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

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Executive Summary (1 minute read)

Morris Finance Ltd v Brown (FCAFC) - bankruptcy - plaintiff did not require leave under s58(3)(b) *Bankruptcy Act 1966* (Cth) to proceed with application for possession of property - appeal allowed (I B C G)

Giddings v Australian Information Commissioner (FCA) - judicial review - freedom of information - delegate erred in refusing to continue to review Australian Federal Police officer's decision not to release documents - delegate's decision set aside (I B C G)

Piazza Trevi v Cromwell BT Pty Ltd as custodian for the Cromwell Symantec House Trust. (NSWSC) - contract - retail lease - failure to exercise option for renewal of lease by operative date - no basis to grant plaintiff further five year lease (I B C G)

Zheng v Commonwealth of Australia (NSWSC) - pleadings - claim against Commonwealth arising from detention following cancellation of visa - part of statement of claim pleading false imprisonment struck out - plaintiff granted leave to replead cause of action in negligence or breach of duty (I B C G)

Drew v Patricks Stevedores Holdings Pty Limited (No 2) (VSC) - negligence - limitations - plaintiff claimed he was injured in course of employment - time began to run at time of injury, not cessation of employment - plaintiff granted extension of time to bring claim (I B C G)

In the matter of the Will and Estate of Ada Margaret Dyer, deceased (VSC) - wills and

estates - application for rectification or revocation of will on basis it did not carry out deceased's intentions - application dismissed (B)

The Corporation of the Synod of the Diocese of Brisbane v Greenway (QCA) - costs - respondent granted further costs order on basis of s313 *Workers' Compensation and Rehabilitation Act 2003* (Qld) (I B C G)

Summaries With Link (Five Minute Read)

Morris Finance Ltd v Brown [2017] FCAFC 97

Full Court of the Federal Court of Australia

Beach, Markovic & Moshinsky JJ

Bankruptcy - applicant claimed to be equitable chargee of land owned by first and second respondents pursuant to commercial goods lease between applicant and first respondent - second respondent gave guarantee of first respondent's obligations under lease - first respondent became bankrupt - third respondent was trustee in bankruptcy - second respondent also became bankrupt - fourth respondent was second respondent's trustee in bankruptcy - amount owed to applicant remained unpaid - applicant sought relief in Supreme Court of New South Wales under s103(2) *Conveyancing Act 1919* (NSW) in order to sell land - applicant sought to appeal against primary judge's determination that, due to respondents' bankruptcies, it required leave under s58(3)(b) *Bankruptcy Act 1966* (Cth) to proceed with application for possession - 'the right of a secured creditor to realize or otherwise deal with his or her security' - ss58(3)(b) & 58(5) - held: judicial process to enforce equitable charge not excluded from s58(5) *Bankruptcy Act*, which operated as an exception to s58(3)(b) - primary judge erred in finding leave required in order to proceed - appeal allowed - primary judge's answer to separate question set aside.

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

Giddings v Australian Information Commissioner [2017] FCA 677

Federal Court of Australia

Tracey J

Judicial review - freedom of information - applicant sought judicial review of decision of respondent's delegate not to continue to review Australian Federal Police officer's decision not to release documents or parts thereof which applicant had sought under *Freedom of Information Act 1982* (Cth) - held: delegate's decision not authorised by s54W(a), or any other provision of Act - decision was based on irrelevant consideration of applicant's concerns as to 'potential content of any published decision' - delegate's decision set aside - matter referred to Commissioner with view to completion of review of application.

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

Piazza Trevi v Cromwell BT Pty Ltd as custodian for the Cromwell Symantec House

Trust. [2017] NSWSC 794

Supreme Court of New South Wales

Sackar J

Contract - retail lease - plaintiff leased premises from defendant for five year term - defendant issued notice to plaintiff to vacate possession of premises - plaintiff contended that, pursuant to option, it was entitled to further five year lease - plaintiff claimed it exercised option or that defendant waived time for exercise of option, or that defendant estopped from relying on any failure to exercise option - plaintiff also claimed defendant engaged in unconscionable and/or misleading and deceptive conduct under Australian Consumer Law (ACL) and *Retail Leases Act 1994* (NSW) (RLA) - plaintiff sought grant of new five year term by defendant by specific performance, under s237(1) Australian Consumer Law and/or s72 RLA - credit - relief against forfeiture - held: plaintiff failed to validly exercise option by operative date - Court did not accept plaintiff should be granted further five year lease on basis of waiver, estoppel, by specific performance, or under ACL or RLA - relief against forfeiture not enlivened and even if it were enlivened there would not be grounds for relief.

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

Zheng v Commonwealth of Australia [2017] NSWSC 795

Supreme Court of New South Wales

Harrison J

Pleadings - negligence - false imprisonment - plaintiff's temporary tourist visa cancelled under s116(1)(g) *Migration Act 1958* (Vic) - plaintiff detained as unlawful non-citizen - decision to cancel visa illegal - Federal Court of Australia made orders by consent - plaintiff sued Commonwealth in negligence and for false imprisonment - Commonwealth sought to strike out whole or part of amended statement of claim under r14.28 *Uniform Civil Procedure Rules 2005* (NSW) - held: plaintiff had no cause of action for false imprisonment - part of statement of claim pleading false imprisonment struck out - Court not satisfied plaintiff had no possible cause of action for breach of duty by Commonwealth to take reasonable care for her whilst detained - matter was not properly pleaded - plaintiff given opportunity to replead cause of action in negligence or breach of duty.

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

Drew v Patricks Stevedores Holdings Pty Limited (No 2) [2017] VSC 352

Supreme Court of Victoria

Ierodionou AsJ

Negligence - limitations - plaintiff employed by defendant from 2000 until retrenchment in May 2014 - plaintiff alleged he was injured in course of employment - defendant contended part of plaintiff's claim relating to injury in November 2002 was out of time - plaintiff denied he was out of time and that if he was, he should be granted extension of time to bring whole claim - whether time ran from time of November 2002 injury or from the cessation employment - whether to treat injuries as single claim or multiple claims - whether to extend time pursuant to s23A *Limitations of Actions Act 1958* (Vic) - delay - prejudice - held: Court concluded time ran from November

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2002, not time of employment's cessation - Court satisfied it was just and reasonable to grant extension of time for plaintiff to bring claim - application granted.

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

In the matter of the Will and Estate of Ada Margaret Dyer, deceased [2017] VSC 341

Supreme Court of Victoria

Ierodiaconou AsJ

Wills and estates - applicant claimed deceased's will did not carry out her intentions because deceased had intended that applicant be sole primary beneficiary and trustee - applicant sought rectification or revocation under s31 *Wills Act 1997* (Vic) - whether will failed to carry out deceased's intention because it did not give effect to deceased's instructions to solicitor who drafted will - if will failed to carry out deceased's intention, whether it should be rectified - whether will should be revoked on basis solicitor did not carry out deceased's instructions in drafting will nor fully explain will to deceased - consideration of provisions of will - held: 'no clear and convincing proof' of deceased's actual intentions when will executed, thus it could not be said solicitor failed to give effect to instructions when drafting will - evidence did not establish clerical error in will or that solicitor mistook deceased's instruction when drafting will - application dismissed.

[In the matter of the Will and Estate of Ada Margaret Dyer](#) (B)

The Corporation of the Synod of the Diocese of Brisbane v Greenway [2017] QCA 138

Court of Appeal of Queensland

Morrison & McMurdo JJA; Bond J

Costs - Court gave judgment for appellant in proceedings and ordered respondent to pay appellant's costs of appeal unless written submissions filed - respondent sought part of costs on basis of s313 *Workers' Compensation and Rehabilitation Act 2003* (Qld) - appellant did not file written submissions - held: Court acted on 'factual premises' of respondent's submissions, concluding that provisional costs order could stand, together with further order that appellant was to pay respondent's costs of District Court proceeding up to and including date of exchange of written final offers, and that respondent was to pay appellant's costs of District Court proceeding after that date.

[The Corporation of the Synod](#) (I B C G)

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