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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)

The Dempsey Group Pty Ltd v Spotlight Pty Ltd (No 3) (FCA) - costs - copyright - Court ordered respondent to pay damages to applicant for loss of profits and of reputation - costs order reduced to take into account applicant's 'lack of success' - respondent to pay 65% of applicant's costs (I B C G)

Mylan Health Pty Ltd v Cipla Australia Pty Ltd (FCA) - intellectual property - patent - appellants sought 'interlocutory injunctive relief in appeal - application dismissed (I B C G)

Trenfield (Liquidator), in the matter of Ostwald Bros. Pty Ltd (In Liq) (FCA) - corporations - liquidators sought approval for 'funding agreement' - approval granted (I B)

Brose v Baluskas & Ors (No 2) (QDC) - costs - defamation - Court refused third, fifth and seventh defendants leave to replead honest opinion defences - third, fifth and seventh defendants to each pay one third of plaintiff's costs on indemnity basis (I B C G)

Cappello v Roads and Maritime Services & Anor. (NSWSC) - acquisition of land - environment and planning - 'proposed acquisition notices' were authorised - proceedings dismissed (I B C G)

In The Estate of Leslie Wayne Quinn (deceased) (QSC) - wills and estates - informal will - applicant sought declaration that 'video recording' was deceased's will - applicant sought grant of letters of administration with copy of recording's transcript attached - application granted (B)

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd (WASC) - stay - oppression - corporations - abuse of process - permanent stay of proceedings refused - stay granted pending payment of amount into Court - security for costs granted (I B C G)

Summaries With Link (Five Minute Read)

The Dempsey Group Pty Ltd v Spotlight Pty Ltd (No 3) [2019] FCA 519

Federal Court of Australia

Davies J

Costs - intellectual property - copyright - Court gave judgment in proceeding - Court ordered that respondent pay applicant damages for loss of profits and loss of reputation - applicant sought that respondent pay its costs of proceedings (except its costs of an interlocutory application) on party-party basis - respondent sought that applicant pay 50% of its costs on indemnity basis - whether applicant had 'substantial success' - whether costs order should be reduced to take into account applicant's 'lack of success' on 'infringement claims', 'additional damages claim' and failure to obtain damages in amount claimed - conduct - offer of settlement by respondent - whether to reduce costs pursuant to 40.08 *Federal Court Rules 2011* (Cth) (Rules) - r25.14(1) of the Rules - held: respondent to pay 65% of applicant's costs.

[The Dempsey Group](#) (I B C G)

Mylan Health Pty Ltd v Cipla Australia Pty Ltd [2019] FCA 506

Federal Court of Australia

Yates J

Injunction - intellectual property - patent - primary judge found appellant's 'claims in suit' invalid for 'lack of novelty' and 'lack of inventive step' - appellants sought 'interim injunctive relief' against respondents in appeal - whether appellant's appeal arguable - prospects of success - balance of convenience - s25(2B)(ab) *Federal Court of Australia Act 1976* (Cth) - held: application dismissed.

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

Trenfield (Liquidator), in the matter of Ostwald Bros. Pty Ltd (In Liq) [2019] FCA 558

Federal Court of Australia

Greenwood J

Corporations - applicants were joint and several liquidators of company (Ostwald) - applicants, under s477(2B) *Corporations Act 2001* (Cth), sought approval for 'funding agreement' between Ostwald, applicants and Commonwealth ("Department of Jobs and Small Business") - funding agreement's purpose was to enable applicants to obtain 'insolvency report' as step towards possible proceedings against creditor or creditors on basis one or more of them had received 'preferential payment' - funding agreement's impact on liquidation's duration - whether approval

of funding agreement was in the administration's interests - held: funding agreement approved.
[Trenfield](#) (I B)

Brose v Baluskas & Ors (No 2) [2018] QDC 239

District Court of Queensland

Muir DCG

Costs - defamation - third, fifth and seventh defendants sought leave to replead honest opinion defences - Court dismissed application - plaintiff sought that third, fifth and seventh defendants should 'be jointly and severally liable' for costs assessed on indemnity basis - fifth and seventh defendants sought separate costs orders against them - third defendant did not make submissions on costs and was bankrupt - rr681 & 703(1) *Uniform Civil Procedure Rules 1999* (Qld) - whether plaintiff sued defendants on basis they were jointly and severally liable - held: defendants had sought to maintain defence 'in the face of clearly established law' - plaintiff had given defendants notice that defence was 'hopeless and doomed to fail' - Court satisfied that third, fifth and seventh defendants should each pay one third of plaintiff's costs on indemnity basis.

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

Cappello v Roads and Maritime Services & Anor. [2019] NSWSC 439

Supreme Court of New South Wales

Campbell J

Acquisition of land - planning and environment - defendant issued acquisition notices ('proposed acquisition notices') under s11 *Land Acquisition (Just Terms) Act 1991* (NSW) - first and second plaintiffs were "landowners" who challenged proposed acquisition notices' validity - issue was whether defendant had 'statutory authority to acquire' plaintiffs' land - statutory interpretation - ss53, 63, 64, 71, & 177 *Roads Act 1993* (NSW) - *Environment and Planning Assessment Act 1979* (NSW) - held: Court satisfied the proposed acquisition notices were authorised - proceedings dismissed.

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

In The Estate of Leslie Wayne Quinn (deceased) [2019] QSC 99

Supreme Court of Queensland

Lyons SJA

Wills and estates - deceased took own life in 2015 - deceased had 'made a video recording on his iPhone' (video recording) in 2011 - deceased called the video recording his Will - video recording recorded deceased's wishes concerning disposition of deceased's property after death of deceased - video recording did not meet valid Will's requirements - applicant wife of deceased sought declaration that video recording was deceased's Will - applicant also sought grant of letters of administration with copy of recording's transcript attached - whether video recording was informal will which met requirements of s18 *Succession Act 1981* (Qld) - testamentary capacity - held: application granted.

[In The Estate of Leslie Wayne Quinn](#) (B W WB) (B)

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns

Australia Pty Ltd [2019] WASC 121

Supreme Court of Western Australia

Vaughan J

Stay - oppression - corporations - plaintiff alleged 'oppressive conduct' in first defendant's affairs - plaintiff sought relief under s233 *Corporations Act 2001* (Cth) - defendants sought that proceedings be stayed permanently for abuse of process, or that proceedings be stayed until payment into Court of 'earlier proceedings' 'likely taxed costs' - alternatively, defendants sought security for costs - in earlier proceedings, plaintiff had made oppression allegations which 'substantially' mirrored those in present proceedings - earlier proceedings 'deemed dismissed' on basis of want of prosecution - held: Court not satisfied proceedings' continuation abuse of process warranting proceedings' permanent stay - stay granted pending payment of earlier proceedings' likely taxed costs into Court - application for security for costs granted.

[Patrick Jebb](#) (I B C G)



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From: The Tempest

By: William Shakespeare, 1564 - 1616

Come unto these yellow sands,
And then take hands:
Court'sied when you have, and kiss'd,--
The wild waves whist--
Foot it featly here and there;
And, sweet sprites, the burthen bear.
Hark, hark!
Bow, wow,
The watch-dogs bark:
Bow, wow.
Hark, hark! I hear
The strain of strutting chanticleer
Cry, Cock-a-diddle-dow!

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