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

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Executive Summary (1 minute read)

Bristol-Myers Squibb v Superior Court of California (SCOTUS) - jurisdiction - specific jurisdiction - California State court did not have specific jurisdiction to determine claims against company by nonresidents - reversed and remanded (I B C G)

Reavill Farm Pty Ltd v Burrell Solicitors Pty Ltd (NSWCA) - trade and commerce - costs - two appeals concerning solicitors' legal costs - misleading and deceptive conduct did not result in loss - 'liability appeal' dismissed - leave to appeal in respect of 'costs appeal' dismissed (I B C G)

PND Civil Group Pty Ltd v Bastow Civil Constructions Pty Ltd (NSWCA) - contract - defective work performed by appellant under subcontract with respondent - appellant liable to pay amount to respondent for rectification costs - appeal dismissed - cross-appeal allowed in part (I B C G)

People for the Plains Incorporated v Santos NSW (Eastern) Pty Ltd (No 2) (NSWCA) - costs - 'public interest litigation' - dismissal of appeal against decision concerning validity of approvals granted under *Petroleum (Onshore) Act 1991* (NSW) - Court not persuaded to depart from usual order as to costs (I B C G)

Re Victoria Station Corporation Pty Ltd (VSC) - corporations - insolvency - extension of convening periods for second meetings of companies' creditors granted (I B C G)

Re Katherine Scerri & Ors (as Legal Personal Representatives of Giovanna Scicluna, Deceased) (VSC) - real property - restrictive covenant - discharge or modification of restrictive covenant refused - application dismissed (I B C G)

Austruct Group Pty Ltd v Bluenergy Engineering (Australia) Pty Ltd [No 2] (WASC) - corporations - application to wind up company - presumption of insolvency prevailed - company to be wound up (I B C G)

Summaries With Link (Five Minute Read)

Bristol-Myers Squibb v Superior Court of California No. 16–466.

Supreme Court of the United States

Alito, J., Roberts, C. J., Kennedy, Thomas, Ginsburg, Breyer, Kagan, Gorsuch, & Sotomayor JJ
Jurisdiction - specific jurisdiction - plaintiffs sued Bristol-Myers Squibb Company (BMS) alleging its drug (Plavix) damaged their health - plaintiffs brought proceeding in California state court - most plaintiffs not California residents - BMS engaged in business activities in California and sold Plavix in California but 'did not develop, create a marketing strategy for, manufacture, label, package, or work on the regulatory approval for Plavix in the State' - BMS sought to quash service of summons on nonresidents' claims for lack of personal jurisdiction - State Supreme Court found California State court had specific jurisdiction over nonresidents' claims on basis of BMS's 'wide-ranging' contacts with California, similarity between nonresidents' claims and residents' claims, and on basis of BMS's engagement in activities in California - 'settled principles of specific jurisdiction' - held: State Supreme Court erred in finding California courts had specific jurisdiction to entertain nonresidents' claims - reversed and remanded.

[Bristol-Myers Squibb](#) (I B C G)

Reavill Farm Pty Ltd v Burrell Solicitors Pty Ltd [2017] NSWCA 156

Court of Appeal of New South Wales

Bathurst CJ; Leeming JA & Emmett AJA

Trade and commerce - costs - solicitors' costs - two appeals concerning costs which Burrell Solicitors charged in relation to two Land & Environment Court proceedings - in 'liability appeal', 'Champion parties' appealed against primary judge's finding on their cross-claim in proceedings originally brought by Burrell solicitors but which were discontinued - primary judge had found that Burrell parties' conduct contravened *Legal Profession Act 2004* (NSW) and was misleading and deceptive to extent conduct continued past certain date, but that Champion parties suffered no loss due to conduct - in 'costs appeal', Champion parties appealed against costs determinations in Burrell Solicitors' favour made by Costs Review Panel - whether Champion parties suffered loss from Burrell parties' conduct - procedural fairness - held: liability appeal dismissed - extension of time refused in relation to costs appeal.

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

PND Civil Group Pty Ltd v Bastow Civil Constructions Pty Ltd [2017] NSWCA 159

Court of Appeal of New South Wales

McCull & Gleeson JJA; McDougall J

Contract - respondent engaged appellant as subcontractor for performance of work on project - respondent contended appellant's work was defective and sued for recovery of rectification costs - primary judge concluded works defective and awarded appellant some of claimed rectification cost - appellant appealed - respondent cross-appealed against disallowance of part of its claim and against costs order - held: appellant not permitted to rely on accord and satisfaction and repudiation, due to failure to plead those issues - no failure to establish loss - appeal dismissed - primary judge erred in exercise of discretion as to costs - cross-appeal allowed in part.

[PND Civil Group](#) (I B C G)

People for the Plains Incorporated v Santos NSW (Eastern) Pty Ltd (No 2) [2017] NSWCA 157

Court of Appeal of New South Wales

Meagher, Ward & Payne JJA

Costs - Court dismissed appellant's appeal from decision concerning relating validity of approvals granted under *Petroleum (Onshore) Act 1991* (NSW) - appellant sought pursuant to rr36.16(3A) & 51.58 *Uniform Civil Procedure Rules 2005* (NSW) to set aside costs order against it, and that there be no order as to costs - whether litigation was 'public interest litigation' and, if so, there was 'something more' to warrant departure from general rule - whether any 'relevant countervailing circumstances' - held: even assuming litigation 'public interest litigation', appellant did not establish that there was 'something more' - Court not persuaded to depart from usual order as to costs - motion dismissed.

[People for the Plains Incorporated](#) (I B C G)

Re Victoria Station Corporation Pty Ltd [2017] VSC 371

Supreme Court of Victoria

Gardiner AsJ

Corporations - insolvency - administrators, pursuant to ss439A(6) & 447A(1) *Corporations Act 2001* (Cth), sought extension of convening periods for second meetings of companies' creditors - complex administration - sale of companies' businesses - disposal of companies' assets - comprehensive report to creditors - consideration of position of employees - held: there were 'substantial and abundant reasons' to make orders sought - orders made.

[Re Victoria Station Corporation](#) (I B C G)

Re Katherine Scerri & Ors (as Legal Personal Representatives of Giovanna Scicluna, Deceased) [2017] VSC 368

Supreme Court of Victoria

Ierodiaconou AsJ

Real property - restrictive covenant - plaintiffs pursuant to s84(1) *Property Law Act 1958* (Vic)

sought to discharge or modify restrictive covenant over land - plaintiffs were registered proprietors of land as deceased's legal personal representatives - whether plaintiffs showed there would not be substantial injury, by discharge or modification of restrictive covenant, to persons with benefit of restrictive covenant - held: plaintiffs failed to prove that discharge of covenant would not injure relevant persons - Court did not accept there could be no injury if modification made - application dismissed.

[Re Katherine](#) (I B C G)

Austruct Group Pty Ltd v Bluenergy Engineering (Australia) Pty Ltd [No 2] [2017] WASC 175

Supreme Court of Western Australia

Acting Master Strk

Corporations law - plaintiff sought to wind up defendant in reliance on creditor's statutory demand for payment of debt - Court refused to grant leave to defendant, which it had sought pursuant to s459S *Corporations Act 2001* (Cth), to rely on existence of genuine dispute which it could have relied on if it sought to set aside statutory demand - presumption of insolvency - abuse of process - s459P *Corporations Act - Corporate Law Reform Act 1992* (Cth) - held: grounds which defendant sought to rely upon concerning abuse of process were grounds it could have relied on in applying to set aside statutory demand - defendant had been refused leave under s459S *Corporations Act* - Court's jurisdiction not enlivened to dismiss winding up application as an abuse of process - defendant did not discharge onus to overcome presumption of insolvency - presumption of insolvency prevailed - appropriate to order winding up of company.

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

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