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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Tolkien Estate Ltd v Saltalamacchia (FCA) - copyright - infringement of copyright in inscription contained in book 'The Lord of the Rings' - no reasonable prospect of defending proceeding - respondent granted summary judgment (I B C G)

Clement v Australian Bureau of Statistics (FCA) - summary judgment - no entitlement to compensation under *Public Interest Disclosure Act 2013* (Cth) - respondents granted summary judgment (I B C G)

Commonwealth Bank Officers Superannuation Corporation Pty Ltd v Beck (NSWCA) - contract - superannuation - estoppel - amendment of trust deed to remove benefit - plaintiff not entitled to consideration of benefits under clause - appeal allowed (I B C G)

Beefeater Sales International Pty Ltd v MIS Funding No 1 Pty Ltd (NSWCA) - contract - loan agreement in connection with managed investment scheme - assignment - respondent entitled to judgment against appellants - appeal dismissed (I B C G)

Alzawy v Coptic Orthodox Church Diocese of Sydney, St Mary and St Merkorious Church (NSWSC) - evidence - admissibility of evidence - hearsay - plaintiff not 'unavailable' to give evidence within meaning of *Evidence Act 1995* (NSW) - permission to adduce hearsay evidence refused (I B C G)

Buses + 4WD Hire Pty Limited v Oz Snow Adventures Pty Limited (NSWSC) - costs -

insured plaintiff granted leave for separate legal representation to defend first cross-claim - plaintiffs' insurer to pay defendant's costs - plaintiffs and cross-defendants to bear own costs of motion (I B C G)

Summaries With Link (Five Minute Read)

Tolkien Estate Ltd v Saltalamacchia [2016] FCA 944

Federal Court of Australia

Beach J

Copyright - applicant was owner of copyright in book 'The Lord of the Rings' (book) and thus owner of copyright in the inscription (One Ring Inscription) - respondent offered for sale and sold on website rings bearing One Ring Inscription - applicant sought summary judgment pursuant to r26.01 *Federal Court Rules 2011* (Cth) and s31A *Federal Court of Australia Act 1976* (Cth) for infringement of copyright - ss14, 31, 32, 36, 38, 115, 126, 127, 129 & 184 *Copyright Act 1968* (Cth) - reg 4 *Copyright (International Protection) Regulations 1969* (Cth) - held: respondent infringed applicant's copyright - no real dispute respondent engaged in impugned conduct involving unauthorised use of applicant's work in breach of Copyright Act - applicant had no reasonable prospect of defending proceeding - summary judgment granted.

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

Clement v Australian Bureau of Statistics [2016] FCA 948

Federal Court of Australia

Katzmann J

Summary judgment - applicant sought compensation under s14 *Public Interest Disclosure Act 2013* (Cth) (PID Act) for reprisals against her after she made 'public interest disclosures' in International Accounts Branch of Australian Bureau of Statistics' Foreign Trade Section - respondents sought summary judgment - ss15A & 15AA *Acts Interpretation Act 1901* (Cth) - s570(2) *Fair Work Act 2009* (Cth) - s31A *Federal Court of Australia Act 1976* (Cth) - s78B *Judiciary Act 1903* (Cth) - *Migration Litigation Reform Act 2005* (Cth) - ss10, 13, 14 & 26 *Public Interest Disclosure Act 2013* (Cth) - held: applicant did not have entitlement to compensation under PID Act which was an 'incurable deficiency' in application - even if respondents did not dispute allegations applicant did not have reasonable prospects of success - respondents granted summary judgment.

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

Commonwealth Bank Officers Superannuation Corporation Pty Ltd v Beck [2016] NSWCA 218

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Gleeson JJA

Contract - equity - statutory interpretation - superannuation - respondent was former employee of bank and member of superannuation fund to which he contributed - trustee of fund amended

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trust deed of fund to remove existing fund rule (cl A11.3) which provided for certain discretionary benefits - respondent contended trustee's exercise of power to amend breached its general law duty to act in best interests of fund's beneficiaries and contravened statutory duties under s52(2)(c) *Superannuation Industry Supervision Act 1993* (Cth) and *Superannuation Industry (Supervision) Regulations 1994* (SIS regulations) - primary judge found respondent successful in challenge to validity of decision to amend rules of fund to remove clause and that respondent entitled to consideration of possible benefits under clause - respondent was also successful in estoppel case and found entitled to relief on basis he was entitled to pension at age 55 subject to adjustments and other relief considerations - held: respondent did not have right to assets in fund pursuant to cl A11.3 because it was a discretionary power - respondent had not retired before 55 at time of removal of provision so was not entitled to consideration - no contravention of anti-discrimination legislation by deleted clause - no failure by trustee to consider whether amendment was in best interests of members - no breach of SIS regulations - appeal allowed.
[Commonwealth Bank Officers](#) (I B C G)

Beefeater Sales International Pty Ltd v MIS Funding No 1 Pty Ltd [2016] NSWCA 217

Court of Appeal of New South Wales

Bathurst CJ; Gleeson & Payne JJA

Contract - respondent sued first appellant for money advanced to first appellant to fund participation in forestry investment scheme which failed - second appellant guaranteed first appellant's obligations - respondent made claim as assignee of rights of company (WFIN) under loan agreement pursuant to loan transfer deed between respondent, company (WFIN) and another company (WFL) - first appellant contended respondent had not established funds were advanced to WFL and that, even if funds paid to, they were not paid to acquire "Hectares" as required by cl 11 of loan agreement - primary judge found it was more likely than not that amount was advanced and paid directly as contemplated by cl 11 of loan agreement - primary judge found in respondent's favour appellants appealed - s163 *Conveyancing Act 1919* (NSW) - s9 *Corporations Act 2001* (Cth) - s8-1 *Income Tax Assessment Act 1997* (Cth) - held: WFIN authorised to pay money to WFL and money had been advanced - right to issue certificate assigned under assignment's terms - appeal dismissed.

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

Alzawy v Coptic Orthodox Church Diocese of Sydney, St Mary and St Merkorious Church [2016] NSWSC 1122

Supreme Court of New South Wales

Garling J

Evidence - admissibility of evidence - hearsay - plaintiff brought claim for damages against defendant arising from fall on internal stairs at defendant's premises - plaintiff sought to lead hearsay evidence on basis she was not available to give evidence within meaning of s63 *Evidence Act 1995* (NSW) - held: Court not satisfied plaintiff not 'unavailable' to give evidence within meaning of the Act - plaintiff was 'physically and mentally capable of giving evidence in a general sense' - application to adduce hearsay evidence refused.



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

Buses + 4WD Hire Pty Limited v Oz Snow Adventures Pty Limited [2016] NSWSC 1149

Supreme Court of New South Wales

Adamson J

Costs - insured plaintiff granted leave for separate legal representation to defend first cross-claim - Court ordered insured plaintiff to pay defendant's costs - insured plaintiff sought that insurer pay defendants' costs and its costs - plaintiffs' insurer objected to payment of insured plaintiff's costs on basis that, as plaintiffs' insurer, it would be obliged to pay defendants' costs, which plaintiffs were ordered to pay - s78 *Motor Accidents Compensation Act 1999* (NSW) - held: Court not of view plaintiffs' insurer should pay insured plaintiff's costs of bringing notice of motion as cross-defendant because its application was 'brought in its own interests and for its own benefit' and supported by plaintiff's insurer, for its own interests and own benefit - plaintiffs' insurer to pay defendant's costs - plaintiffs and respective cross-defendants are to bear their own costs of motion.

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

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