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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

SA Power Networks v Australian Competition Tribunal (FCA) - judicial review - Minister granted leave to intervene in in proceedings pursuant to r9.12 (1) *Federal Court Rules 2011* (Cth) (I B C G)

Muswellbrook Shire Council v The Royal Bank of Scotland NV (FCA) - representative proceedings - financial investments - application for approval of settlement of proceedings - settlement approved (I B C G)

In the matter of Infinite Plus Pty Ltd (NSWSC) - arbitration - oppression - shareholders agreement - requirements of s7 *International Arbitration Act 1974* (Cth) - proceedings stayed (I B C G)

United Petroleum Pty Ltd v Bonnie View Petroleum Pty Ltd (In Liquidation) & Ors (VSC) - contract - guarantee - leases and tenancies - proceedings arising from sale of petrol business - breach of Side Agreement - judgment for plaintiff (I B C G)

Bannon v Nauru Phosphate Royalties Trust (Subpoena Objection) (VSC) - subpoena - employment - objections to subpoena - subpoena set aside (I B C G)

Masters Home Improvement Australia Pty Ltd v North East Solutions Pty Ltd (VSCA) - contract - leases and tenancies - guarantee - no breach of agreement for lease of site - appeal

allowed (I B C G)

Fingal Pastoral Pty Ltd v Page Seager Lawyers (A Firm) (TASSC) - discovery - solicitors' duties - mediation - determination of interlocutory applications (I B C G)

Summaries With Link (Five Minute Read)

SA Power Networks v Australian Competition Tribunal [2017] FCA 415

Federal Court of Australia

Robertson J

Judicial review - proceedings concerned application for judicial review of decision of Australian Competition Tribunal - South Australian Minister for Mineral Resources and Energy sought leave to intervene in proceedings pursuant to r9.12 (1) *Federal Court Rules 2011* (Cth) - whether intervener's contribution would be useful and different from parties' contribution - whether intervention might unreasonably interfere with parties' ability to conduct proceeding - held: Minister granted leave to intervene on conditions including that Minister was neither liable for costs nor should seek costs, and intervention be limited as to subject matter - orders made.

[SA Power Networks](#) (I B C G)

Muswellbrook Shire Council v The Royal Bank of Scotland NV [2017] FCA 414

Federal Court of Australia

Wigney J

Representative proceedings - application for approval of settlement - applicant was representative applicant in representative proceedings against Royal Bank of Scotland NV and McGraw-Hill International (UK) Limited - proceedings arose from investments in financial products named 'Rembrandt Notes' - parties agreed to settle proceedings - applicant sought approval of settlement - held: settlement sum reasonable - nothing 'inherently unreasonable' in settlement distribution scheme - no reason to question expert opinion on legal fees' reasonableness - group members given fair and reasonable notice - if approval not granted, group members would incur considerable costs in relation to trial - not unfair and unreasonable to exclude non-participating group members from settlement - no 'real and practical' injustice to non-participating group members - settlement approved.

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

In the matter of Infinite Plus Pty Ltd [2017] NSWSC 470

Supreme Court of New South Wales

Gleeson J

Stay - arbitration - shareholders agreement - oppression - first defendant sought stay of oppression proceedings brought by plaintiffs - first defendant relied on s7(2) *International Arbitration Act 1974* (Cth) and Art 8(1) *UNCITRAL Model Law on International Commercial Arbitration* ('Model Law'), contending shareholders agreement contained arbitration agreement

- validity of Expulsion Notice which first defendant gave under agreement - 'arising out of or relating to this Agreement or the breach thereof' - held: requirements of s7 of the Act were satisfied - proceedings stayed - orders made.

[Infinite Plus](#) (I B C G)

United Petroleum Pty Ltd v Bonnie View Petroleum Pty Ltd (In Liquidation) & Ors [2017] VSC 185

Supreme Court of Victoria
Kennedy J

Contract - proceedings arising from sale of petrol station business by defendant company (BV) to plaintiff - BV leased sale property from defendant landlords - plaintiff contended BV breached Side Agreement by failing to remediate land and to take steps to assign lease - plaintiff claimed sum to remediate site and amount incurred in obtaining lease directly with landlords - amounts claimed against BV and defendant guarantor - construction of Side Agreement - held: plaintiff established alleged breaches of Side Agreement - plaintiff entitled to apply Retention Amount and proceeds of Bank Guarantee against its losses under Side Agreement - judgment for plaintiff - counterclaim dismissed.

[United Petroleum](#) (I B C G)

Bannon v Nauru Phosphate Royalties Trust (Subpoena Objection) [2017] VSC 213

Supreme Court of Victoria
Ierodionou AsJ

Subpoena - employment - plaintiff employed by Trust was dismissed from employment - plaintiff brought proceedings against Trust - Trust counterclaimed, alleging failure by plaintiff to discharge his obligations to Trust - Trust subpoenaed plaintiff's wife (Ms Bannon) - subpoena required Ms Bannon to produce bank and credit card statements - plaintiffs objected - held: bank statements operated by Ms Bannon on behalf of Trust's former trustee were not relevant - wife not required to produce documents that could be discovered by Mr Bannon or Trust - no legitimate forensic purpose for subpoenaed documents - Ms Bannon not required to depose another affidavit in answer to subpoena - subpoena set aside.

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

Masters Home Improvement Australia Pty Ltd v North East Solutions Pty Ltd [2017] VSCA 88

Court of Appeal of Victoria
Santamaria, Ferguson & Kaye JJA

Contract - respondent (NES) was corporate entity in 'Maxi Foods Group' (Maxi) - first applicant (Masters) was subsidiary of second applicant (Woolworths) - respondent agreed to purchase site to construct store to be leased to Masters - Masters' obligations to be guaranteed by Woolworths - parties entered Agreement for Lease of site - NES sued Woolworths and Masters for breach of agreement - primary judge found Woolworths and Masters breached obligation to act reasonably and in good faith to attempt to resolve differences concerning cost of store's

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construction and Masters' contribution to costs - appellant appealed - held: Court made critical finding concerning costs of store's construction and amount Masters was to contribute to the costs on basis of a spreadsheet provided by quantity surveyor - spreadsheet was work in progress and its figures not final - no sufficient basis for judge's pivotal finding - no breach of contract by Masters or Woolworths - appeal allowed.

[Masters Home Improvement](#) (I B C G)

Fingal Pastoral Pty Ltd v Page Seager Lawyers (A Firm) [2017] TASSC 24

Supreme Court of Tasmania

Holt AsJ

Discovery - solicitors' duties - mediation - plaintiff sued defendants for economic loss resulting from advice they gave - plaintiff sought that defendants deliver witness statements and referral of action to mediation - defendants sought production of certain documents and that plaintiff serve affidavit stating whether documents were or had been in plaintiff's possession - defendant also sought permission to issue subpoenas returnable in near future - rr515 & 516 *Supreme Court Rules 2000* (Tas) - held: orders made by consent on plaintiff's application - defendants refused order for production of documents - defendants' application for order that plaintiff serve affidavit adjourned - permission to issue subpoenas granted - action referred to mediation.

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

CRIMINAL

Executive Summary

Forster v Director of Public Prosecutions (NSWSC) - criminal law - habitual consorting - erroneous statutory construction - conclusion not open on evidence - wrongful conviction - appeal allowed

Bouch v The Queen (VSCA) - criminal law - appellant convicted of culpable driving causing death - jury misdirected by trial judge - no substantial injustice caused by misdirection because conviction was inevitable - appeal dismissed

Summaries With Link

Forster v Director of Public Prosecutions [2017] NSWSC 458

Supreme Court of New South Wales

McCallum J

Criminal law - habitual consorting - plaintiff pleaded guilty to habitual consorting contrary to

s93X *Crimes Act 1900* (NSW) - plaintiff sentenced to 12 months in prison with 9 months non-parole period - plaintiff allowed to traverse plea and granted Supreme Court bail almost eleven months after sentence commenced - Magistrate found offence proved - sentence reinstated - plaintiff appealed against conviction - held: there was erroneous construction of statute - conclusion that on-the-street encounters were consorting under s93X was not open on the evidence - no merit in challenge to adequacy of reasons - plaintiff wrongly convicted - appeal allowed.

[Forster](#)

Bouch v The Queen [2017] VSCA 86

Court of Appeal of Victoria

Redlich, Weinberg, Whelan, Priest & Ferguson JJA

Criminal law - appellant charged with culpable driving causing death (CDCD) - appellant found guilty of CDCD and charge of negligently causing serious injury - appellant appealed against convictions - whether substantial miscarriage of justice due to trial judge's direction 'that in order to find the appellant guilty of culpable driving and negligently causing serious injury it was necessary that the jury be satisfied that the appellant's conduct merited criminal punishment' - held: trial judge misdirected jury in relation to charge of CDCD by instructing them that they had to be satisfied appellant's driving 'merited criminal punishment' - misdirection did not give rise to a substantial miscarriage of justice however because conviction for CDCD was inevitable - appeal dismissed.

[Bouch](#)



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The Cloud Confines

By [Dante Gabriel Rossetti](#)

The day is dark and the night
 To him that would search their heart;
 No lips of cloud that will part
Nor morning song in the light:
 Only, gazing alone,
 To him wild shadows are shown,
 Deep under deep unknown
And height above unknown height.
 Still we say as we go,
 "Strange to think by the way,
 Whatever there is to know,
 That shall we know one day."

The Past is over and fled;
 Nam'd new, we name it the old;
 Thereof some tale hath been told,
But no word comes from the dead;
 Whether at all they be,
 Or whether as bond or free,
 Or whether they too were we,
Or by what spell they have sped.
 Still we say as we go,
 "Strange to think by the way,
 Whatever there is to know,
 That shall we know one day."

What of the heart of hate
 That beats in thy breast, O Time?
 Red strife from the furthest prime,
And anguish of fierce debate;
 War that shatters her slain,
 And peace that grinds them as grain,
 And eyes fix'd ever in vain
On the pitiless eyes of Fate.
 Still we say as we go,
 "Strange to think by the way,
 Whatever there is to know,
 That shall we know one day."

What of the heart of love



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That bleeds in thy breast, O Man?
Thy kisses snatch'd 'neath the ban
Of fangs that mock them above;
Thy bells prolong'd unto knells,
Thy hope that a breath dispels,
Thy bitter forlorn farewells
And the empty echoes thereof?
Still we say as we go,
"Strange to think by the way,
Whatever there is to know,
That shall we know one day."

The sky leans dumb on the sea,
Aweary with all its wings;
And oh! the song the sea sings
Is dark everlastingly.
Our past is clean forgot,
Our present is and is not,
Our future's a seal'd seedplot,
And what betwixt them are we?
We who say as we go,
"Strange to think by the way,
Whatever there is to know,
That shall we know one day."

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