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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)

**Kookaburra Educational Resources Pty Limited v MacGear Limited Partnership trading as MacGear Australia, in the matter of Kookaburra Educational Resources Pty Limited** (FCA) - corporations - statutory demand - bankruptcy - service - plaintiff sought to set aside statutory demand addressed to it from defendant - Court's jurisdiction under s459G Corporations Act not enlivened - demand null and void - demand set aside (B)

**R v Macdonald; R v Edward Obeid; R v Moses Obeid (No 17)** (NSWSC) - criminal law - 'joint trial' of co-accused: Mr Ian Macdonald, Mr Edward Obeid and Mr Moses Obeid - each accused charged with conspiracy to commit misconduct in public office - each accused found guilty (I B C G)

**Precision Flooring Pty Ltd v Armstrong** (NSWSC) - contract - consumer law - plaintiff claimed sum for breach of agreement between parties - defendant cross-claimed, contending breach of *Competition and Consumer Act 2010* (Cth) and Australian Consumer Law - Magistrate found in defendant's favour - appeal allowed - matter remitted (I B C G)

**Kalx Capital Securities Pty Ltd v Richardson 1 Pty Ltd** (WASC) - caveat - Court extended caveat which was 'due to expire' - proceedings concerned determination of issue whether director required to give 'personal undertaking' - director to give personal undertaking (B)

**Dudley v Reece Australia Pty Ltd** (WASC) - costs - bankruptcy - dispute concerned claims by

'competing creditors' bankrupt's estate - parties agreed in proceedings concerning 'substantive dispute' - 'no determination of merits' - no order for costs (I B C G)

## Summaries With Link (Five Minute Read)

### **Kookaburra Educational Resources Pty Limited v MacGear Limited Partnership trading as MacGear Australia, in the matter of Kookaburra Educational Resources Pty Limited [2021] FCA 797**

Federal Court of Australia

Halley J

Corporations - statutory demand - bankruptcy - service - plaintiff sought to set aside statutory demand addressed to it from defendant - whether application 'filed and served within the 21 day statutory period' - whether demand 'null and void' - *Opensoft Australia Pty Limited v Miller Street Pty Limited* [2011] FCA 653 - ss9, 459E, 459G(2), 459G, 459G(2), 459H, 459J & 109X *Corporations Act 2001* (Cth) (*Corporations Act*) - *Service and Execution of Process Act 1992* (Cth) - whether to grant leave to rely on affidavits in 'irregular form' - held: Court's jurisdiction under s459G *Corporations Act* not enlivened - demand null and void - demand set aside.

[Kookaburra](#) (B)

### **R v Macdonald; R v Edward Obeid; R v Moses Obeid (No 17) [2021] NSWSC 858**

Supreme Court of New South Wales

Fullerton J

Criminal law - 'joint trial' of co-accused: Mr Ian Macdonald, Mr Edward Obeid and Mr Moses Obeid - co-accused charged with conspiracy to commit misconduct in public office - each accused pleaded not guilty - whether 'offence known to law' - whether co-accused agreed that Mr Macdonald would commit misconduct in public office by 'acts in connection with' granting of exploration licence concerning 'financial interests of the accused and/or members of their family and/or their associates' for 'improper purposes' - whether each accused 'knew and intended that Mr Macdonald would wilfully breach his Ministerial duties and obligations of impartiality and/or confidentiality' - whether indictment was defective - '*Shepherd* fact' - 'co-conspirators rule' - s87(1)(c) *Evidence Act 1995* (NSW) - held: each accused found guilty - verdicts entered.

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

### **Precision Flooring Pty Ltd v Armstrong [2021] NSWSC 844**

Supreme Court of New South Wales

Walton J

Contract - consumer law - plaintiff claimed sum for breach of agreement between parties whereby 'plaintiff would supply and install various timber products and install timber stairs at the defendant's property' - defendant cross-claimed, contending plaintiff in breach of *Competition and Consumer Act 2010* (Cth) and Australian Consumer Law - Magistrate found in defendant's favour essentially on basis 'timber flooring and stairs' installed by plaintiff were 'not fit for

purpose' - whether Magistrate made findings 'without evidence' - whether Magistrate made findings 'without adequate reasons' - whether 'breach of procedural fairness' - held: appeal allowed - matter remitted.

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

## **Kalx Capital Securities Pty Ltd v Richardson 1 Pty Ltd [2021] WASC 236**

Supreme Court of Western Australia

Archer J

Caveat - Court extended caveat which was 'due to expire' - proceedings concerned determination of issue whether director required to give 'personal undertaking' - defendants concerned in regard to plaintiff's capacity to meet damages award under undertaking - defendants claimed fear that 'plaintiff had no real assets' - capacity of the plaintiff to meet any award of damages under its undertaking - held: director to give personal undertaking.

[Kalx](#) (B)

## **Dudley v Reece Australia Pty Ltd [2021] WASC 240**

Supreme Court of Western Australia

Strk J

Costs - bankruptcy - dispute concerned claims by 'competing creditors' bankrupt's estate - parties agreed in proceedings concerning 'substantive dispute' - there had not been hearing on action's merits - determination of costs - 'adverse costs orders' were pressed, by plaintiff, second and fourth defendants against first defendant; and first defendant against plaintiff - 'no determination of merits' - s37 *Supreme Court Act 1935* (WA) - O66 r1 *Rules of the Supreme Court 1971* (WA) - *Australian Securities Commission v Aust-Home Investments Ltd* [1993] FCA 585 - held: no order for costs.

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

## Summaries With Link

## A Midsummer Noon in the Australian Forest

**By:** Charles Harpur

NOT a sound disturbs the air,  
There is quiet everywhere;  
Over plains and over woods  
What a mighty stillness broods!

All the birds and insects keep                      5  
Where the coolest shadows sleep;  
Even the busy ants are found  
Resting in their pebbled mound;  
Even the locust clingeth now  
Silent to the barky bough:                      10  
Over hills and over plains  
Quiet, vast and slumbrous, reigns.

Only there 's a drowsy humming  
From yon warm lagoon slow coming:  
'Tis the dragon-hornet—see!                      15  
All bedaubed resplendently,  
Yellow on a tawny ground—  
Each rich spot nor square nor round,  
Rudely heart-shaped, as it were  
The blurred and hasty impress there                      20  
Of a vermeil-crustéd seal,  
Dusted o'er with golden meal.  
Only there 's a droning where  
Yon bright beetle shines in air,  
Tracks it in its gleaming flight                      25  
With a slanting beam of light,  
Rising in the sunshine higher,  
Till its shards flame out like fire.

Every other thing is still,                      30  
Save the ever-wakeful rill,  
Whose cool murmur only throws  
Cooler comfort round repose;  
Or some ripple in the sea  
Of leafy boughs, where, lazily,



Tired summer, in her bower 35  
Turning with the noontide hour,  
Heaves a slumbrous breath ere she  
Once more slumbers peacefully.

Oh, 'tis easeful here to lie  
Hidden from noon's scorching eye, 40  
In this grassy cool recess  
Musing thus of quietness.

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