

Friday, 27 March 2020

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)

One Tree Community Service Inc v United Voice (No 2) (FCA) - industrial law - constitutional law - applicant sought to restrain Fair Work Commission from conducting arbitration - application dismissed (I B C G)

Catalyst Provisional Lending Pty Ltd v Tsiamoulis (NSWSC) - pro bono legal assistance - possession - defendant sought pro bono assistance - notice of motion granted on terms (I B C G)

Chateau Constructions (Aust) Ltd v Zepinic (NSWSC) - vexatious proceedings - applicant, pursuant to s14(2) *Vexatious Proceedings Act 2008* (NSW), sought leave to file summons seeking certain orders - application dismissed (I B C G)

In the matter of Ichor Group Holdings Pty Limited (in liquidation) (NSWSC) - service - substituted service - corporations - plaintiffs sought orders for substituted service in respect of second defendant - substituted service orders granted (I B C G)

Hurford Hardwood Kempsey Pty Ltd v Kempsey Timbers (Sawmilling) Pty Ltd (No 5) (NSWSC) - costs - non-party costs order - Hurford, by notice of motion, sought costs orders - orders refused (B C I G)

Govindan v Charan (VSC) - wills and estates - probate - plaintiff sought dismissal of caveat -

'prima facie case' not established - caveat struck out (B)

The Shop, Distributive and Allied Employees' Association of Western Australia v Samuel Gance (ABN 50 577 312 446) T/A Chemist Warehouse Perth (WASCA) - stay - industrial law - appellant in each of two appeals sought stay pending appeal of Full Bench of the Western Australian Industrial Relations Commission's 'declarations and orders' - stay application granted (I B C G)

Summaries With Link (Five Minute Read)

One Tree Community Service Inc v United Voice (No 2) [2020] FCA 390

Federal Court of Australia

McKerracher J

Industrial law - constitutional law - applicant, by 'tender process', acquired business, 'former employees' and enterprise agreement - enterprise agreement applied to employees at time business acquired - enterprise agreement contained dispute resolution clause under which industrial arbitration was referred to Fair Work Commission if 'internal processes' could not resolve the dispute - applicant sought to restrain Fair Work Commission from conducting arbitration - applicant contended it could not be 'compelled to arbitrate in the Commission' as it had not consented - first respondent contended that applicant, by acquiring business subject to enterprise agreement, was 'deemed to have agreed to' dispute resolution clause and arbitration in Commission - 'constitutional argument' - whether 'any form of consent' by applicant - ss311 & 313 *Fair Work Act 2009* (Cth) - 'constructional argument' - whether Commission was appropriate place for determination of 'constructional argument' - held: application dismissed.

[One Tree Community Service](#) (I B C G)

Catalyst Provisional Lending Pty Ltd v Tsiamoulis [2020] NSWSC 246

Supreme Court of New South Wales

Davies J

Pro bono legal assistance - possession - defendant, by notice of motion, sought referral to Registrar for 'referral to a solicitor or barrister for the provision of pro bono legal assistance' - r7.36 *Uniform Civil Procedure Rules 2005* (NSW) - *Neale v Commonwealth Bank of Australia Ltd* [2015] NSWCA 136 - held: notice of motion granted on terms.

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

Chateau Constructions (Aust) Ltd v Zepinic [2020] NSWSC 266

Supreme Court of New South Wales

Stevenson J

Vexatious proceedings - applicant, pursuant to s14(2) *Vexatious Proceedings Act 2008* (NSW) (Vexatious Proceedings Act), sought leave to file summons seeking certain orders - application made subsequent to orders of Pembroke J under s8(7) Vexatious Proceedings Act which

prohibited applicant 'from commencing the wide-ranging proceedings referred to in that judgment' - Court of Appeal upheld Pembroke J's orders - whether 'affidavit in support' complied with requirements of s14(3) Vexatious Proceedings Act - held: application dismissed.

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

In the matter of Ichor Group Holdings Pty Limited (in liquidation) [2020] NSWSC 290

Supreme Court of New South Wales

Rees J

Service - substituted service - corporations - plaintiffs sought orders for substituted service in respect of second defendant - second defendant was first plaintiff's director - second plaintiffs were first plaintiff's liquidators - r10.14 *Uniform Procedure Rules 2005* (NSW) - whether 'reasonably practicable to serve' second defendant 'at any address' in respect of which he had notified ASIC - held: substituted service orders granted.

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

Hurford Hardwood Kempsey Pty Ltd v Kempsey Timbers (Sawmilling) Pty Ltd (No 5) [2020] NSWSC 287

Supreme Court of New South Wales

Stevenson J

Costs - non-party costs order - Court gave judgment for Hurford against Kempsey Timbers - judgment satisfied from funds which Court ordered to be paid out of Court to Hurford - Hurford 'entitled to the bulk of its costs' - Court ordered Kempsey Timbers to pay Hurford's costs, 'other than in relation to the long service leave issue', on ordinary basis to certain date and on indemnity basis after that date - Hurford contended its costs were \$500,000.00 - costs not assessed - Court dismissed Hurford's application for freezing order to restrain Kempsey Timbers 'from disposing of, dealing with, or diminishing the value of its only remaining asset' - Hurford, by notice of motion, sought, pursuant to s98 *Civil Procedure Act 2005* (NSW), payment of its costs by Dr Head, Oakley Investments Pty Ltd and Beebo Pty Ltd - Hurford also sought that once its costs were paid by 'one or other of those parties', Court's orders of 19/9/20 'be extinguished' - whether 'exceptional circumstance' - interests of justice - *FPM Constructions v Council of the City of Blue Mountains* [2005] NSWCA 340 - held: orders refused - notice of motion dismissed.

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

Govindan v Charan [2020] VSC 137

Supreme Court of Victoria

Keith JR

Wills and estates - plaintiff was seeking grant of probate of deceased will - plaintiff, by summons, sought dismissal of a caveat 'and consequential orders' - plaintiff submitted caveators lacked standing and that grounds supporting caveat did not 'disclose a prima facie case' - plaintiff contended claim in caveat had 'no real prospect of success' s63 *Civil Procedure Act 2010* (Vic) - *Re Przychodski* [2016] VSC 781 - *Gardiner v Hughes (No 2)* [2019] VSCA 198 -

standing - whether prima facie case - s58 *Administration and Probate Act 1958* (Vic) - held: prima facie case not established - caveat struck out.

[Govindan](#) (B)

The Shop, Distributive and Allied Employees' Association of Western Australia v Samuel Gance (ABN 50 577 312 446) T/A Chemist Warehouse Perth [2020] WASCA 36

Stay - industrial law - two appeals - appellant in each appeal sought stay, pending appeals or Court's further order, of Full Bench of the Western Australian Industrial Relations Commission's 'declarations and orders' and of 'any proceedings pursuant to the declaration and orders' - strength of each appellant's case - balance of convenience - whether 'special or exceptional circumstances' - *Industrial Relations (Western Australian Industrial Appeal Court) Regulations 1980* (WA) - *Industrial Relations Act 1979* (WA) - held: stay granted.

[The Shop](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link

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Poems of Sentiment: I. Time

Procrastination

By: Edward Young (1681–1765)

From "Night Thoughts," Night I.

BE wise to-day; 't is madness to defer;
 Next day the fatal precedent will plead;
 Thus on, till wisdom is pushed out of life.
 Procrastination is the thief of time;
 Year after year it steals, till all are fled, 5
 And to the mercies of a moment leaves
 The vast concerns of an eternal scene.
 If not so frequent, would not this be strange?
 That 't is so frequent, this is stranger still. 10
 Of man's miraculous mistakes this bears
 The palm, "That all men are about to live,"
 Forever on the brink of being born.
 All pay themselves the compliment to think
 They one day shall not drivel: and their pride
 On this reversion takes up ready praise; 15
 At least, their own; their future selves applaud:
 How excellent that life they ne'er will lead!
 Time lodged in their own hands is folly's veils;
 That lodged in Fate's, to wisdom they consign;
 The thing they can't but purpose, they postpone: 20
 'T is not in folly not to scorn a fool,
 And scarce in human wisdom to do more.
 All promise is poor dilatory man,
 And that through every stage. When young, indeed,
 In full content we sometimes nobly rest, 25
 Unanxious for ourselves, and only wish,
 As duteous sons, our fathers were more wise.
 At thirty, man suspects himself a fool;
 Knows it at forty, and reforms his plan;
 At fifty, chides his infamous delay, 30
 Pushes his prudent purpose to resolve;
 In all the magnanimity of thought,
 Resolves, and re-resolves; then dies the same.
 And why? Because he thinks himself immortal.
 All men think all men mortal but themselves; 35
 Themselves, when some alarming shock of fate
 Strikes through their wounded hearts the sudden dread;



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But their hearts wounded, like the wounded air,
Soon close; where passed the shaft, no trace is found.
As from the wing no scar the sky retains, 40
The parted wave no furrow from the keel,
So dies in human hearts the thought of death:
Even with the tender tears which Nature sheds
O'er those we love, we drop it in their grave.
https://en.wikipedia.org/wiki/Edward_Young

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