

Friday, 29 June 2018

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)

Carlisle Homes Pty Ltd v Tick Homes Pty Ltd (FCA) - copyright - alleged infringement of copyright in relation to 'residential home plans' - interlocutory injunction refused (I B C G)

Il Vizio Corp Pty Ltd v Cashflow Finance Australia Pty Ltd (No 2) (NSWCA) - costs - appellant successful on appeal - appellant to pay 10% of respondent's costs of proceedings at first instance (B C I G)

2-6 First Ave Pty Ltd v Aquamore Credit Equity Pty Ltd (NSWSC) - real property - caveat - contract - sale of land - application for extension of caveat's operation refused (B C I G)

Goodwin Street Developments Pty Ltd as trustee for Jesmond Unit Trust v DSD Builders Pty Ltd (NSWSC) - judgments and orders - security of payments - amount of determination to be paid into Court pending underlying dispute's determination (B C I G)

Bauer Media Pty Ltd v Wilson (No 3) (VSCA) - judgments and orders - defamation - interest - respondent to repay part of judgment sum set aside on appeal together with interest - trial judge's order for indemnity costs in respondent's favour not disturbed - respondent to pay 80% of appellants' costs of appeal (I B C G)

Clay v The Owners of Carinya Court Rockingham Strata Plan 25819 (WASC) - real property - strata titles - administrators' powers - dismissal of application to restrain administrator from

acting before obtaining permission of lots' proprietors - appeal dismissed (I B C G)

Carr v Larussa (WASC) - wills and estates - trusts and trustees - privilege - application for production of legal advice dismissed - application for private advice granted - direction given (B)

Summaries With Link (Five Minute Read)

Carlisle Homes Pty Ltd v Tick Homes Pty Ltd [2018] FCA 973

Federal Court of Australia

Murphy J

Interlocutory injunction - copyright - applicant alleged respondents infringed its copyright under *Copyright Act 1968* (Cth) in relation to nine 'residential home plans' - respondents denied infringement of the plans - applicant sought interlocutory injunction to restrain respondents from engaging in certain conduct in respect of the plans - whether prima facie case for breach of copyright established - whether damages would be adequate remedy - balance of convenience - held: Court not satisfied to grant injunction sought.

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

Il Vizio Corp Pty Ltd v Cashflow Finance Australia Pty Ltd (No 2) [2018] NSWCA 142

Court of Appeal of New South Wales

Meagher, Ward & White JJA

Costs - appellant successful on appeal - application concerning determination of costs at first instance - appellant sought that there be no costs of proceedings at first instance or that it pay 10% of respondent's costs - respondent sought reinstatement of District Court order that appellant pay its costs or that appellant pay 50% of its costs - whether continuation of proceedings in District Court warranted - r42.35 *Uniform Civil Procedure Rules 2005* (NSW) - held: appellant to pay 10% of respondent's costs of proceedings at first instance.

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

2-6 First Ave Pty Ltd v Aquamore Credit Equity Pty Ltd [2018] NSWSC 980

Supreme Court of New South Wales

Darke J

Real property - caveat - plaintiff was purchaser under contract for sale of land - defendant was vendor exercising power of sale as mortgagee - plaintiff lodged a caveat on property's title claiming interest as purchaser under contract - defendant contended plaintiff engaged in conduct amounting to repudiation - defendant served lapsing notice in respect of caveat - plaintiff, pursuant to s 74K(2) *Real Property Act 1900* (NSW), sought extension of caveat's operation - whether serious question to be tried whether plaintiff repudiated contract - whether plaintiff's claim 'had or may have substance' - balance of convenience - whether plaintiff able to proffer undertaking - risk of injustice - held: Court concluded risk of injustice to defendant in extending caveat's operation outweighed risk of injustice to plaintiff in refusing extension -

application dismissed.

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

Goodwin Street Developments Pty Ltd as trustee for Jesmond Unit Trust v DSD Builders Pty Ltd [2018] NSWSC 984

Supreme Court of New South Wales

Stevenson J

Judgments and orders - security of payments - plaintiff sought to quash adjudication determination in first respondent's favour - issue was whether plaintiff should pay adjudicated amount into Court pending underlying dispute's resolution - *Building and Construction Industry Security of Payment Act 1999* (NSW) - *Nazero Group Pty Limited v Top Quality Construction Pty Limited* [2015] NSWSC 232 - held: Court satisfied to follow 'usual practice' requiring payment into Court of adjudicated amount - order made.

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

Bauer Media Pty Ltd v Wilson (No 3) [2018] VSCA 164

Court of Appeal of Victoria

Tate, Beach & Ashley JJA

Judgments and orders - defamation - interest - determination of remaining issues in proceedings - appellants' entitlement to repayment of part of judgment sum set aside on appeal - determination of costs at first instance and on appeal - , s40 *Defamation Act 2005* - held: respondent required to repay part of judgment sum set aside together with interest in total sum of \$4,183,071.45 - trial judge's order for indemnity costs in respondent's favour not disturbed - respondent to pay 80% of appellants' costs of appeal on standard basis.

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

Clay v The Owners of Carinya Court Rockingham Strata Plan 25819 [2018] WASC 191

Supreme Court of Western Australia

Jenkins J

Administrative law - real property - strata titles - administrators' powers - appellant sought to restrain administrator appointed under s83 *Strata Titles Act 1985* (WA) (*Strata Titles Act*) from acting without obtaining approval of lots' proprietors in general meeting - State Administrative Tribunal dismissed appellant's application - appellant appealed - appellant contended Learned Member erred in finding administrators not bound by same requirements of proprietor approval as strata company and strata council, and in finding proprietors' voting rights reposed in administrator for term of appointment - s102 *Strata Titles Act* - held: leave to appeal refused - appeal dismissed.

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

Carr v Larussa [2018] WASC 176

Supreme Court of Western Australia

Acting Master Strk

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Wills and estates - trusts and trustees - privilege - plaintiff daughter of deceased sought private advice - plaintiff sought direction whether she was justified in pursuing 'debt proceedings' which she had commenced in capacity as administratrix - order also sought from Court requiring plaintiff to produce legal advice for inspection by beneficiary - s92 *Trustees Act* 1962 (WA) - O58 r2 *Rules of the Supreme Court* 1971 (WA) - held: legal professional privilege established in respect of legal advice in 'first Carr Affidavit' - Court satisfied it was appropriate to provide direction.

[Carr](#) (B)

CRIMINAL

Executive Summary

Ping He v R (NSWCCA) - criminal law - proceeds of crime - offences contrary to s193B(2) *Crimes Act 1900* (NSW) - 'subjective circumstances' - parity - appeal against aggregate sentence dismissed

Wagner v R (NSWCCA) - criminal law - offences against s474.19(1) Criminal Code (Cth) - offence against s91H(2) *Crimes Act 1900* (NSW) - utilitarian value of guilty pleas - leave to appeal against sentences for Commonwealth offences grant - appellant resentenced

Summaries With Link

Ping He v R [2018] NSWCCA 123

Court of Criminal Appeal of New South Wales

Leeming JA; Bellew & Fagan J

Criminal law - applicant pleaded guilty to 'dealing with proceeds of crime knowing that they were proceeds' contrary to s193B(2) *Crimes Act 1900* (NSW) with four more offences taken into account on Form 1, to a second offence 'of the same kind' against s193B(2), and to a third offence against s193B(2) - judge imposed aggregate sentence of 5 years with 3 year non-parole period - applicant sought leave to appeal against sentence, contending that judge failed to give effect to findings on applicant's 'subjective case', or that applicant had a 'justifiable sense of grievance' in light of co-offender's sentence - parity - held: leave to appeal granted - grounds of appeal failed - appeal dismissed.

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Wagner v R [2018] NSWCCA 124

Court of Criminal Appeal of New South Wales

Leeming JA, Button & Fagan JJ

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Criminal law - applicant pleaded guilty to two offences against s474.19(1) Criminal Code (Cth) - applicant also pleaded guilty to one offence against s91H(2) *Crimes Act 1900* (NSW) - applicant sought to appeal against sentences on ground judge erred in consideration of guilty pleas in respect of Commonwealth offences - principles applicable to discounting for guilty pleas - effect of decision in *Xiao v R* [2018] NSWCCA 4 in relation to whether judge could take guilty plea's utilitarian value into consideration in mitigation - held: judge had not taken into account utilitarian value of guilty plea - in light of *Xiao v R*, applicant had been denied consideration of a basis of mitigation - applicant resentenced.

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Sunset on the Spire

By: Elinor Wylie

All that I dream

By day or night

Lives in that stream

Of lovely light.

Here is the earth,

And there is the spire;

This is my hearth,

And that is my fire.

From the sun's dome

I am shouted proof

That this is my home,

And that is my roof.

Here is my food,

And here is my drink,

And I am wooed

From the moon's brink.

And the days go over,

And the nights end;

Here is my lover,

Here is my friend.

All that I

Could ever ask

Wears that sky

Like a thin gold mask.

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

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