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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)

Hungry Spirit Pty Limited ATF The Hungry Spirt Trust v Fit n Fast Australia Pty Ltd (FCA) - trade mark - registration of trade mark - 'non-use' - appeal allowed by consent - orders made (I B)

Broadlex Services Pty Ltd v United Workers' Union (FCA) - industrial law - failure to pay redundancy under s119 *Fair Work Act 2009* (Cth) - contravention of s44 *Fair Work Act 2009* (Cth) - appeal dismissed (I B C G)

Baldwin v State of New South Wales (NSWCA) - supervision order - criminal law - applicant challenged validity of conditions of 'extended supervision order' - appeal dismissed (I B C G)

Hamilton v State of New South Wales (NSWSC) - misfeasance in public office - claim arising from sending of letter by Detective - fourth further amended statement of claim dismissed - judgment for defendant (I B C G)

Central Stone Pty Ltd v GEM Management Group Pty Ltd (In Liq) (VSC) - real property - corporations - mortgage - legal costs - determination of legal costs which third defendant entitled to recover (I B C G)

Allcool Facilities and Maintenance Pty Ltd v CCS FM Pty Ltd (ACTSC) - security for costs - contract - specific performance - unjust enrichment - defendant by Application in Proceeding sought that plaintiff provide security for costs - application granted (I B C G)

Paule v McKay (ACTSC) - defamation - pleadings - plaintiff sought to amend statement of claim - Court satisfied, with exception of amendments 'relating to the claim for relief', to allow amendments (I B C G)

Summaries With Link (Five Minute Read)

Hungry Spirit Pty Limited ATF The Hungry Spirit Trust v Fit n Fast Australia Pty Ltd [2020] FCA 883

Federal Court of Australia

Burley J

Trade mark - respondent sought removal of trade mark from Register of Trade Marks on basis of 'non-use' - delegate refused to remove trade mark but gave direction for amendment of trade mark's 'specification of goods and services for classes 9, 16 and 41' - appellant sought to set aside decision - parties informed Court matter had settled - parties sought that Court make consent orders that appeal be allowed and that Registrar allow trade mark 'to remain registered' without amendments - s104 *Trade Marks Act 1995* (Cth) - held: Court satisfied to make orders.

[Hungry Spirit](#) (I B)

Broadlex Services Pty Ltd v United Workers' Union [2020] FCA 867

Federal Court of Australia

Katzmann J

Industrial law - appellant supplied 'cleaning services' to 'Ausgrid' - appellant entered employment contract with cleaner - cleaner employed as 'full-time cleaner' at 'Energy Australia/Ausgrid site' - appellant negotiated 'new contract with Ausgrid' in which 'cleaning hours reduced' - appellant made decision which reduced cleaner's working hours and salary - respondent sought declaration appellant, by failure to pay cleaner redundancy under s119 *Fair Work Act 2009* (Cth) (Fair Work Act), contravened s44 Fair Work Act - respondent also sought 'compensation and penalties' - Magistrate upheld respondent's claims - appellant contended decision of magistrate made on basis of 'incorrect interpretation' of s119(1) Fair Work Act - appellant contended cleaner not entitled to 'redundancy pay' because 'employment relationship continued' following contract's termination, and that contract's termination 'at employer's initiative' was insufficient to generate entitlement under s119(1) Fair Work Act - common ground job was redundant - statutory interpretation - meaning of "employment is terminated" - held: cleaner's employment terminated when appellant repudiated cleaner's contract as full-time cleaner - cleaner entitled to redundancy pay - appeal dismissed.

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

Baldwin v State of New South Wales [2020] NSWCA 112

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Emmett AJA

Supervision order - criminal law - statutory construction - primary judge, pursuant to ss5B & 9(1)(a) *Crimes (High Risk Offenders) Act 2006* (NSW) (CHROA), made 'extended supervision order' in respect of application - order to have effect for two years - applicant, pursuant s11 CHROA, sought to challenge 'validity of four conditions of the order' - whether to grant applicant leave - whether imposition of conditions was beyond Court's power - power, under Part 2, Div 4 CHROA, to impose conditions - 'privilege against self-incrimination' - 'directions to third party' - construction of s11 CHROA - held: appeal dismissed.

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

Hamilton v State of New South Wales [2020] NSWSC 700

Supreme Court of New South Wales

Walton J

Misfeasance in public office - plaintiff, by fourth further amended statement of claim, brought claim against defendant for misfeasance in public office - claim was brought pursuant to *Crown Proceedings Act 1988* (NSW), *Law Reform (Vicarious Liability) Act 1983* (NSW) and *Employees Liability Act 1991* (NSW) - claim arose from 'positive act' of sending of letter signed by Detective Senior Constable of Child Protection and Sex Crimes Squad of the New South Wales Police Force (Detective), to solicitor of Mr Kenneth Emmanuel Dyers' - plaintiff claimed Detective sent letter 'with an actual intention of causing harm to Mr Dyers and the plaintiff' - whether 'targeted malice' - whether Court satisfied Detective sent letter with 'intention to cause harm' - whether Detective's 'exercise of public power was beyond its scope' due to defendant 'acting maliciously (with an intention to harm)' in use of power - whether letter sent with intent to 'inflict harm' rather than for 'purpose of carrying out a bona fide investigation' - held: fourth further amended statement of claim dismissed - judgment for defendant.

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

Central Stone Pty Ltd v GEM Management Group Pty Ltd (In Liq) [2020] VSC 373

Supreme Court of Victoria

Derham AsJ

Real property - corporations - mortgage - legal costs - \$20 million ('Fund') paid into 'Funds in Court' due to sale by mortgagee of land - orders made for payment out of Fund's bulk - proceedings concerned legal costs which third defendant was entitled to 'under his security' - whether legal costs third defendant incurred included legal costs incurred 'in dealing with the solicitors for, and Liquidators of, the company' that lent third defendant money to on-lend to mortgagor and registered proprietor of property (Company) - held: recoverable legal costs limited to legal costs associated with loan third defendant to Company - recoverable legal costs did not extend to legal costs which were incurred in dealing with lender to third defendant - legal costs incurred in 'engagement of Senior Counsel' allowed - appropriate to fix 'gross sum' for third defendant's costs to be paid from Fund.

[Central Stone](#) (I B C G)

Allcool Facilities and Maintenance Pty Ltd v CCS FM Pty Ltd [2020] ACTSC 162

Supreme Court of the Australian Capital Territory

Crowe AJ

Security for costs - contract - specific performance - unjust enrichment - defendant, by Application in Proceeding, sought that plaintiff provide security for costs - r1900 *Court Procedures Rules 2006 (ACT)* - s1335 *Corporations Act 2001 (Cth)* - Court's inherent jurisdiction - whether plaintiff would be able to pay defendant's costs if defendant successful - 'means of people behind' plaintiff - prospects of success - proceedings' genuineness - whether impecuniosity cause by defendant's conduct - delay - proceedings' 'estimated costs' - held: order for security for costs granted.

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

Paule v McKay [2020] ACTSC 145

Supreme Court of the Australian Capital Territory

Crowe AJ

Defamation - pleadings - plaintiff sought to amend statement of claim - expansion of republication pleading - 'reference to extensions of time' - removal of paragraph - reference to "the Further Republications" as cause of damage - rr501, 502, 503, 504, 505, 506 & 514 *Court Procedures Rules 2006 (ACT)* - *Aon Risk Services Australia Ltd v ANU [2009] HCA 27* - held: Court satisfied, with exception of amendments 'relating to the claim for relief', to allow amendments - amendments to operate as at date of original statement of claim.

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



Benchmark

The Fly

By: William Oldys

An Anacreontick

Busy, curious, thirsty Fly,
Gently drink, and drink as I;
Freely welcome to my Cup,
Could'st thou sip and sip it up;
Make the most of Life you may,
Life is short and wears away.
Just alike, both mine and thine,
Hasten quick to their Decline;
Thine's a Summer, mine's no more,
Though repeated to threescore;
Threescore Summers, when they're gone,
Will appear as short as one.

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

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