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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 Belokoski (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 Belokoski [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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Of Love, A Sonnet

By: Robert Herrick

How love came in I do not know,
Whether by the eye, or ear, or no;
Or whether with the soul it came
(At first) infused with the same;
Whether in part 'tis here or there,
Or, like the soul, whole everywhere,
This troubles me: but I as well
As any other this can tell:
That when from hence she does depart
The outlet then is from the heart.

[https://en.wikipedia.org/wiki/Robert_Herrick_\(poet\)](https://en.wikipedia.org/wiki/Robert_Herrick_(poet))

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