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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)

Silvia (Trustee) v Williams (FCAFC) - trusts and trustees - bankruptcy - 'common intention constructive trust case' should not have been entertained - no error in conclusion common intention constructive trust case failed - notice of contention upheld - appeal dismissed (I B C G)

Ian Jones v The Owners Strata Plan No 69008 (NSWCA) - judgments and orders - solicitors' costs - action struck out to extent it concerned sum for services provided before date of costs disclosure - leave to appeal refused (B C I G)

BB Australia v Danset (No 2) (NSWSC) - contact - determination of outstanding issue - plaintiff not entitled to recovery of 'enforcement expenses' under franchise agreement and deed of guarantee and indemnity - claim dismissed (B C I G)

The Commissioner of the Australian Federal Police (NSWSC) - proceeds of crime - application for forfeiture order under s49 *Proceeds of Crime Act 2002* (Cth) granted (B C I G)

Re Benji and Perry (NSWSC) - judgments and orders - parens patriae jurisdiction - Secretary sought to prevent orders of Children's Court of New South Wales in respect of two children from being implemented - summons dismissed (B C I G)

Ian Street Developer v Arrow International (VSCA) - statutory interpretation - security of payments - adjudicator's failure to comply with time limit in making adjudication did not render

adjudication void - appeal dismissed (I B C G)

Monto Coal 2 Pty Ltd & Ors v Sanrus Pty Ltd & Ors (QCA) - security for costs - defendants sought increase in security for costs - trial judge dismissed application - appeal dismissed (B C I G)

Summaries With Link (Five Minute Read)

Silvia (Trustee) v Williams [2018] FCAFC 194

Full Court of the Federal Court of Australia

Perram, Barker & Derrington JJ

Trusts and trustees - bankruptcy - respondent and Mrs Williams were married - respondent exchanged contracts for residential home' purchase - sale completed - title placed in respondent's name - Mrs Williams, after respondent acquired premises, 'became bankrupt' - appellant trustee in bankruptcy claimed respondent held 50% of interest in property on trust for bankrupt estate - trial judge rejected appellant's contention - appellant appealed - whether trial judge correct to find appellant's case for 'common intention constructive trust' failed - whether Court should have entertained appellant's case - whether common intention constructive trust case had been pleaded - whether prejudice to respondent - held: common intention constructive trust case should not have been entertained - no error in trial judge's conclusion that common intention constructive trust case failed - notice of contention upheld - appeal dismissed.

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

Ian Jones v The Owners Strata Plan No 69008 [2018] NSWCA 272

Court of Appeal of New South Wales

Macfarlan JA & Barrett AJA

Judgments and orders - solicitors' costs - applicant solicitor sought to recover legal costs from respondent - primary judge struck action out to extent it concerned sum for services provided before date of costs disclosure - applicant sought to appeal - ss317(1) & 317(2) *Legal Profession Act 2004* (NSW) - statutory interpretation - whether disclosure had 'retrospective effect' - held: Court not satisfied 'exceptional circumstance' or 'well-based apprehension of miscarriage of justice' demonstrated - leave to appeal refused - summons dismissed.

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

BB Australia v Danset (No 2) [2018] NSWSC 1745

Supreme Court of New South Wales

McDougall J

Contract - franchise agreement - deed of guarantee and indemnity - plaintiff unsuccessfully brought proceedings against defendant - Court found breach of franchise agreement by defendant but that plaintiff did not establish loss - Court also found no basis for award of equitable compensation - determination of outstanding issue - whether, on proper construction

of franchise agreement and deed of guarantee and indemnity, plaintiff was entitled to recovery of 'enforcement expenses' - whether defendants obliged to indemnify plaintiff - held: claim for enforcement expenses dismissed.

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

The Commissioner of the Australian Federal Police [2018] NSWSC 1737

Supreme Court of New South Wales

Adamson J

Proceeds of crime - plaintiff sought forfeiture order under s49 *Proceeds of Crime Act 2002* (Cth) - whether restraining order had been made and in force 'for at least six months' - whether 'interested parties' had been notified of restraining order and plaintiff's intention to seek forfeiture order - whether application for 'exclusion order' had been made - held: Court satisfied to make forfeiture order - orders made.

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

Re Benji and Perry [2018] NSWSC 1750

Supreme Court of New South Wales

McDougall J

Judgments and orders - parens patriae jurisdiction - plaintiff Secretary sought to prevent orders of Children's Court of New South Wales in respect of two children from being implemented - effect of Children's Court orders was that adoptive parents of one child would parental responsibility for and care of that child, and care of other child - Secretary contended orders' implementation would expose children to 'unacceptable risk of sexual abuse' - *Children and Young Persons (Care and Protection) Act 1998* (NSW) - held: Court not satisfied there was 'unacceptable risk of harm' - summons dismissed.

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

Ian Street Developer v Arrow International [2018] VSCA 294

Court of Appeal of Victoria

Maxwell P; McLeish & Niall JJA

Statutory interpretation - security of payments - applicant entered construction contract with first respondent - dispute concerned payment claim which first respondent issue under s14 *Building and Construction Industry Security of Payment Act 2002* (Vic) (Security of Payment Act) - payment claim referred to adjudicator - adjudicator found applicant liable to pay amount to builder - adjudication completed outside time limit - proceedings concerned question upon which Security of Payment Act was 'silent' - question was whether non-compliance with time limit rendered adjudication decision void - 'whether it was a purpose of the legislation that an act done in breach of the provision should be invalid.' - primary judge found that non-compliance with time limit 'was not intended to render the adjudication decision invalid' - statutory interpretation - held: appeal dismissed.

[Ian Street Developer](#) (I B C G)



Monto Coal 2 Pty Ltd & Ors v Sanrus Pty Ltd & Ors [2018] QCA 309

Court of Appeal of Queensland

Gotterson & McMurdo JJA; Boddice J

Security for costs - defendants sought increase in security for costs - trial judge dismissed application - defendants appealed - whether primary judge failed to apply correct test for the 'first stage' of process under r671(a) *Uniform Civil Procedure Rules 1999* (Qld) (Rules) - whether erroneous failure to find "reason to believe" plaintiffs would not be able to pay defendants' costs - whether erroneous failure to exercise discretion to order security for costs - whether erroneous calculation of amount of security - held: primary judge applied 'incorrect test' for first stage of process under r671(a) of the Rules - Court not satisfied there was reason to believe plaintiff companies could not pay costs of defendant companies costs if ordered to pay - Court agreed with trial judge's conclusion - appeal dismissed.

[Monto Coal](#) (B C I G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Spring, the sweet spring

By: Thomas Nashe

Spring, the sweet spring, is the year's pleasant king,
Then blooms each thing, then maids dance in a ring,
Cold doth not sting, the pretty birds do sing:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The palm and may make country houses gay,
Lambs frisk and play, the shepherds pipe all day,
And we hear aye birds tune this merry lay:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The fields breathe sweet, the daisies kiss our feet,
Young lovers meet, old wives a-sunning sit,
In every street these tunes our ears do greet:

Cuckoo, jug-jug, pu-we, to witta-woo!

Spring, the sweet spring!

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

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