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Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

HQ Insurance Pty Limited v Stonehatch Risk Solutions Limited (No 2) (FCA) - preliminary discovery - corporations - 'prospective applicant' sought discovery of categories of documents from 'prospective respondent' - application dismissed (I B C G)

Prouten v Chapman & Anor (NSWSC) - negligence - postal worker contended she suffered 'jolt' to body while riding "postie-bike" when surprised by 'extended bed' of defendants' caravan and postie-bike lost stability - defendants not liable (I)

WOTCH Inc v VicForests (No 4) (VSC) - environmental law - interim injunction - plaintiff sought to restrain defendant from rom timber harvesting in 'native forest coupes' - interim injunction granted (I B C G)

Porter v Mulcahy & Co Accounting Services Pty Ltd (Ruling) (VSC) - vacation of trial date - COVID-19 - plaintiffs sought vacation of trial date - trial date vacated (I B C G)

Re Fawkes (QSC) - wills and estates - probate - application for probate of will's photocopy - application granted (B)

Re Zenith Energy Ltd; Ex Parte Zenith Energy Ltd (WASC) - corporations - plaintiff sought orders concerning 'proposed scheme of arrangement' - orders granted (B)

Bellaire Pty Ltd v Roselink Enterprises Pty Ltd as trustee for The Ice Nemesis Unit

Trust (WASC) - corporations - plaintiff sought to wind up defendant on basis of insolvency - application granted (B)

Summaries With Link (Five Minute Read)

HQ Insurance Pty Limited v Stonehatch Risk Solutions Limited (No 2) [2020] FCA 1010

Federal Court of Australia

Thawley J

Preliminary discovery - corporations - 'prospective applicant' sought discovery of categories of documents from 'prospective respondent' - prospective applicant had reasonable belief that it might have 'right to relief' - whether prospective applicant reasonably believed prospective respondent had 'documents in its control which would assist' prospective applicant to decide whether to commence proceeding - whether prospective applicant established it had made 'reasonable inquiries' or that information 'already obtained' by prospective applicant was insufficient for making of decision whether to commence proceeding - r7.23 *Federal Court Rules 2011* (Cth) - s1324(1) *Corporations Act 2001* (Cth) - held: application dismissed.

[HQ Insurance](#) (I B C G)

Prouten v Chapman & Anor [2020] NSWSC 873

Supreme Court of New South Wales

Button J

Negligence - plaintiff was 'postal delivery rider/officer' - defendants' caravan located on nature strip at front of defendants' house - defendants extended bed of their caravan - plaintiff alleged that, while she was riding "postie-bike", she was surprised by extended bed of caravan - plaintiff alleged she suffered 'jolt' to body when postie-bike lost stability and she had 'to pull it from left to right' - plaintiff sued defendants, contending that the jolt caused injury and disability - whether accident occurred as claimed by plaintiff - whether 'wrongful breach of a duty of care' by defendants - causation - credibility - 'balance of probabilities' - held: defendants not liability -

[View Decision](#) (I)

WOTCH Inc v VicForests (No 4) [2020] VSC 433

Supreme Court of Victoria

Keogh J

Environmental law - interim injunction - plaintiff sought to restrain defendant from timber harvesting in 28 'native forest coupes' - whether 'prima facie case' concerning coupes - 'precautionary principle' - balance of convenience *Code of Practice for Timber Production 2014 - Flora and Fauna Guarantee Act 1988* (Vic) - *Sustainable Forests (Timber) Act 2004* (Vic) - held: Court not satisfied to grant injunctive relief in respect of the 5 coupes in which timber harvesting was 'already underway' - interim injunction granted - Court to hear from parties concerning orders' form.

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

Porter v Mulcahy & Co Accounting Services Pty Ltd (Ruling) [2020] VSC 430

Supreme Court of Victoria

Delany J

Vacation of trial date - COVID-19 - Court, due to COVID-19, unable to proceed with trial except as 'trial solely conducted by audio visual means' - plaintiffs sought vacation of trial date to 'provide a greater likelihood of a conventional hearing' - credit - s42E *Evidence (Miscellaneous Provisions) Act 1958* (Vic) - s22C *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) - impact of 'stay at home directions (restricted areas) direction' on trial's conduct - s199(2)(a) *Public Health and Wellbeing Act 2008* (Vic) - interests of justice - 'overarching purpose' and objects in s9(1) *Civil Procedure Act* (Vic) - held: Court satisfied trial date should be vacated.

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

Re Fawkes [2020] QSC 200

Supreme Court of Queensland

Davis J

Wills and estates - probate - applicants were 'executors and trustees' named in deceased's will - applicants unable to locate 'original will' - applicants sought grant of probate in respect of will's photocopy r489(1) *Uniform Civil Procedure Rules 1999* (Qld) - whether applicants overcame presumption deceased destroyed original will intention to revoke it - *Frizzo v Frizzo* [2011] QSC 107 - *Cahill v Rhodes* [2002] NSWSC 561 - held: Court satisfied to grant probate of will's photocopy.

[Re Fawkes](#) (B)

Re Zenith Energy Ltd; Ex Parte Zenith Energy Ltd [2020] WASC 266

Supreme Court of Western Australia

Hill J

Corporations - plaintiff, pursuant to s411 *Corporations Act 2001* (Cth) (Corporations Act), sought orders concerning 'proposed scheme of arrangement (Scheme)' - whether 'substantial and procedural requirements' satisfied - 'virtual scheme meetings' - COVID-19 - ss411(1) & 1319 Corporations Act - held: Court made orders for convening of 'two meetings' of plaintiff's members for consideration and voting on 'proposed Scheme' - Court made ancillary orders concerning meetings' 'convening and conduct'.

[Re Zenith Energy](#) (B)

Bellaire Pty Ltd v Roselink Enterprises Pty Ltd as trustee for The Ice Nemesis Unit Trust [2020] WASC 115

Supreme Court of Western Australia

Master Sanderson

Corporations - plaintiff sought to wind up defendant for insolvency - objections to defendant's evidence - standing - whether defendant solvent - ss459P(2)(b), 459P(3) & 95(A)(1)

Corporations Act 2001 (Cth) - held: Court satisfied defendant insolvent - defendant to be wound up.

[Bellaire](#) (B)

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