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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Summers v Repatriation Commission (No 3) (FCAFC) - costs - solicitors' costs - recovery of costs incurred in appeal and Court below - orders (I B)

Garrett v Make Wine Pty Ltd (FCA) - summary dismissal - abuse of process - deed of settlement - leave to appeal refused (I B)

Kumar v Legal Services Commissioner (NSWCA) - legal practitioners - removal from Roll for professional misconduct - appeal dismissed (I)

Agripower Barraba Pty Ltd v Blomfield (NSWCA) - real property - fixtures - appellant entitled to certain disputed items which were not fixtures - appeal allowed in part (I B C)

Biddle v State of Victoria (VSC) - assault - false imprisonment - police acted lawfully in arresting and detaining plaintiff - proceeding dismissed (I)

Vision Eye Institute Ltd v Kitchen (No 3) (QSC) - costs - offer of settlement - costs payable by defendants reduced to reflect defendants' partial success - costs assessed on indemnity basis (I B)

Moran v Atrium Coal NL (WASC) - suppression orders - confidence - orders protecting subject matter of litigation (I C)

Summaries With Link (Five Minute Read)

Summers v Repatriation Commission [2015] FCAFC 85

Full Court of the Federal Court of Australia

Kenny, Murphy & Beach JJ

Costs - solicitors' costs - Court handed down costs judgment in matter - Court ordered each party bear own costs of proceeding and appeal - solicitors' firm filed further submissions in relation to costs - for reasons given in costs judgment Court considered respondent should not be required to meet appellant's costs even though he was successful in appeal - Court refused to make party/party costs order in appellant's favour - whether solicitors should be able to recover costs incurred in appeal and in Court below from appellant or some other - held: solicitors not to seek or obtain payment of professional fees by appellant - some costs incurred by firm on appellant's behalf reasonably incurred - question of quantum should be referred back to primary judge or registrar of Court for decision - Court did not express concluded view in respect of solicitors' entitlement to payment of fees by Legal Aid Victoria - that question best left to Legal Aid Victoria - orders made.

[Summers](#) (I B)

Garrett v Make Wine Pty Ltd [2015] FCA 593

Federal Court of Australia

Beach J

Summary dismissal - abuse of process - deed of settlement - proceedings concerning consequences of applicant's decision as part of settlement of litigation to divest himself of winemaking interests including in trade marks - applicant made claims against respondents alleging entitlement to payments under a deed of settlement, breaches of entitlements under deed, or allegations about dealing in and use of intellectual property - primary judge gave judgment for respondents on principal ground proceeding was abuse of process - applicant sought leave to appeal - s129AA *Bankruptcy Act 1966* - s 37AO *Federal Court of Australia Act 1976* - held: proposed grounds of appeal did not identify reasonably arguable error justifying grant of leave to appeal - criticisms as to course of proceedings had no substance - primary judge applied customary fairness and dealt comprehensively with all arguments - challenge to order under s 37AO order failed - application dismissed.

[Garrett](#) (I B)

Kumar v Legal Services Commissioner [2015] NSWCA 161

Court of Appeal of New South Wales

Basten & Leeming JJA; Sackville AJA

Legal practitioners - appellant former legal practitioner's name was removed from Roll of Practitioners following findings of professional misconduct - appellant challenged the three adverse findings against him, the finding that he had only repaid \$9,000 of \$12,000 found to

have been misappropriated, and order removing his name from the Roll - held: no appellable error made out on any grounds of appeal - appeal dismissed.

[Kumar](#) (I)

Agripower Barraba Pty Ltd v Blomfield [2015] NSWCA 30

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Sackville AJA

Real property - fixtures - Agripower sought declaration it was true owner of plant and equipment on land and orders to permit removal of items - occupiers of property agreed that if disputed items were not fixtures they would permit their removal from property - Agripower challenged primary judge's holdings that disputed items were fixtures and that it had not obtained legal title to disputed items but only rights of a secured creditor - Agripower sought to adduce further evidence pursuant to s75A(7) *Supreme Court Act 1970* - held: leave to adduce further evidence refused - Court found that certain items should not be regarded as fixtures - no error in primary judge's finding that other disputed items were fixtures - Agripower's appeal allowed in part - declaration made that Agripower owned seven disputed items and was entitled to immediate possession - proceedings remitted to primary judge to determine outstanding issues.

[Agripower](#) (I B C)

Biddle v State of Victoria [2015] VSC 275

Supreme Court of Victoria

Kaye JA

Assault - false imprisonment - plaintiff sued police defendants and State claiming damages arising out of arrest at caravan park for assault and false imprisonment - arrest effected by police without warrant - police purported to arrest plaintiff under s124 *Family Violence Protection Act 2008* which provided that police officer may arrest and detain person without warrant if police officer believed on reasonable grounds that person had committed an offence by contravening family violence order - held: Court satisfied police acted lawfully in arresting and detaining plaintiff - claim for damages for assault and false imprisonment failed - proceeding dismissed.

[Biddle](#) (I)

Vision Eye Institute Ltd v Kitchen (No 3) [2015] QSC 164

Supreme Court of Queensland

Applegarth J

Costs - plaintiffs sought that defendants pay costs of entire proceedings on basis of extent of plaintiffs' success on own claim and in resisting defendants' counterclaim - plaintiffs also sought indemnity costs under r360(1) *Uniform Civil Procedure Rules 1999* on basis of formal offer to settle - defendants sought that amount of damages payable should be discounted to reflect their partial success - 'no less favourable than the offer' - held: plaintiffs not entitled to whole of costs of proceeding and counterclaim - defendants to pay 95% of plaintiffs' costs of principal proceeding and of counterclaim assessed on indemnity basis.

[Vision](#) (I B)

Moran v Atrum Coal NL [2015] WASC 209

Supreme Court of Western Australia

Mitchell J

Suppression orders - obligation of confidence - Court granted and extended injunction restraining defendant from disclosing personal information which plaintiffs provided to defendant - reference necessarily made to content of confidential information during course of evidence and submissions and in course of reasons - plaintiff sought to restrict access to the court file and to suppress publication of proceedings in order to protect confidentiality of information subject matter of proceedings - held: preservation of subject matter of litigation required departure from general rule that any person may publish fair account of proceedings - orders made to protect subject matter of litigation.

[Moran](#) (I C)

CRIMINAL

Executive Summary

Cappis v R (NSWCCA) - criminal law - possession of border controlled drug - appeal against sentence dismissed

Summaries With Link

Cappis v R [2015] NSWCCA 138

Court of Criminal Appeal of New South Wales

Gleeson JA; Johnson & Garling JJA

Criminal law - possession of border controlled drug - self-represented litigant - applicant Canadian national pleaded guilty to a single offence contrary to ss11.1 & 307.6(1) *Criminal Code 1995* of attempt to possess a marketable quantity of border controlled drug unlawfully imported - primary judge imposed a sentence of 6 years and 9 months imprisonment with a non-parole period of 4 years - applicant sought leave to appeal against sentence - held: contention that there was inadequate discount for guilty plea failed - ground of appeal alleging bad legal advice failed - conclusion of sentencing judge well open to him - no error of fact - contention failed that applicant ought to have been given further discount on compassionate grounds because he was a foreigner and time in prison would be difficult - no manifest excess in sentence - appeal dismissed.

[Cappis](#)



Song

By James Joyce

My love is in a light attire
Among the apple trees,
Where the gay winds do most desire
To run in companies.

There, where the gay winds stay to woo
The young leaves as they pass,
My love goes slowly, bending to
Her shadow on the grass.

And where the sky's a pale blue cup
Over the laughing land,
My love goes lightly, holding up
Her dress with dainty hand.

<http://www.poetryfoundation.org/bio/james-joyce>

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