - defendant claimed 'security interest' concerning the debts as 'Collateral' under 'security deeds' - plaintiff sought declarations neither loan account's balance or unpaid present entitlements were 'Collateral' under security deeds - sufficiency of evidence - utility - s85 *Constitution Act 1975* (Vic) - s36 *Supreme Court Act 1986* (Vic) - s1305 *Corporations Act 2001* (Cth) - held: application dismissed.

[Pitard](#) (B)

Mirabela Nickel Ltd (In Liquidation) (Receivers and Managers Appointed) v Mining Standards International Pty Ltd [No 3] [2020] WASC 372

Supreme Court of Western Australia

Hill J

Pleadings - sale agreement - defendant, under O21 r5(2) *Rules of the Supreme Court 1971* (WA) (Rules), sought to amend defence - delay - explanation for 'late amendment' - *Soia v Bennett* [2011] WASC 59 - 'good faith' - whether amendment defective - prejudice - need for adjournment if leave granted - balance of parties' interests - held: amendments allowed subject to vacation of trial dates and relisting of proceedings.

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

Archibald v Field [2020] WASC 369

Supreme Court of Western Australia

Master Sanderson

Wills and estates - plaintiff by writ of summons sought grant of letters of administration of deceased's will - plaintiff was sister of deceased - remaining three sisters of deceased ('proposed interveners') sought that all four sisters be 'joint administrators' - held: proposed interveners' application dismissed - orders sought in writ of summons granted.

[Archibald](#) (B)

Summaries With Link



To the Nightingale

By: John Milton

O NIGHTINGALE, that on yon bloomy spray
Warblest at eve, when all the woods are still;
Thou with fresh hope the lover's heart dost fill,
While the jolly Hours lead on propitious May.
Thy liquid notes that close the eye of day,
First heard before the shallow cuckoo's bill,
Portend success in love; O, if Jove's will
Have linked that amorous power to thy soft lay,
Now timely sing, ere the rude bird of hate
Foretell my hopeless doom, in some grove nigh;
10
As thou from year to year, hast sung too late
For my relief, yet had'st no reason why:
Whether the Muse or Love call thee his mate,
Both them I serve, and of their train am I.

5

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

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