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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)

**Meat & Livestock Australia Limited v Cargill, Inc** (FCA) - patents - appeal against challenge to application which was unsuccessful except on one ground - appeal allowed in part

**Sharpe v CNH Capital Australia Pty Limited** (FCA) - bankruptcy - sequestration order - no material error in primary judge's refusal to 'go behind' judgment - appeal dismissed

**Commonwealth Bank of Australia v Saggese** (VSC) - judgments and orders - warrant of execution - assignment - delay - leave refused to issue warrant to enforce judgment

**In the matter of applications by Lupco Slaveski (a person subject to a general litigation restraint order)** (VSC) - vexatious proceedings - contempt - leave granted for applicant to seek extension of time to apply for leave to appeal against sentence - leave granted to seek bail

**Coal Hub Pty Ltd v NSL Consolidated Ltd [No 4]** (WASC) - contract - tenant acquisition agreement - breach of implied term - company's assignment of interest to plaintiff ineffective - plaintiff entitled to nominal damages

**Conservation Council of Western Australia (Inc) v The Hon Stephen Dawson MLC** (WASC) - environment and planning - challenged to Minister's statement under s45 *Environmental Protection Act 1986* (WA) failed - proceedings dismissed

### Summaries With Link (Five Minute Read)

# Benchmark

## **Meat & Livestock Australia Limited v Cargill, Inc [2018] FCA 51**

Federal Court of Australia

Beach J

Patents - first appellant was 'marketing and research body' under *Australian Meat and Livestock Industry Act 1997* (Cth) - second appellant invested in dairy industry research - first and second respondents were co-applicants of Australian patent application (253 Application), involving 'method claims' for identification of 'trait of a bovine subject from a nucleic acid sample of that subject' - appellants opposed application - appellants unsuccessful except on one ground of lack of clarity and an aspect of 'manner of manufacture' affecting one claim - appellants appealed - *Patents Act 1990* (Cth) - held: aspects of claims deficient for lack of clarity; 'failure to define the invention' and lack of utility - appeal allowed in part.

[Meat & Livestock](#)

## **Sharpe v CNH Capital Australia Pty Limited [2018] FCA 49**

Federal Court of Australia

Lee J

Bankruptcy - appellant sought to set aside sequestration order against his estate, and that creditor's petition in relation to farm debt, presented by respondent petitioning creditor, be dismissed - whether primary judge erred in identifying when Bankruptcy Court would 'go behind' judgment, and in finding no substantial reason had been shown to question whether, 'in truth and reality', appellant owed a debt as alleged - *Farm Debt Mediation Act 1994* (NSW) held: no material error established in primary judge's reasoning - appeal dismissed.

[Sharpe](#)

## **Commonwealth Bank of Australia v Saggese [2018] VSC 40**

Supreme Court of Victoria

Derham AsJ

Judgments and orders - warrant of execution - assignment - equitable assignment - chose in action - company (Credit Corp) was assignee of debt from plaintiff - Credit Corp appealed from Judicial Registrar's refusal to grant it leave to issue warrant to enforce Magistrate's judgment in plaintiff's favour against defendant/respondent - judgment had been entered in 2009 - delay - prejudice - validity and enforceability of assignment - held: appellant's reasons for delay did not support grant of leave - leave to issue warrant to enforce judgment refused.

[Commonwealth Bank of Australia](#)

## **In the matter of applications by Lupco Slaveski (a person subject to a general litigation restraint order) [2018] VSC 39**

Supreme Court of Victoria

John Dixon J

Vexatious proceedings - contempt - Court declared applicant a vexatious litigant - Court convicted applicant of charges in relation to language used in communications to 'judicial officers, court employees, lawyers and their families' - applicant sentenced to 23 months

imprisonment with 15 month non-parole period - applicant sought leave to seek extension of time to apply for leave to appeal, and leave to appeal against conviction and sentence - applicant also sought leave to apply for bail - held: application to extend time to seek leave to appeal sentence was not a vexatious proceeding, and there were reasonable grounds for proceeding - no reasonable grounds for application to extend time to seek leave to appeal against contempt declarations - application for bail, upon satisfaction of certain preconditions was not vexatious, and there were reasonable grounds for application - leave granted to seek extension of time to apply for leave to appeal against sentence - leave granted to seek bail.

[In the matter of applications](#)

## **Coal Hub Pty Ltd v NSL Consolidated Ltd [No 4] [2018] WASC 41**

Supreme Court of Western Australia

Banks-Smith J

Contract - company (Birmanie) owned applications for coal exploration permits and rights in relation to tenements - Birmanie, by tenant acquisition agreement, sold assets to defendant company (NSL) - certain tranches payable on NSL's establishment of 'JORC Inferred or Indicated coal resources' - not possible to establish JORC Inferred or Indicated coal resources without drilling - NSL contended it 'did not obtain unfettered access to tenements' - plaintiff contended defendant 'engineered a delay' in obtaining unfettered access' - Birmanie alleged defendant repudiated agreement and that Birmanie accepted repudiation and terminated agreement - Birmanie sought damages - Birmanie assigned its interests to plaintiff - validity of assignment - implied terms - whether breach of contract - whether repudiation - held: Birmanie's assignment was ineffective - defendant had breached implied term of agreement by delays but its conduct was not repudiatory - plaintiff entitled to nominal damages.

[Coal Hub](#)

## **Conservation Council of Western Australia (Inc) v The Hon Stephen Dawson MLC [2018] WASC 34**

Supreme Court of Western Australia

Martin CJ

Environment and planning - Minister for the Environment published statement under s45 *Environmental Protection Act 1986 (WA)* that there had been agreement, subject to specified conditions, for second respondent, to mine uranium ore from deposit - applicants challenged validity of statement - respondents conceded second applicants had standing - unnecessary to make determination as to first applicant's standing - held: statement and agreement were not 'otherwise than in accordance with' Minister's decision on appeal against assessment report of Environmental Protection Authority - conditions in statement not invalid - proceedings dismissed.

[Conservation Council](#)

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