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## 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)

**Northern Territory v Sangare** (HCA) - costs - Court of Appeal erred in depriving successful appellant of costs order on sole basis of respondent's impecuniosity - appeal allowed (I B C G)

**Citadel Financial Corporation Pty Ltd (Administrator Appointed) v Action Scaffolding & Rigging Pty Limited (in liq)** (FCAFC) - bankruptcy - appellant unsuccessfully claimed it was 'subrogated to and an assignee of' rights under charge which first respondent granted to company - appeal dismissed (I B)

**Bellamy's Australia Limited v Basil** (FCAFC) - representative proceedings - 'two competing class actions' - refusal of orders capping costs which may be recovered by applicants - respondent's appeal dismissed (I B)

**Rush v Nationwide News Pty Limited (No 9)** (FCA) - injunction - defamation - applicant sought permanent injunction to restrain respondent from republishing defamatory imputations - injunction refused (I)

**Domican v Pan Macmillan Australia Pty Limited** (FCA) - defamation - pleadings - respondents' 'truth and contextual truth defences' struck out - particulars of truth struck out - leave to file amended defences granted (I)

**In the matter of Force Draft Pty Limited** (NSWSC) - corporations - winding up - statutory

demand set aside pursuant to s459H(3) *Corporations Act 2001* (Cth) (B C I G)

**The Trustee For Hardev Property (Dev 10) Unit Trust v Palmgrove Holdings Pty Ltd & others** (QSC) - security of payments - applicant contended adjudication decision under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (Act) void - application dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Northern Territory v Sangare [2019] HCA 25**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane & Nettle JJ

Costs - defamation - appellant succeeded in litigation - appellant contended Court of Appeal of the Northern Territory erred in finding that impecuniosity of respondent 'without more' was 'sufficient reason to deny' appellant costs order - appellant also contended it was not open to Court of Appeal to refuse appellant costs order on ground of futility - held: Court of Appeal identified respondent's impecuniosity as only reason for depriving appellant of costs - impecuniosity not a consideration relevant to exercise of costs discretion - Court of Appeal erred in declining to make order on basis of futility - appeal allowed.

[Northern Territory](#) (I B C G)

### **Citadel Financial Corporation Pty Ltd (Administrator Appointed) v Action Scaffolding & Rigging Pty Limited (in liq) [2019] FCAFC 145**

Full Court of the Federal Court of Australia

Besanko, Colvin & Stewart JJ

Bankruptcy - appellant claimed it was 'secured creditor' of first respondent - appellant claimed it was 'subrogated to, and an assignee of' rights under charge which first respondent granted to company (Bibby) - appellant claimed it was entitled to first respondent's property 'in priority to other creditors' - primary judge rejected appellant's claims - whether erroneous refusal of leave to reopen - whether 'inferential factual error' concerning whether appellant 'paid out' first respondent's debt to Bibby - s418A *Corporations Act 2001* (Cth) - held: appeal dismissed.

[Citadel](#) (I B)

### **Bellamy's Australia Limited v Basil [2019] FCAFC 147**

Full Court of the Federal Court of Australia

Murphy, Gleeson & Lee JJ

Representative proceedings - respondent 'in two competing class actions' sought to appeal against primary judge's refusal of orders capping costs which may be recovered by applicants in proceedings - whether to grant leave to appeal - whether either limb of *Décor Corporation Pty Ltd v Dart Industries Inc* [1991] FCAFC 844 established - ss33V & 37M(3) *Federal Court of Australia Act 1976* (Cth) - held: appeal dismissed.

[Bellamy's \(I B\)](#)

**Rush v Nationwide News Pty Limited (No 9) [2019] FCA 1383**

Federal Court of Australia

Wigney J

Injunction - defamation - applicant sought permanent injunction to restrain respondent from republishing defamatory imputations - applicant contended that there was 'serious risk or apprehension' of first respondent continuing to republish the imputations if not restrained - whether appropriate to grant injunction - 'public interest in the right of free speech' - whether 'real or appreciable risk' that respondent would 'repeat or republish' defamatory imputations if not restrained - s23 *Defamation Act 2005* (NSW) - held: injunction refused.

[Rush \(I\)](#)

**Domican v Pan Macmillan Australia Pty Limited [2019] FCA 1384**

Federal Court of Australia

Wigney J

Defamation - applicant sued respondents for defamation - applicant sought to strike out parts of respondents' defences - respondents pleaded "common law truth" defence or, alternatively, contextual truth defence under s26 *Defamation Act 2005* (NSW) - applicant sought to strike out the common law truth defence and 'contextual truth imputations' - applicant sought to strike out 'virtually all' respondents' 'particulars of truth' - principles in *Rush v Nationwide News Pty Ltd* [2018] FCA 357 - r16.21(1) *Federal Court Rules 2011* (Cth) - held: respondents' 'truth and contextual truth defences' struck out - particulars of truth struck out - respondents granted leave to file amended defences.

[Domican \(I\)](#)

**In the matter of Force Draft Pty Limited [2019] NSWSC 1102**

Supreme Court of New South Wales

Rees J

Corporations - winding up - statutory demand - plaintiff sought to set aside statutory demand which defendant served on it - plaintiff contended there was genuine dispute concerning debt's existence - whether "genuine dispute" - dispute concerning whether contract included certain terms - dispute concerning 'factual matters' - held: "substantiated amount" less than 'statutory minimum' - statutory demand set aside pursuant to s459H(3) *Corporations Act 2001* (Cth).

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

**The Trustee For Hardev Property (Dev 10) Unit Trust v Palmgrove Holdings Pty Ltd & others [2019] QSC 208**

Supreme Court of Queensland

Lyons SJA

Security of payments - applicant contended second respondent's adjudication decision under *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (Act) was void - whether first



respondent breached s42(1) *Queensland Building and Construction Commission Act 1991* (Qld) with result respondent had 'no contractual right' to progress payment under the Act - held: application dismissed.

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

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

**On the Hill-Side**

**By:** Radclyffe Hall

A Memory

You lay so still in the sunshine,  
So still in that hot sweet hour—  
That the timid things of the forest land  
Came close; a butterfly lit on your hand,  
Mistaking it for a flower.

You scarcely breathed in your slumber,  
So dreamless it was, so deep—  
While the warm air stirred in my veins like wine,  
The air that had blown through a jasmine vine,  
But you slept—and I let you sleep.

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