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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Shearwood (Trustee), in the matter of Allied Resource Partners Pty Ltd v Allied Resource Partners Pty Ltd (FCA) - corporations - shareholders agreement - removal of director of company and appointment of director were 'beyond power, invalid and ineffectual' - declarations and orders granted

Goode v England (NSWCA) - negligence - recreational activity - appellant professional jockey injured in fall from horse during race - appellant's claim against respondent jockey precluded by s5L *Civil Liability Act 2002* (NSW) - appeal against judgment in respondent's favour dismissed

Inghams Enterprises Pty Ltd v (NAME REMOVED) (NSWCA) - bias - workers compensation - challenge to decision of Deputy President to confirm arbitrator's decision in worker's favour - allegation of reasonable apprehension of bias failed - appeal dismissed

Ubertas Funds Management Pty Ltd v PwC (release from implied undertaking) (VSC) - judgments and orders - *Harman* undertaking - Court satisfied special circumstances justified release from obligation in respect of documents - orders granted

Mowatt & ors v White Horses Pty Ltd (QSC) - injunction - corporations - interlocutory injunction to prevent extraordinary general meeting in respect of company's winding up and appointment of directors as liquidators - application dismissed

Icechest Corp Pty Ltd v Quan (WASC) - costs - leases and tenancies - plaintiff not wholly or substantially successful in proceedings - plaintiff to pay defendants' costs on indemnity basis

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Summaries With Link (Five Minute Read)

Shearwood (Trustee), in the matter of Allied Resource Partners Pty Ltd v Allied Resource Partners Pty Ltd [2017] FCA 1451

Federal Court of Australia

Markovic J

Corporations - trustee for superannuation fund (Mr Shearwood) and Mr Shearwood were plaintiffs - plaintiffs were shareholders in first defendant company (Allied) - plaintiffs sought declarations and orders concerning composition of Allied's board - whether, under shareholders' agreement, Mr Shearwood was removed as a director of Allied and second defendant appointed as director of Allied by Allied's remaining director - discontinuation of balance of claims - ss1322(2), 1322(4) & 1322(6) *Corporations Act 2001* (Cth) - held: Mr Shearwood's purported removal as director, and appointment of second defendant as director, was 'beyond power, invalid and ineffectual' - declarations and orders granted.

[Shearwood](#)

Goode v England [2017] NSWCA 311

Court of Appeal of New South Wales

Beazley P; Meagher & Leeming JJA

Negligence - recreational activity - appellant injured in fall while riding in race as professional jockey - respondent was riding horse in same race - appellant sued respondent in negligence or breach of duty - appellant contended the way respondent was riding caused interference with appellant and horse, resulting in the fall and injuries - appellant appealed against trial judge's decision in respondent's favour - whether trial judge made factual error concerning horses' movement - whether erroneous construction of s5L *Civil Liability Act 2002* (NSW) - *Civil Liability (Personal Responsibility) Amendment Bill 2002* (NSW) - whether s5L distinguished between sports participated in for recreational purposes and sports participated in for professional purposes. held: horse racing was recreational activity under s5K of the Act - appellant's claim precluded by s5L - appeal dismissed.

[View Decision](#)

Inghams Enterprises Pty Ltd v (NAME REMOVED) [2017] NSWCA 313

Court of Appeal of New South Wales

McColl & Basten JJA; Bellew J

Bias - workers compensation - Deputy President confirmed arbitrator's determination in worker's favour in proceedings - appellant challenged Deputy President's decision, contending there was reasonable apprehension of bias and that President should have disqualified himself - ss353 & 355 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - comment allegedly made by Deputy President as arbitrator in earlier proceeding during telephone conference - contention Deputy President's erroneous refusal to recuse himself was 'was compounded by [his] subsequent conduct of the appeal' - ground of appeal arising from Deputy President's alleged management, as conciliator, of conciliation hearing - held: grounds

of appeal not made out - appeal dismissed.

[View Decision](#)

Ubertas Funds Management Pty Ltd v PwC (release from implied undertaking) [2017] VSC 735

Supreme Court of Victoria

Macaulay J

Judgments and orders - *Harman* undertaking - plaintiff and defendant in proceedings sought release from obligation and implied undertaking so that they could use documents which parties had disclosed in prior civil proceeding - s27(1) *Civil Procedure Act 2010* (Vic) - special circumstances - whether to release defendant from obligation - held: Court satisfied that there were special circumstances justifying release from obligation - orders granted.

[Ubertas](#)

Mowatt & ors v White Horses Pty Ltd [2017] QSC 292

Supreme Court of Queensland

Bond J

Injunction - corporations - respondent home unit company was proposing to hold extraordinary general meeting at which shareholders would put resolutions concerning voluntary winding up of company and appointment of company's directors as liquidators - six unit holders sought interlocutory injunction to restrain respondent from proceeding with meeting, considering or passing any resolution for voluntary liquidators' appointment, and selling or taking steps to sell land - *Corporations Act 2001* (Cth) - held: applicants failed to establish serious question to be tried that 'threatened conduct' was unlawful or that their rights would be otherwise infringed - interlocutory application dismissed.

[Mowatt](#)

Icechest Corp Pty Ltd v Quan [2017] WASC 345

Supreme Court of Western Australia

Le Miere J

Costs - leases and tenancies - plaintiff was lessee of property defendants owned - defendants gave plaintiff default notice for failure to pay rent and outgoings, and to deliver security deposit - plaintiff did not remedy failure to pay amounts in accordance with time limit in default notice - defendants terminated lease - plaintiff claimed damages for lease's wrongful termination - plaintiff claimed that it paid outstanding amounts and sought relief from lease's forfeiture - plaintiff obtained interlocutory injunction which required defendants to give plaintiff possession of premises and restrained them from taking possession - plaintiff withdrew wrongful termination claim - Court discharged interim injunction by consent - Court ordered that plaintiff be relieved from lease's forfeiture - held: plaintiff not wholly or substantially successful in proceedings - plaintiff to pay defendants' costs on indemnity basis, and reimbursement for cost of security guard engaged at time lease terminated.

[Icechest](#)

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Sonnet 105

By: William Shakespeare

Let not my love be call'd idolatry,
Nor my beloved as an idol show,
Since all alike my songs and praises be
To one, of one, still such, and ever so.
Kind is my love to-day, to-morrow kind,
Still constant in a wondrous excellence;
Therefore my verse to constancy confined,
One thing expressing, leaves out difference.
'Fair, kind and true' is all my argument,
'Fair, kind, and true' varying to other words;
And in this change is my invention spent,
Three themes in one, which wondrous scope affords.
'Fair, kind, and true,' have often lived alone,
Which three till now never kept seat in one.

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

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