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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)

Re.Group Pty Ltd v Kazal (No 5) (FCA) - contempt - sentencing - costs - second respondent guilty of civil contempt - Court to impose fine - second respondent to pay applicant's costs on indemnity basis - imposition of fine postponed until Court aware of indemnity costs order's magnitude (I B C G)

Warner Bros Feature Productions Pty Ltd v Kennedy Miller Mitchell Films Pty Ltd (NSWCA) - contract - commercial arbitration - arbitration clause incorporated into Letter Agreement - dispute 'capable of settlement by arbitration' - proceedings stayed - appeal allowed (I B C G)

Carbone v Mills (NSWSC) - land law - equity - contract for sale - plaintiffs did not validly exercise Call Option granted by defendant under Option Agreement - declarations to be made (I B C G)

Webster v Strang; Steiner v Strang (NSWSC) - succession - family provision - two proceedings - plaintiff in each proceeding entitled to further provision from deceased's estate - defendants succeeded on cross-claim against one plaintiff for 'debt on account' (B)

The State of South Australia v Roberts (SASCFC) - workers compensation - no error in finding respondent's employment was 'a significant contributing cause' of respondent's injury - appeal dismissed (I B C G)

Australian Unity Property Limited as responsible entity for the Australian Unity Diversified Property Fund v City of Busselton (WASCA) - planning and environment - judicial review - appeal against development approvals dismissed (I B C G)

A & A Martins Pty Limited v Liu (ACTSC) - restitution - quantum meruit - plaintiff entitled to payment by defendants of 'a fair and reasonable sum' for supplied goods and services (I B C G)

Summaries With Link (Five Minute Read)

Re.Group Pty Ltd v Kazal (No 5) [2018] FCA 546

Federal Court of Australia

Perram J

Contempt - sentencing - costs - Court found second respondent guilty of civil contempt for breach of Court's orders - issues for determination were whether contempt contumacious such that it involved criminal contempt - appropriate penalty - matters relevant to sentencing discretion's exercise - 'contrition, character and antecedents' - whether conduct was 'wilful disobedience' - held: Court concluded that contempts were civil - second respondent to pay applicant's costs of proceedings on indemnity basis - Court to impose fine - fine's imposition postponed until Court aware of indemnity costs order's magnitude.

[Re. Group Pty Ltd](#) (I B C G)

Warner Bros Feature Productions Pty Ltd v Kennedy Miller Mitchell Films Pty Ltd [2018] NSWCA 81

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Emmett AJA

Contract - commercial arbitration - appeal concerned question whether Court should make order under s7(2) *International Arbitration Act 1974* (Cth) staying proceedings brought by respondents against applicants seeking damages arising from breach of contract (Letter Agreement) - applicants sought to appeal against primary judge's decision that proceedings should not be stayed - whether Letter Agreement contained clause such that Letter Agreement could be characterised as an arbitration agreement - 'incorporation of terms' - whether arbitration clause incorporated by clause of Letter Agreement - held: arbitration clause was incorporated into Letter Agreement - dispute involved matter "capable of settlement by arbitration" - proceedings stayed under s7(2) of the Act - appeal allowed.

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

Carbone v Mills [2018] NSWSC 496

Supreme Court of New South Wales

Darke J

Land law - equity - contract - plaintiffs and defendants entered Option Agreement in respect of

property which defendant owned - dispute arose concerning period in which it was open to plaintiffs to exercise Call Option - defendant contended period expired on 4/9/16 - plaintiffs contended period expired on 4/10/16 - plaintiffs did not exercise Call Option by 4/9/16 - defendant served Notice to Vacate on plaintiffs on 14/9/16 - the plaintiffs served Notice of Exercise of Call Option on defendant. on 28/9/16 - plaintiffs contended they validly exercised Call Option and sought orders for specific performance of contract for sale - variation of Option Agreement - estoppel - held: Call Option not exercised before '5pm on the Call Option Lapse Date' of 4/9/16 - Call Option lapsed under clause of Option Agreement - declarations to be made.

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

Webster v Strang; Steiner v Strang [2018] NSWSC 495

Supreme Court of New South Wales

Kunc J

Succession - family provision - two 'associated proceedings' concerning deceased's estate ('Robyn's case' and 'John's case') - plaintiff in each proceeding was child of deceased - plaintiffs each sought further provision from deceased's estate pursuant to Ch 3 *Succession Act 2006* (NSW) - deceased granted probate of will to first and second defendants in respective proceedings - Robyn's case and John's case each concerned whether to make order pursuant to Ch 3 of the Act and if so, what order - John's case was 'complicated by a cross-claim' by defendants, which was made on basis of alleged loan deceased made to John - 'Acknowledgement of Loan' - held: both plaintiffs entitled to further provision - defendants succeeded on cross-claim for 'debt on account'.

[View Decision](#) (B)

The State of South Australia v Roberts [2018] SASCFC 25

Full Court of the Supreme Court of South Australia

Kourakis CJ, Blue & Parker JJ

Workers compensation - respondent alleged injury from mosquito bites received during work placement - State appealed against decision of Full Bench of the South Australian Employment Tribunal as to injuries' compensability under *Return to Work Act 2014* (SA) - issue on appeal was whether respondent's employment was 'a significant contributing cause' of respondent's injury such that it "[arose] from employment" under s7(2) of the Act - causation - statutory construction - whether employment 'important or influential' cause of injury - 'but for' test - held: no error in conclusion that employment was significant contributing cause of injury - appeal dismissed.

[The State of South Australia](#) (I B C G)

Australian Unity Property Limited as responsible entity for the Australian Unity Diversified Property Fund v City of Busselton [2018] WASCA 38

Court of Appeal of Western Australia

Buss P; Murphy & Mitchell JJA

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Planning and environment - judicial review - appellants owned and operated shopping centre - appellants sought to quash City's development approvals in respect of proposed development with which it would compete - primary judge dismissed application for judicial review - whether 'Kmart Application' was a development application 'for the approval of development that has an estimated cost of \$10 million or more' under reg 5(c) *Planning and Development (Development Assessment Panels) Regulations 2011* (WA) (Regulations), such that City lacked jurisdiction to not have jurisdiction to deal with application - whether use of lot as 'Discount Department Store' and 'Supermarket' could be permitted under clause of Local Planning Scheme - held: Kmart Application was not a development application 'for the approval of development that has an estimated cost of \$10 million or more' under Regulations - use of lot as 'Discount Department Store' and 'Supermarket' could be permitted under clause of Local Planning Scheme - appeal dismissed.

[Australian Unity Property](#) (I B C G)

A & A Martins Pty Limited v Liu [2018] ACTSC 102

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Restitution - quantum meruit - plaintiff was construction company - defendants were owners of property - plaintiff contended it 'substantially built a residential dwelling' for defendants on property and it was not paid for most of the work, including materials supplied to defendants - defendants contended house substantially built by another corporate entity, a matter decided in *Maples Winterview Pty Ltd v Liu and Li [2015] ACTSC 58 (Maples v Winterview)* - defendants contended they did not pay for dwelling's construction due to defects - defendants contended plaintiff was subcontractor which they had no obligation to pay - defendants also contended they became aware of plaintiff's involvement only upon decision in *Maples Winterview* - 'proper plaintiff' - whether unconscionable for defendants to retain benefit without payment - whether 'operable defence' - remedy - held: defendants required to pay 'a fair and reasonable sum' for supplied goods and services - judgment for plaintiff.

[A & A](#) (I B C G)



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Still On Patrol

By: Lt Col Frederick Lambert

In their submarines they went,
Some never to return
In those dark years of war.
We called them Yanks.
Do not forget them,
We give out our thanks.
Roll calls for their battle losses
The tolling of the bells
Dong, dong, dong.
War claimed its sacrifices
Tributes paid, wreathes laid.
Messages from aching hearts
Of loved ones far from home.
Lives for freedom.
Submarines,
Still on patrol.

Lt Col Frederick Lambert
"Z Special Force"
Borneo, 1944/45

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