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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)

Melbourne City Investments Pty Ltd v Treasury Wine Estates Limited (FCAFC) - representative proceedings - class closure order - opt out notice - leave to appeal from interlocutory decisions refused (I B C G)

Lake Maintenance (NSW) Pty Ltd v Bone (NSWSC) - injunction - estoppel - deed - application for injunction to prevent judgement's enforcement, or declaration plaintiff 'estopped from taking enforcement action' - motion dismissed (I B C G)

Bogunovic v Buildcorp Contracting NSW Pty Ltd (NSWSC) - evidence - expert evidence - orders made concerning questions raised in conclave (I B C G)

Jambere Pty Ltd v Body in Balance Chiropractic Pty Ltd (VSCA) - judgments and orders - failure to file leave application book by due date - application for leave to appeal not taken to have been abandoned (I B C G)

Corporation of the City of Marion v WC Projects Pty Ltd (SASC) - environment and planning - Commissioner erred in allowing developer's appeal against Council's refusal of development plan - development plan consent set aside (I B C G)

Quantum Asset Management Pty Ltd v Love Properties (WA) Pty Ltd (WASC) - summary judgment - contract - loan - default on facility deed - interest provision under facility deed was not a penalty - appeal dismissed (I B C G)

Farris v Development Consent Authority (NTSC) - town planning - consent of authority not required for helicopter-related activities, subject to self-imposed restrictions - declaration made (I B C G)

Summaries With Link (Five Minute Read)

Melbourne City Investments Pty Ltd v Treasury Wine Estates Limited [2017] FCAFC 98

Full Court of the Federal Court of Australia

Jagot, Yates & Murphy JJ

Representative proceedings - applicant sought to appeal against interlocutory orders in shareholder class action which second respondent brought against first respondent (Jones action) - applicant was class member of Jones action - applicant was also representative applicant in competing shareholder class action against first respondent which was permanently stayed as abuse of process - applicant sought, representing class members in Jones action, to appeal against 'class closure order' and setting out of form of 'opt out notice', and against order dismissing applicant's application seeking that class members be sent 'supplementary opt out notice' - whether opt-out notice 'materially misleading' - discretion to make class closure order - held: decisions not attended by sufficient doubt to warrant Full Court's reconsideration - even if decisions assumed to be wrong, no substantial injustice suffered by applicant and class members - leave to appeal refused.

[Melbourne City Investments](#) (I B C G)

Lake Maintenance (NSW) Pty Ltd v Bone [2017] NSWSC 758

Supreme Court of New South Wales

Davies J

Injunction - estoppel - parties entered into Deed to settle proceedings under which plaintiff was entitled to enter judgment - judgment entered - plaintiff issued Bankruptcy Notice against defendant to enforce judgment - defendant had sought to stay Bankruptcy Notice in Federal Circuit Court and also filed motion for injunction to prevent judgment's enforcement - defendant alternative sought declaration that plaintiff was 'estopped from taking enforcement action' - *Farm Debt Mediation Act 1994* (NSW) - serious question to be tried - balance of convenience - proper construction of deed - abuse of process - held: notice of motion dismissed.

[Lake Maintenance](#) (I B C G)

Bogunovic v Buildcorp Contracting NSW Pty Ltd [2017] NSWSC 805

Supreme Court of New South Wales

Davies J

Evidence - expert conclave - orthopaedic surgeons to meet in conclave to prepare joint report - plaintiff sought to preface questions to be answered by experts with a direction that they reach conclusions on balance of probabilities - plaintiff also sought to provide experts with

assumptions largely taken from plaintiff's evidentiary statement - held: Court not satisfied direction should be given or that experts should be provided with assumptions - orders made.

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

Jambere Pty Ltd v Body in Balance Chiropractic Pty Ltd [2017] VSCA 143

Court of Appeal of Victoria

Tate, Whelan & Kyrou JJA

Judgments and orders - applicants sought to reinstate application for leave to appeal in dispute concerning contract of sale of business - application had been taken to have been abandoned under r64.45(2)(a) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) due to applicant's failure to file leave application book by the due date mandated by registry's directions - applicants' submitted failure to comply was due to mistaken assumption that registry's directions would be revised - whether appeal should be taken to have been abandoned - held: it was unsatisfactory that applicants had failed to prosecute application for leave to appeal but the conduct was 'slight and explicable' - application not taken to be abandoned - Court declined to dismiss application.

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

Corporation of the City of Marion v WC Projects Pty Ltd [2017] SASC 74

Supreme Court of South Australia

Blue J

Environment and planning - Commissioner of the Environment Resources and Development Court allowed developer's appeal against Council's refusal of development plan consent in respect of construction of residential flat buildings - Council refused plan consent on basis proposal did not accord with City of Marion Development Plan - Commissioner granted development plan on conditions - Council appealed - held: Commissioner erred by 'accepting or countenancing a wholesale reduction in dwelling site area, dwelling private open space and car parking' - Commissioner also erred by failing to consider mandatory relevant consideration of dwelling site area - appeal allowed - development plan consent set aside.

[Corporation of the City of Marion](#) (I B C G)

Quantum Asset Management Pty Ltd v Love Properties (WA) Pty Ltd [2017] WASC 167

Supreme Court of Western Australia

Banks-Smith J

Summary judgment - contract - loan - plaintiff provided short-term loan to defendants by facility deed - defendants defaulted on repayment under facility - plaintiff obtained summary judgment - defendants paid judgment sum - defendant contended they were entitled to defend proceedings and also entitled to restitution of money - defendants contended that money claimed and paid to plaintiff was excessive because facility deed's interest provision was unenforceable as penalty - held: inclusion of 'period B interest rate' had purpose other than to punish defendants - plaintiff had interest that explained period B interest rate - no real question to be tried that interest provision operated only as punishment - appeal dismissed.



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

Farris v Development Consent Authority [2017] NTSC 44

Supreme Court of the Northern Territory

Barr J

Town planning - plaintiff joint owner and registered proprietor of property sought declaration he did not require development permit under *Planning Act* (NT) for helicopter flights to and from property under certain self-imposed restrictions - restrictions were that plaintiff piloted flights, plaintiff resided at property and flights' only passengers were plaintiff and/or family members - whether helicopter related activities subject to self-imposed restrictions were a 'development' for which consent was required - Northern Territory Planning Scheme - definition of 'development' in s3 of the Act - held: proposed helicopter related activities were use of property for purpose of a dwelling house - consent authority's consent was not required - declaration made in terms consistent with self-imposed restrictions and description of 'helicopter related activities'.

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

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