

Friday, 29 March 2019

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)

Cornwall v Allianz Australia Insurance Limited (NSWSC) - judicial review - motor accidents compensation - whole person impairment - application to set aside decision of Review Panel granted (B I G)

In the matter of SBC Construction Pty Ltd (NSWSC) - corporations - winding up - application to set aside statutory demand - application granted (B C I G)

Chandrasekaran v Western Sydney Local Health District t/as Westmead Hospital (NSWSC) - subpoenas - injunction - consumer law - contract - injurious falsehood - defamation - notice of motion - prayers for relief refused - amended notice of motion dismissed (B C I G)

Haichkay Pty Ltd v Sacco (VSC) - summary judgment - possession - loans - plaintiff's application for summary judgment against defendant granted (I B C G)

O'Brien Glass Industries Ltd v Pisani (VSCA) - accident compensation - dismissal of application to quash Medical Panel's opinion - appeal dismissed (I B C G)

In the Estate of Gwendoline Katherine Wilkinson (No. 2) (SASC) - wills and estates - Court granted plaintiff's application for passing over of defendants as executors - parties' costs to be paid out of estate (B)

Fremantle Lawyers Pty Ltd, Ashley David Wilson, Nicholas Emil Gvozdin and Ante Zorotovic v Ivan Josip Sarich as executor of the estate of Ivan Branimir Saric (WASCA) - wills and estates - planning and development - devising part of lot in will did not 'subdivide' land within s135(1)(a) *Planning and Development Act 2005* (WA) - appeal allowed (B C I G)

Summaries With Link (Five Minute Read)

Cornwall v Allianz Australia Insurance Limited [2019] NSWSC 324

Supreme Court of New South Wales

Schmidt J

Judicial review - motor accident compensation - plaintiff sought review of Review Panel's determination that plaintiff did not suffer whole person impairment due to 'rear-end' collisions - plaintiff contended Panel erred in assessing 'accident circumstances', in 'reasoning process', in 'approach to causation' and approach to plaintiff's 'pre-existing impairment' - *Motor Accident Compensation Act 1999* (NSW) - held: grounds of review established - Review Panel's certificate set aside.

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

In the matter of SBC Construction Pty Ltd [2019] NSWSC 310

Supreme Court of New South Wales

White J

Corporations - winding up - statutory demand - defendant served statutory demand on plaintiff - debt arose from adjudication determinations under *Building and Construction Industry Security of Payment Act 1999* (NSW) - plaintiff sought to set aside statutory demand - plaintiff contended at time statutory demand served and originating process filed, no judgment was in existence against plaintiff for claimed amount - plaintiff also sought to set aside statutory demand on basis of off-setting claims - held: at time statutory demand served on plaintiff defendant did not have judgment debt in claimed amount - Court retrospectively amended judgment - whether to set demand aside 'because it was not verified when the debt claimed was not a judgment debt at the time of service of the demand, but is retrospectively to be taken as having been such a judgment debt' - whether to set aside demand on condition plaintiff pay demanded amount into Court - ss459E & 459J *Corporations Act 2001* (Cth) - held: statutory demand set aside.

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

Chandrasekaran v Western Sydney Local Health District t/as Westmead Hospital [2019] NSWSC 327

Supreme Court of New South Wales

Wright J

Subpoenas - injunction - consumer law - contract - injurious falsehood - defamation - notice of motion - plaintiff sought review of Deputy Registrar's refusal to grant leave to plaintiff 'to issue

subpoenas' - plaintiff also made two subpoena requests "in the context of both Defendants refusing to respond to Notices to Produce" - plaintiff also sought interlocutory injunction 'against defendants and potential defendants' in relation to preventing them from filing additional evidence until trial - held: prayers for relief refused - amended notice of motion dismissed.

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

Haichkay Pty Ltd v Sacco [2019] VSC 196

Supreme Court of Victoria

Matthews JR

Summary judgment - possession - loans - plaintiff, pursuant to s63 *Civil Procedure Act 2010* (Vic), sought summary judgment against defendant, or strike out of defence and judgment in plaintiff's favour pursuant to O23 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - plaintiff sought possession of land or repayment of amount advanced under loans - plaintiff also sought interest and 'enforcement costs' in respect of loans - whether plaintiff's cause of action established - whether National Credit Code applied - whether defence had 'no real prospect of success' - whether defence could 'be remedied' if leave to replead granted - held: summary judgment granted.

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

O'Brien Glass Industries Ltd v Pisani [2019] VSCA 61

Court of Appeal of Victoria

Kyrou & McLeish JJA; Almond AJA

Accident compensation - applicant sought to appeal against associate judge's dismissal of application to quash Medical Panel's opinion - applicant contended associate judge erroneously found it was open to Panel to conclude 'compensable incapacity' could persist after injury's full resolution - applicant also contended associate judge erroneously concluded Panel's reasons sufficient - ss5, 82, 91E, 93, 93A, 93B & 93C *Accident Compensation Act 1985* (Vic) - s313(2) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - held: appeal dismissed.

[O'Brien](#) (I B C G)

In the Estate of Gwendoline Katherine Wilkinson (No. 2) [2019] SASC 45

Supreme Court of South Australia

Stanley J

Costs - wills and estates - probate - plaintiff was son of deceased - Court granted plaintiff's application for passing over of defendants as executors - defendants were testatrix's sons and had been appointed executors by testatrix - Court also ordered that Public Trustee was to be granted estate's administration - determination of costs - whether costs should follow event - whether defendants were not acting in good faith - held: parties costs to be paid from estate.

[In the Estate of Gwendoline](#) (B)



Fremantle Lawyers Pty Ltd, Ashley David Wilson, Nicholas Emil Gvozdin and Ante Zorotovic v Ivan Josip Sarich as executor of the estate of Ivan Branimir Saric [2019]

WASCA 48

Court of Appeal of Western Australia

Buss P; Murphy & Beech JJA

Wills and estates - planning and development - appeal concerned proper construction of 'subdivides' in s135(1)(a) *Planning and Development Act 2005 (WA)* - whether, if testator devised part of 'lot' by will, testator subdivided lot under s135(1)(a) of the Act - whether, if testator gifted part of 'lot' by will, gift would be 'void and of no effect' due to gift's infringement of prohibition in s135(1)(a) of the Act - consideration of 'competing constructions' of s135(1)(a) - whether Master erred in finding clause of will void and of no effect because it 'purported to subdivide 'lot' contrary to s135(1)(a)' - held: devising part of lot in will did not 'subdivide' land within s135(1)(a) of the Act - devising part of lot was not within prohibition in s135(1)(a) - appeal allowed.

[Fremantle Lawyers](#) (B C I G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

A Winter Blue Jay

By: Sara Teasdale

Crisply the bright snow whispered,
Crunching beneath our feet;
Behind us as we walked along the parkway,
Our shadows danced,
Fantastic shapes in vivid blue.
Across the lake the skaters
Flew to and fro,
With sharp turns weaving
A frail invisible net.
In ecstasy the earth
Drank the silver sunlight;
In ecstasy the skaters
Drank the wine of speed;
In ecstasy we laughed
Drinking the wine of love.
Had not the music of our joy
Sounded its highest note?
But no,
For suddenly, with lifted eyes you said,
"Oh look!"
There, on the black bough of a snow flecked maple,
Fearless and gay as our love,
A bluejay cocked his crest!
Oh who can tell the range of joy
Or set the bounds of beauty?

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

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