

Friday, 21 February 2025

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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (One Minute Read)

Integrity Life Australia Limited, in the matter of Integrity Life Australia Limited (FCA) - Court approved transfer of life insurance business where actuarial evidence was that the transfer scheme was in interests of policy owners as a whole (I B)

Re YL (NSWSC) - Court made orders in its parens patriae jurisdiction to allow medical staff to administer blood products to a 7-year-old child during surgery, where the parents did not consent (I)

Zeaiter v Zeaiter (NSWSC) - Court found that both brothers had signed a deed agreeing to amount one would receive on the separation of their interests in a residential construction business (I B C)

Jane Jones (a pseudonym) v Waller Legal Pty Ltd (VSC) - class action by former clients of firm who represented them in institutional abuse claims should not go forward as a group proceeding, as there were insufficient common issues of fact or law to make this efficient or effective (I B)

In the matter of Memon Bros Pty Ltd (VSC) - Court made freezing order where there was a good arguable case that director of trustee of discretionary trust had transferred money without authority to accounts he controlled (I B C)

HABEAS CANEM

Soulful



Summaries With Link (Five Minute Read)

Integrity Life Australia Limited, in the matter of Integrity Life Australia Limited [2025] FCA 92

Federal Court of Australia

Jackman J

Insurance - two life insurers applied under s193 of the *Life Insurance Act 1995* (Cth) for transfer of part to one's life insurance business to the other - scheme subject to Court's approval, and other conditions precedent - held: Court had discretion to confirm scheme with or without modification - confirmation not a mere formality - while Court's discretion was broad, it was not unfettered and had to be exercised on the evidence with regard to the objects of the *Life Insurance Act*, principally the protection of interests of policy owners in a way consistent with continued development of a viable, competitive, and innovative life insurance industry - adverse effect to be answered predominantly by reference to actuarial evidence - interests of policyholders not necessarily identical with preferences - no authority Court cannot confirm a scheme due to a material adverse effect on one or some policy owners - English authority under *Financial Services and Markets Act 2000* (UK) broadly applicable, with appropriate modifications - procedural requirements substantially complied with - transferring insurer in breach of prudential capital requirements and capacity to meet benefits in full expected to be exhausted by 2027 - very significant premium increases planned in the next two years if scheme did not proceed - disadvantages to some policy holders assessed in that context - actuarial evidence was scheme was in interests of policy owners as a whole - scheme approved without modification.

[Integrity Life Australia Limited, in the matter of Integrity Life Australia Limited](#) (I B)

Re YL [2025] NSWSC 75

Supreme Court of New South Wales

Williams J

Parens patriae jurisdiction - a 7-year-old child was diagnosed with a brain tumour - doctors formulated a plan for surgery to resect the tumour - in the opinion of the treating specialist, the child's prognosis was very dire if the tumour were not removed completely or at least reduced in size, whether it is malignant or not - hospital's Neurosurgical Registrar of opinion that surgery was 90-95% likely to succeed in removing or reducing size of the tumour, with a 5% risk of major complications or death - parents consented to surgery, but not to the administration of blood products should that be necessary, as it would be contrary to their Jehovah's Witness faith - NSW health informed parents of intention to make application to Court for an order in its parens patriae jurisdiction, offered to pay their reasonable legal costs, and gave them contact details for NSW Law Society - parents confirmed they did not wish to be heard on the application - NSW Health sought orders authorising relevant persons to administer blood products if they thought it necessary, while seeking to minimise the use of such products - held: Court accepted evidence of the treating specialist, who had more than 25 years' experience as an oncologist and who was the paediatric neurooncologist and haematologist at the relevant

hospital - child was not capable of consenting, and granting such consent would fall within the ordinary scope of parental authority - in exercising the *parens patriae* jurisdiction, the overriding criterion to be applied by the Court is the welfare of the child, objectively assessed - having regard to all of the evidence, Court considered it was in the child's best interests to receive blood products - orders made as sought.

[View Decision](#) (I)

Zeaiter v Zeaiter [2025] NSWSC 60

Supreme Court of New South Wales

Peden J

Contracts - two brothers orally agreed to separate their interests a residential building construction company on a 50:50 basis - plaintiff claimed he had not received 50% and sued - defendant said plaintiff had executed a deed agreeing to what he would receive, and he had received that amount - plaintiff said he had not signed deed, that it should be set aside for misleading or deceptive conduct, that certain payments defendant had made to himself were contrary to the company's constitution, constituted oppression, or were unconscionable, and that he should receive 50% of those payments - held: the plaintiff's evidence was false and both brothers had signed the deed - the plaintiff's evidence was therefore difficult to accept on other topics, unless corroborated by documents or another witness - Court did not accept defendant had overpaid himself - defendant's spreadsheet an attempt to informally resolve family dispute, not an admission of liability - misleading or deceptive conduct claim failed - unnecessary to consider whether breach of company's constitution can sound in damages - plaintiff did not have standing to bring an oppression claim, as he had not shown claim related to the circumstances in which he had ceased to be a member of the company - no direct or substantial association between the impugned payments and the cessation of the plaintiff's membership - unconscionably claim failed - defendant's silence about payments to himself did not fall outside societal norms of acceptable commercial behaviour so as to warrant condemnation as offensive to conscience - plaintiff merely pled facts and bare conclusion of unconscionability - on its proper construction, deed did not contemplate future payment for goodwill - the parties had agreed in the deed to a final payment of a total figure - claim dismissed.

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

Jane Jones (a pseudonym) v Waller Legal Pty Ltd [2025] VSC 42

Supreme Court of Victoria

Gorton J

Class actions - plaintiff commenced group proceeding against former solicitors, who specialised in acting in childhood sexual abuse claims against institutions - group was all persons who claimed to have been abused as minors by persons associated with an institution, who were clients of the firm in a particular date range, and who resolved their claims without proceedings or before judgment - alleged negligence regarding damages for loss of earning capacity - firm applied under s33N(1) of the *Supreme Court Act 1986* (Vic) for claim not to go on as group proceeding - held: firm had to satisfy Court it was in interests of justice as (a) costs would be

Benchmark

greater than for separate proceedings; (b) all relief sought could be obtained without group proceeding; (c) group proceeding not an efficient and effective means; or (d) group proceedings otherwise inappropriate - duties not controversial - only substantive questions would be breach and damage, essentially questions of fact - each case factually discrete - difficult to see common questions of fact or law applying across sufficient number of members for group proceeding to be efficient and effective - question as to whether a claimant is, at law, able to recover for loss of earning capacity using a method like average weekly earnings without first having to have had a particular career path in mind as a child and denied to them by the abuse would arise across claims, but was not difficult - not likely to be real dispute that answer was 'yes' - failure to answer this question for the group would not add to any expense or delay - plaintiff proposed to approach factual questions whether firm had a practice of giving certain advice, or a particular legal understanding, as tendency questions - real problems regarding admissibility - imbalance between common and individual issues meant group proceedings should be terminated.

[Jane Jones \(a pseudonym\)](#) (I B)

In the matter of Memon Bros Pty Ltd [2025] VSC 47

Supreme Court of Victoria

Nichols J

Freezing orders - brothers involved in various businesses together including the acquisition and sale of real estate, through company that was trustee of a discretionary trust - applicant brother contended respondent brother had transferred without authority proceeds of a property sale into accounts respondent controlled, contrary to the trust deed and the interests of the members of the trustee company as a whole - applicant sought interlocutory freezing order - held: Court had both inherent and statutory power under O37A of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) to make freezing orders - freezing order by its very nature is a drastic remedy which will not be granted lightly - rationale is to prevent the frustration of the Court's processes - freezing order not designed to provide security for applicant's claim - applicant must establish a good arguable case and a reasonable possibility of prospective judgment being wholly or partly unsatisfied - exercise of power is then discretionary, and the Court may take balance of convenience into account, although it is not a distinct requirement - applicant had good arguable case that proceeds of sale were trust funds transferred without authority, and that respondent's belief he was entitled to be reimbursed for tax liabilities did not entitle him to appropriate trust funds - relief under s232 and s233 of the *Corporations Act 2001* (Cth) may be granted where oppressive conduct has occurred in a bare trustee company, and remedy may include orders dealing with equitable interests in the trust - evidence showed risk assets would be disposed of or diminished in value - freezing order was appropriate.

[In the matter of Memon Bros Pty Ltd](#) (I B C)



Poem for Friday

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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