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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)

Freshfood Holdings Pte Limited v Pablo Enterprise Pte Limited (FCA) - trade mark - non-use - service - respondent Singapore-based company successful on 'non-use application' against appellant - appellant appealed - service of notice of appeal on 'Address for Service' which respondent provided was not 'effective service' - Court satisfied to grant order confirming service (I B)

Enkel v We R Finance Pty Ltd (No 2) (FCA) - costs - industrial law - cross-appellant substantially successful on cross-appeal - cross-appellant sought costs of cross-appeal, and costs of appeal instituted by first cross-respondent which was subsequently discontinued - ss570 & 570(2) *Fair Work Act 2009* (Cth) - no order for costs of cross-appeal or appeal (I B C G)

Application of Tatham (NSWSC) - wills and estates - trusts and trustees - plaintiffs were trustees of deceased's estate - plaintiffs sought order for power 'to make advances of capital and income to any residual beneficiary under' clause of deceased will and 'consequential order' for 'all such powers as are necessary and incidental to' trustees' exercise of that power - orders granted (B)

Adoption of C, D, E (ANONYMISED (3 children) (NSWSC) - adoption - application for 'adoption of three children' and for 'change of name' in respect of each child - child's best interests - application granted (I B C G)

Randhawa v Transport Accident Commission (VSCA) - accident compensation - applicant injured when struck by vehicle whilst riding bicycle - applicant sought to claim damages for injuries in reliance on 'serious injury' definition in s93(17) *Transport Accident Act 1986* (Vic) - primary judge dismissed application - leave to appeal refused (I B G)

Summaries With Link (Five Minute Read)

Freshfood Holdings Pte Limited v Pablo Enterprise Pte Limited [2021] FCA 323

Federal Court of Australia

Thawley J

Trade mark - non-use - service - appellant appealed against decision of delegate of Registrar of Trade Marks - respondent was company based in Singapore - decision concerned respondent's 'non-use application' for removal of Australian Registered Trade Mark of appellant (PABLO Mark) - delegate found in respondents' favour that PABLO Mark 'should be removed for non-use' - whether 'effective service' by service of notice of appeal on 'Address for Service' which respondent provided - whether to grant order confirming service - whether explanation for failure to seek leave before service of notice of appeal in Singapore - s215 *Trade Marks Act 1995* (Cth) - rr10.08 & 10.44(3) *Federal Court Rules 2011* (Cth) - held: Court satisfied to grant order confirming service

[Freshfood](#) (I B)

Enkel v We R Finance Pty Ltd (No 2) [2021] FCA 529

Federal Court of Australia

Jackson J

Costs - industrial law - Western Australian Industrial Magistrates Court found first cross?respondent 'liable for underpayment of award rates to' cross?appellant and other contraventions of *Fair Work Act 2009* (Cth) (Fair Work Act) - claim dismissed against second cross?respondent - Court 'substantially allowed a cross?appeal' by cross-appellant - cross-appellant sought costs of cross-appeal, and costs of 'initial appeal' which first cross-respondent commenced and discontinued - ss570 & 570(2) Fair Work Act - whether proceedings were instated 'vexatiously or without reasonable cause' - whether 'unreasonable act or omission' by party caused other party's loss - held: no order for costs of appeal or cross?appeal.

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

Application of Tatham [2021] NSWSC 540

Supreme Court of New South Wales

Henry J

Wills and estates - trusts and trustees - plaintiffs were trustees of deceased's estate - plaintiffs by summons sought order under s81 *Trustee Act 1925* (NSW) for power 'to make advances of capital and income to any residual beneficiary under' clause of deceased will - plaintiffs also

sought, by 'consequential order', 'all such powers as are necessary and incidental to the exercise by them of' that power - whether Court should exercise discretion to grant the 'additional powers' sought - *Charitable Trusts Act 1993* (NSW) - *Trustee Act 1925* (NSW) - held: orders granted.

[Application of Tatham](#) (B)

Adoption of C, D, E (ANONYMISED (3 children) [2021] NSWSC 473

Supreme Court of New South Wales

Sackar J

Adoption - application for 'adoption of three children' - ss45F, 8(1), 52, 90(1)(a), 90(1)(b) & 90(3) *Adoption Act 2000* (NSW) - 'change of name' also sought in respect of each child - child's best interests - whether adoption was 'obviously, plainly or manifestly preferable course' - 'formal statutory requirements' - whether restoration 'a realistic possibility' - held: application granted.

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

Randhawa v Transport Accident Commission [2021] VSCA 135

Court of Appeal of Victoria

Beach, Kaye & Osborn JJA

Accident compensation - applicant injured when struck by vehicle whilst riding bicycle - applicant, pursuant to s93(4)(d) *Transport Accident Act 1986* (Vic) (TAA), sought to claim damages for injuries in reliance on 'serious injury' definition in s93(17) TAA - primary judge dismissed application - application sought to appeal - *Humphries v Poljak* [1992] VicRp 58 - adequacy of reasons - 'pecuniary disadvantage' - *Richards v Wylie* [2000] VSCA 50 - *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298 - held: leave to appeal refused.

[Randhawa](#) (I B G)

Summaries With Link



Song of Myself, 51

By: Walt Whitman

The past and present wilt—I have fill'd them, emptied them.
And proceed to fill my next fold of the future.

Listener up there! what have you to confide to me?
Look in my face while I snuff the sidle of evening,
(Talk honestly, no one else hears you, and I stay only a
minute longer.)

Do I contradict myself?
Very well then I contradict myself,
(I am large, I contain multitudes.)

I concentrate toward them that are nigh, I wait on the door-
slab.

Who has done his day's work? who will soonest be through
with his supper?
Who wishes to walk with me?

Will you speak before I am gone? will you prove already too
late?

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

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