

Friday, 19 July 2019

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)

Pilkin v Sony Australia Limited (No 2) (FCA) - patent - service - summary dismissal - pleadings - determination of two interlocutory applications - case had no prospects of success - proceeding summarily dismissed (I B C G)

Lemongrove Services Pty Ltd trading as Reimer Winter Williamson Lawyers and Anor v Rilroll Pty Ltd and Ors (NSWCA) - contract - evidence - solicitors' duties - 'single factual finding' that second appellant had not told second and third respondents of vendors' rejection of "subject to finance clause" - appeal dismissed (B C I G)

Pun v Poon (NSWSC) - security for costs - plaintiff 'ordinarily resident outside the jurisdiction' - security for costs ordered in two tranches (I B C G)

Ward v Allianz Australia Services Pty Ltd (NSWDC) - workers compensation - workplace bullying - plaintiff former employee of defendant suffering 'psychiatric conditions' - defendant liable for conduct of plaintiff's manager - judgment for plaintiff in sum of \$1,394,421.91 (I B C G)

Re Tang (VSC) - restrictive covenant - application for restrictive covenant's modification - application allowed to extent of removal of two restrictions - modification to permit plaintiff to erect 'second dwelling' refused (I B C G)

Public Trustee in and for The State of Western Australia v Attorney General of Western

Australia (WASC) - wills and estates - '1992 Will' of deceased valid - 1992 Will's validity to be 'pronounced in solemn form' - Probate Registrar to issue grant of probate to Public Trustee (B)

Ardizzone v Valentino Nominees Pty Ltd (WASC) - contract - consumer law - claim against first defendant for breach of contract upheld - claim against defendants under s18 Australian Consumer Law upheld - counterclaim dismissed (B C I G)

Summaries With Link (Five Minute Read)

Pilkin v Sony Australia Limited (No 2) [2019] FCA 980

Federal Court of Australia

Rares J

Patent - service - summary dismissal - claim of infringement of 'innovation patent' - two interlocutory applications - applicant, under r10.43 *Federal Court Rules 2011* (Cth), sought to serve 'three respondents outside Australia' - first and fifth respondents sought proceeding's summary dismissal under s31A(2) *Federal Court of Australia Act 1976* (Cth) or to strike out 'many paragraphs' in further amended statement of claim and 'corresponding prayers for relief' - whether 'prima facie case' for relief - 'deferred priority date' - novelty' - held: applicant's case had no prospects of success - proceeding summarily dismissed.

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

Lemongrove Services Pty Ltd trading as Reimer Winter Williamson Lawyers and Anor v Rilroll Pty Ltd and Ors [2019] NSWCA 174

Court of Appeal of New South Wales

Bell P, Payne JA & Simpson AJA

Contract - evidence - solicitors' duties - appellants 'provided legal services' to respondents concerning land and business's 'aborted purchase' - appeal concerned 'single factual finding' that second appellant had not told second and third respondents that vendors had rejected a "subject to finance clause" (clause) which second and third respondents had sought to include in the 'sale contracts' - whether primary judge erroneously found that director 'did not tell' second and third respondents of vendor's refusal to include clause in sale contracts - whether primary judge erroneously found that second and third respondents 'would not have exchanged contracts' if told of vendors' refusal to include clause in sale contracts - whether primary judge 'overlooked' or did not deal with evidence concerning 'what was said at the 27 November meeting' - whether appellants demonstrated finding "glaringly improbable" or "contrary to compelling inferences" - *Baira v RHG Mortgage Corporation Limited* [2012] NSWCA 387 - held: appeal dismissed.

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

Pun v Poon [2019] NSWSC 918

Supreme Court of New South Wales

Henry J

Security for costs - plaintiff claimed interest in 'residential apartment' - defendant was residential apartment's registered proprietor - defendant, under r42.21(1)(a) *Uniform Civil Procedure Rules 2005* (NSW) sought security for costs - plaintiff 'ordinarily resident outside the jurisdiction' - whether to order security and, if so, in what amount - case's 'strengths and bona fides' - delay - 'broad-brush approach' - held: security for costs ordered in two tranches.

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

Ward v Allianz Australia Services Pty Ltd [2019] NSWDC 293

District Court of New South Wales

Judge J Smith SC

Workers compensation - workplace bullying - plaintiff formerly employed by defendant - plaintiff suffered 'psychiatric conditions' - plaintiff contended 'bullying and harassment' by manager 'materially caused' his condition - plaintiff contended defendant liable for manager's 'intentional infliction of harm' - plaintiff claimed damages - defendant admitted plaintiff was bullied by manager but denied liability - whether manager's conduct deliberate - whether defendant liable for manager's 'deliberate conduct' - whether defendant not liable for 'physical aspects' of manager's treatment of plaintiff because those aspects not authorised by defendant - whether manager's conduct could be 'divided' - Div 3 Pt 5 *Workers Compensation Act 1987* (NSW): s151E - held: manager's conduct could not be divided - manager's 'course of conduct' was 'intimately connected' with task due to being done in 'apparent execution of the authority' defendant had given him as 'State Manager' - unnecessary to deal with plaintiff's claim in negligence but it would not have succeeded - judgment for plaintiff in sum of \$1,394,421.91.

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

Re Tang [2019] VSC 467

Supreme Court of Victoria

Ierodionou AsJ

Restrictive covenant - plaintiff sought that restrictive covenant over 'subject land' be modified - whether to modify covenant to permit plaintiff to erect 'second dwelling', to remove 'costs restriction', and to remove 'supervisory restriction' - s84(1)(c) *Property Law Act 1958* (Vic) - whether modifications 'will not substantially injure the persons entitled to the benefit of the restrictions' - held: application for modification allowed to extent of removal of the two restrictions.

[Re Tang](#) (I B C G)

Public Trustee in and for The State of Western Australia v Attorney General of Western Australia [2019] WASC 258

Supreme Court of Western Australia

Acting Justice Strk

Wills and estates - Public Trustee sought order pronouncing that '1992 Will' of deceased had 'force and effect in solemn form of law' as deceased's will - Public Trustee also sought that

Probate Registrar be directed to 'settle a grant of probate' of 1992 Will in Public Trustee's favour - valid will's requirements - whether evidence supported conclusion deceased had testamentary capacity when she executed 1992 Will - s8 *Wills Act 1970* (WA) - held: Court satisfied 1992 Will valid - 1992 Will's validity to be 'pronounced in solemn form' - Probate Registrar to issue grant of probate to Public Trustee.

[Public Trustee](#) (B)

Ardizzone v Valentino Nominees Pty Ltd [2019] WASC 55

Supreme Court of Western Australia

Archer J

Contract - consumer law - plaintiff contracted with first defendant for purchase of property - second defendants were directors of first defendant - first defendant engaged company to offer sale of property - between 'contract date' and 'settlement date' first defendant received letter from Department of the Environment and Conservation concerning presence of 'threatened ecological community' (TEC) on property - letter stated first defendant should inform purchaser of TEC's existence - plaintiff not told of letter - plaintiff became aware of letter 'about a year after the settlement date' - plaintiff claimed against first defendant for breach of contract - plaintiff brought claim for misleading or deceptive conduct against defendants - whether breach of 'cl 9.1(a)(1) of the 2011 Joint Form of General Conditions for the Sale of Land' - held: judgment for plaintiff on breach of contract claim and claim under s18 Australian Consumer Law - counterclaim dismissed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

A Winter Scene

By: Henry David Thoreau

The rabbit leaps,
The mouse out-creeps,
The flag out-peeps
Beside the brook;
The ferret weeps,
The marmot sleeps,
The owlet keeps
In his snug nook.

The apples thaw,
The ravens caw,
The squirrels gnaw
The frozen fruit.
To their retreat
I track the feet
Of mice that eat
The apple's root.

The snow-dust falls,
The otter crawls,
The partridge calls,
Far in the wood.
The traveller dreams,
The tree-ice gleams,
The blue-jay screams
In angry mood.

The willows droop,
The alders stoop,
The pheasants group
Beneath the snow.
The catkins green
Cast o'er the scene
A summer's sheen,
A genial glow.

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

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