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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)

BlueScope Steel Limited v Dongkuk Steel Mill Co., Ltd (No 2) (FCA) - patent - applicant contended respondent infringed 'various claims' of patents of which applicant was registered proprietor - no infringement by respondent - respondent succeeded in part on contention of invalidity in respect of claims - applicant's interlocutory application to amend patent dismissed (I B)

Director of Public Prosecutions (NSW) v Hamzy (NSWCA) - administrative law - criminal law - assault - District Court erred in ordering permanent stay of 'criminal proceedings' against respondent - orders set aside (B C I G)

Costello v Racing Appeals Tribunal (NSWSC) - judicial review - first defendant dismissed plaintiff's appeal against 'warning off directed by' second defendant - plaintiff sought judicial review - amended summons dismissed (I B C G)

Big Country Developments Pty Limited v Peter Griffiths (No 4) (NSWSC) - guarantee - judgment debt - applicant sought to set aside Deputy Registrar's refusal of applicant's application to pay judgment debt by instalments - notice of motion dismissed (I B C G)

Re Sir Colin and Lady MacKenzie Trust (VSC) - wills and estates - trusts and trustees - cy près scheme - plaintiff sought answers to questions concerning charitable trust's administration - answers granted (B)

Brehm v Brehm (VSC) - costs - wills and estates - Court granted plaintiff 'final relief' sought in proceeding - plaintiff sought that defendant 'personally pay' plaintiff's costs on indemnity basis from deceased's estate to be paid out of defendant's share of estate - application granted (B)

Wagner & Ors v Nine Network Australia & Ors (No 2) (QSC) - costs - defamation - parties agreed defendants should plaintiffs' costs - plaintiffs' sought payment of costs on indemnity basis - indemnity costs order granted (I)

Summaries With Link (Five Minute Read)

BlueScope Steel Limited v Dongkuk Steel Mill Co., Ltd (No 2) [2019] FCA 2117

Federal Court of Australia

Beach J

Patent - applicant contended respondent infringed 'various claims' of '257 Patent' and '258 Patent' (Patents) - applicant was Patents' registered proprietor - applicant contended respondent, without applicant's 'licence or authority', 'imported and authorised other persons to offer for sale, sell and supply in Australia' a product which infringed Patents - respondent denied infringement - respondent contended applicant 'made unjustified threats' concerning 'alleged infringing conduct' - respondent also sought revocation of Patents in relation to various claims on basis the claims were invalid - applicant, by interlocutory application, also sought to amend 257 Patent ('amendment application') - whether claims failed 'to disclose the best method' - *Patents Act 1990* (Cth) - held: applicant's claims of infringement failed - 'asserted claims' of 257 Patent' and some asserted claims of 258 Patent invalid - amendment application refused.

[BlueScope Steel](#) (I B)

Director of Public Prosecutions (NSW) v Hamzy [2019] NSWCA 314

Court of Appeal of New South Wales

Gleeson, Payne & Brereton JJA

Administrative law - respondent convicted and sentenced in Local Court 'for assaulting a law enforcement officer while in the execution of the officer's duties' - Director of Public Prosecutions (NSW) sought judicial review concerning District Court orders which allowed respondent's appeal against 'conviction and sentence' and 'permanently stayed' the 'criminal proceedings' against respondent - whether District Court's order for permanent stay of criminal proceedings 'affected by jurisdictional error' - whether misapprehension of 'nature and scope of the jurisdiction to stay proceedings for an abuse of process' - whether misconstruction of provision concerning 'double jeopardy' in s63 *Crimes (Administration of Sentences) Act 1999* (NSW) - held: District Court erred in ordering permanent stay of criminal proceedings against respondent - orders set aside.

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

Costello v Racing Appeals Tribunal [2019] NSWSC 1808

Supreme Court of New South Wales

Adamson J

Judicial review - plaintiff sought judicial review pursuant of first defendant's dismissal of plaintiff's appeal against 'warning off directed by' second defendant - whether first defendant's decision 'legally unreasonable' - whether denial of procedural fairness - *Thoroughbred Racing Act 1996* (NSW) - *Racing Appeals Tribunal Act 1983* (NSW) - Rules of Racing of Racing NSW - held: amended summons dismissed.

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

Big Country Developments Pty Limited v Peter Griffiths (No 4) [2019] NSWSC 1791

Supreme Court of New South Wales

Ball J

Guarantee - judgment debt - applicant, by notice of motion, sought to set aside Deputy Registrar's refusal of applicant's application to pay judgment debt by instalments - whether Court satisfied that order for judgment debt's payment by instalments 'would result in' judgment's satisfaction 'within a reasonable period of time' - whether applicant 'able to comply with his payment plan' - *s7 Civil Procedure Act 2005* (NSW) - *Pt 37 Uniform Civil Procedure Rules 2005* (NSW) - *In the matter of Australian Institute of Fitness (VIC & TAS) [2016] NSWSC 1143* - held: notice of motion dismissed.

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

Re Sir Colin and Lady MacKenzie Trust [2019] VSC 834

Supreme Court of Victoria

McMillan J

Wills and estates - trusts and trustees - deceased's will established 'charitable trust' (trust) - plaintiff was trustee of trust - committee had been convened under will - plaintiff sought that Court answer 'three questions' concerning trust's administration - plaintiff also sought declarations and *cy près* scheme's adoption to facilitate committee member's replacement - whether name of 'Sir Colin MacKenzie Sanctuary' had 'been altered from' 'Sir Colin MacKenzie Sanctuary' - whether, as result of any alteration, gift had lapsed - if gift had lapsed, how funds which were gifted to sanctuary should be applied - held: gift had lapsed - funds gifted to sanctuary 'to be applied as part of the gift for anatomical studies' under clause of will - gift for anatomical studies unable to be carried out according to will's directions 'as varied by' Cavanough J's orders - 'proposed *cy près* scheme' approved.

[Re Sir Colin](#) (B)

Brehm v Brehm [2019] VSC 840

Supreme Court of Victoria

Moore J

Costs - wills and estates - Court granted plaintiff co-executor 'final relief' sought in proceeding - relief included removal of defendant co-executor and order that deceased's 'assets and estate'

vest in plaintiff 'as continuing executor and trustee' - plaintiff sought that defendant 'personally pay' plaintiff's costs on indemnity basis from deceased's estate, to be paid out of defendant's share of estate - whether 'special or unusual' circumstances warranting order for indemnity costs - *Re Kataryna; Kataryna v Petalas* [2017] VSC 466 - held: application granted.

[Brehm](#) (B)

Wagner & Ors v Nine Network Australia & Ors (No 2) [2019] QSC 309

Supreme Court of Queensland

Applegarth J

Costs - defamation - parties agreed defendants should plaintiffs' costs - plaintiffs, in reliance on s40 *Defamation Act 2005* (Qld) or *Calderbank v Calderbank* principles, sought that defendants pay their costs on indemnity basis - whether defendants unreasonably failed to make "settlement offer" because settlement offer was not a "reasonable offer at the time it was made" - whether defendants unreasonably failed to agree to plaintiffs' settlement offer - held: indemnity costs order granted.

[Wagner](#) (I)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Out there

By: Rev David Conolly

So big, that sea
out there.

So big.

Stopped in your tracks,
silence claims you.

What is it, child of Mary?

Could it be that, in your
sunny spirit of
adventure,
you sense
the sudden passing
of a shadow?

But the dream
of a world
of peace,
healed by love,
could remain
just that
a dream.

Unless
you step,
bravely
and surely,
to where
we're waiting.

Out there.

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