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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)

Australian Securities and Investments Commission v BHF Solutions Pty Ltd (FCA) - consumer law - applicant sought declaratory relief against first and second respondents - applicant also sought to restrain respondents 'from engaging in credit activities' - application dismissed (I B)

Matson v Australian Information Commissioner (No 1) (FCA) - judicial review - self-represented litigant - applicant sought to file interlocutory application - Court refused filing of interlocutory application refused without Court's leave - applicant sought substantive proceeding's stay and referral certificate - whether to re-open case - 'exceptional circumstances' - applicant refused leave to file interlocutory application (I B C G)

Lynch v Cavallo (NSWSC) - negligence - approval of settlement - proceedings arising from plaintiff's fall from racehorse - plaintiff sued defendant in negligence - plaintiff's mental capacity deteriorated due to his injuries - plaintiff became incapacitated and tutor was appointed - defendant offered to resolve proceedings on basis of judgment in defendant's favour with no costs order - settlement approved (B C I)

Matthews v Com 1 International Pty Ltd & Ors (VSC) - administrative law - judicial review - plaintiff sought to quash certificate of opinion of Medical Panel's certificate of opinion and that 'referred medical questions' be remitted to 'differently constituted' Panel - application upheld - Court to hear from parties on form of orders (I B C G)

Re McNamara (QSC) - wills and estates - probate - intestacy - deceased died without will - solicitor had prepared, but deceased had not signed, a will - 'unexecuted will' nominated applicant wife of deceased as executor - applicant sought declaration unexecuted will was deceased's will - applicant sought grant of probate or 'grant of letters of administration on intestacy' - order for grant of letters of administration on intestacy made - 'application otherwise dismissed' (B)

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v BHF Solutions Pty Ltd [2021] FCA 684

Federal Court of Australia

Halley J

Consumer law - applicant sought declaratory relief against first and second respondents - applicant also sought to restrain respondents 'from engaging in credit activities' - 'principal issue' was whether respondents, by operation of 'business model' under which first respondent provided loans and second respondent provided services to borrowers, had provided credit to which National Credit Code (Code) applied - Sch 1 *National Consumer Credit Protection Act 2009* (Cth) - relationship between respondents - 'engaging in a credit activity' - 'provisions of credit' to which Code applied - provisions of credit to which Code did not apply - 'extended definition of contract' - 'evidentiary burdens' - whether 'fees and charges' of second respondent were within meaning of 'charge for providing credit in' ss5(1)(c) & 6(5) Code - held: application dismissed.

[Australian Securities and Investments Commission](#) (I B)

Matson v Australian Information Commissioner (No 1) [2021] FCA 685

Federal Court of Australia

Collier J

Judicial review - self-represented litigant - applicant sought extension of time within which seek 'judicial review of six decisions of' respondent - applicant sought to file interlocutory application - Court ordered that filing of interlocutory application be refused without Court's leave - applicant sought substantive application's stay and referral certificate - whether to grant leave to file interlocutory application - parties' consent to determination of substantive application on the papers - whether to re-open case - whether exceptional circumstances - prospects of success - r4.13 *Federal Court Rules 2011* (Cth) held: leave to file interlocutory application refused.

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

Lynch v Cavallo [2021] NSWSC 704

Supreme Court of New South Wales

Adamson J

Negligence - approval of settlement - proceedings arising from plaintiff's fall from racehorse - plaintiff sued defendant in negligence - plaintiff's mental capacity deteriorated due to his injuries - plaintiff became incapacitated and tutor was appointed - defendant offered to resolve proceedings on basis of judgment in defendant's favour with no costs order - offer was open for one day - plaintiff, subject to approval of Court - accepted defendant's offer - s76(3) *Civil Procedure Act 2005* (NSW) - whether plaintiff's action 'would be bound to fail' - *Singh v Lynch* (2020) 103 NSWLR 568 - *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd* [2020] NSWCA 263 - held: settlement approved.

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

Matthews v Com 1 International Pty Ltd & Ors [2021] VSC 361

Supreme Court of Victoria

Forbes J

Administrative law - judicial review - plaintiff sought to quash certificate of opinion of Medical Panel's certificate of opinion and that 'referred medical questions' be remitted to 'differently constituted' Panel - whether reasons of Panel disclosed 'path of reasoning' for the understanding of its conclusions concerning 'alleged injury and its cessation' - whether possible to determine whether there had been legal error - *Workplace Injury Rehabilitation & Compensation Act 2013* (Vic) - held: application upheld - Court to hear from parties on form of orders.

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

Re McNamara [2021] QSC 148

Supreme Court of Queensland

Henry J

Wills and estates - probate - deceased died without will - a solicitor had prepared, but deceased had not signed, a will - 'unexecuted will' nominated applicant wife of deceased as executor - applicant, pursuant to s18 *Succession Act 1981* (Qld), sought declaration unexecuted will was deceased's will, and sought grant of probate - applicant, in alternative, sought 'grant of letters of administration on intestacy' - *Hatsatouris v Hatsatouris* [2001] NSWCA 408 - *Lindsay v McGrath* [2016] 2 Qd R 160 - held: order for grant of letters of administration on intestacy made - 'application otherwise dismissed'.

[Re McNamara](#) (B)

Summaries With Link



Voices of the Air

By: Katherine Mansfield

But then there comes that moment rare
When, for no cause that I can find,
The little voices of the air
Sound above all the sea and wind.

The sea and wind do then obey
And sighing, sighing double notes
Of double basses, content to play
A droning chord for the little throats

The little throats that sing and rise
Up into the light with lovely ease
And a kind of magical, sweet surprise
To hear and know themselves for these

For these little voices: the bee, the fly,
The leaf that taps, the pod that breaks,
The breeze on the grass-tops bending by,
The shrill quick sound that the insect makes.

https://en.wikipedia.org/wiki/Katherine_Mansfield

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