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

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Executive Summary (1 minute read)

Weber v Greater Hume Shire Council (NSWCA) - negligence - proceedings arising from fire which escaped 'tip site' - house which plaintiff occupied, together with plaintiff's personal possessions, destroyed - primary judge dismissed plaintiff's proceeding, brought on own behalf and on behalf of 'class of persons' - appeal allowed (I B C G)

Harford v Hallmark Construction Pty Ltd (NSWSC) - negligence - two proceedings arising from accident in which Mr Harford injured in fall into 'stormwater retention pit' on site first defendant was developing - claim against first defendant by Mr Harford - claim against first defendant by insurer of company of which Mr Harford was principal - claims upheld (I B C G)

Re Munro (Costs) (VSC) - costs - dismissal of caveator's application for 'probate caveat' - caveator to pay plaintiffs' costs from time at which 'it should have been clear' that sustaining caveat grounds had 'no real prospect' (I B C G)

Midland Metals Overseas Pte Ltd v Powercor Network Services Pty Ltd [No 2] (VSCA) - costs - applicant refused leave to appeal against decision in which associate judge set aside statutory demands - applicant to pay respondent's appeal costs on ordinary basis - respondent refused indemnity costs order (I B C G)

Spoor & Ors v Price & Ors (QSC) - summary judgment - limitations - mortgages - plaintiff claimed money due under mortgages and possession - *Limitation of Actions Act 1974* (Qld) - defendants granted judgment on claims (I B C G)

Polaris Properties (WA) Pty Ltd as trustee for The Polaris Trust v Pickworth (WASC) - separate questions - easement - strata titles - application for determination of separate questions dismissed (I B C G)

Faris v Savage (ACTSC) - security for costs - negligence - consumer law - successful plaintiff sought that appellant pay security for costs of appeal - security for costs granted (I B C G)

Summaries With Link (Five Minute Read)

Weber v Greater Hume Shire Council [2019] NSWCA 74

Court of Appeal of New South Wales

Basten & Gleeson JJA; Sackville AJA

Negligence - respondent operated 'waste disposal sites' - fire escaped 'tip site' and destroyed home which plaintiff occupied, and plaintiff's 'personal possessions' - plaintiff brought proceedings on own behalf and on behalf of 'class of persons' - primary judge dismissed plaintiff's proceedings - appellant contended fire's 'likely causes' were within respondent's control and 'could have been averted' if 'reasonable precautions' taken - appellant also challenged finding that causation was not established by plaintiff - respondent, by notice of contention, challenged findings in plaintiff's favour - whether respondent owed duty of care - whether respondent breached duty of care - ss42 & 43 *Civil Liability Act 2002* (NSW) - held: appeal allowed.

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

Harford v Hallmark Construction Pty Ltd [2019] NSWSC 371

Supreme Court of New South Wales

Fagan J

Negligence - two proceedings arising from accident in which Mr Harford was injured in fall into 'stormwater retention pit' on 'building site' which was being developed by first defendant - in one proceeding Mr Harford claimed damages for injuries from defendant - Mr Harford, at time of accident, was private company's principal - company employed Mr Harford as 'sole truck driver' - company's workers compensation insurer paid Mr Harford benefits - in second proceeding, insurer, in company's name, sought, pursuant to s151Z(1)(d) *Workers Compensation Act 1987* (NSW), to recover paid benefits from first defendant - held: claims upheld.

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

Re Munro (Costs) [2019] VSC 243

Supreme Court of Victoria

Derham AsJ

Costs - Court summarily dismissed application for 'probate caveat' - plaintiff sought indemnity costs order against caveator - caveator sought that parties' costs be paid from estate or that

there be no order concerning caveator's costs - prospects of success - held: caveator to pay plaintiffs' costs from time at which 'it should have been clear to the caveator's legal advisors that there was no real prospect' of sustaining caveat grounds - order made.

[Re Munro](#) (I B C G)

Midland Metals Overseas Pte Ltd v Powercor Network Services Pty Ltd [No 2] [2019]

VSCA 90

Court of Appeal of Victoria

Tate JA & Almond AJA

Costs - applicant unsuccessfully sought to appeal against associate judge's decision to set aside 'three statutory demands' which applicant served on respondent - respondent sought indemnity costs order - respondent contended 'statutory demand process' inappropriate and incurred costs disproportionate to amounts claimed in demands - respondent also relied on Calderbank offer which had put applicant on notice that respondent would seek indemnity costs - held: grounds for indemnity costs order failed - applicant to pay respondent's appeal costs on ordinary basis.

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

Spoor & Ors v Price & Ors [2019] QSC 53

Supreme Court of Queensland

Dalton J

Summary judgments - limitations - contract - mortgage - plaintiffs claimed money due under mortgages and possession - plaintiffs sought summary judgment or strike-out of defences - defendants also claimed summary judgment or strike-out of claims - dispute concerned application of *Limitation of Actions Act 1974* (Qld) (Limitations Act) - held: s24 Limitations Act had extinguished, before proceeding commenced, mortgagee's title to lands - defendants granted judgment on possession claim - claim of money under contract was out of time - defendants not prevented by clause of mortgages from raising limitations defence - judgment for defendants on both the possession claim and claim for money due under mortgages.

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

Polaris Properties (WA) Pty Ltd as trustee for The Polaris Trust v Pickworth [2019] WASC

119

Supreme Court of Western Australia

Smith J

Separate questions - easement - strata titles - application by first defendant for determination of three separate questions in proceedings - O31 r2 *Rules of the Supreme Court* - whether material facts 'could be assumed to be agreed' - whether utility in determining preliminary questions - held: Court not satisfied that it could determine questions which defendant posed in other than 'a hypothetical manner' - 'little utility' in determining the questions - application dismissed.

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



Faris v Savage [2019] ACTSC 94

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Security for costs - negligence - consumer law - appellant performed work for plaintiff at plaintiff's property - plaintiff successfully claimed against appellant for 'defective works' requiring rectification - appellant appealed - plaintiff, under r5055 *Court Procedures Rules 2006* (ACT), sought security for costs of appeal - whether to grant security - amount of security - held: Court satisfied to grant order for security for costs - appellant to pay security of cost in sum of \$20,000.

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

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