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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)

**Barton (Appellant) v Wright Hassall LLP (Respondent)** (UKSC) - service - service by email - non-compliant service by email - Court declined to validate service - appeal dismissed

**Smith v Aircraft Maintenance Services Australia (AMSA) Pty Ltd (FCA)** - evidence - refusal to admit affidavit into evidence - erroneous failure to consider matter - exercise of judgment miscarried - appeal allowed

**Ryde Developments Pty Ltd v The Property Investors Alliance Pty Ltd (No 2)** (NSWCA) - costs - appellant successful on appeal in one respect - respondent to pay 30 per cent of appellant's costs of appeal - appellant to pay 75 per cent of respondent's costs of amended summons and amended first cross-summons - orders made

**D.R. Design (NSW) Pty Limited v Grand City International Development Pty Ltd (No 2)** (NSWSC) - costs - contract - plaintiff succeeded in proceedings - defendant to pay plaintiff's costs to date of its offer of compromise - plaintiff to pay defendant's costs on indemnity basis after date of offer of compromise

**National Australia Bank Ltd v Bluanya Pty Ltd & Anor** (QSC) - summary judgment - possession - loan agreements - plaintiff refused summary judgment against second defendant on part of claim - amended defence and counterclaim struck out with leave to replead

**Lake Laurel Pty Ltd & Anor v Nichols Constructions Pty Ltd & Ors** (QSC) - joinder - pleadings - loan agreement - leave granted to join individual as third plaintiff in proceedings - leave granted to amend pleadings

**Hassan v Calvary Private Hospital Health Care Canberra Ltd t/a Calvary John James Hospital** (ACTSC) - interlocutory applications - pleadings - summary judgment - limitations - medical negligence - summary judgment refused - parts of statement of claim struck out

## Summaries With Link (Five Minute Read)

### **Barton (Appellant) v Wright Hassall LLP (Respondent) [2018] UKSC 12**

United Kingdom Supreme Court

Lady Hale, President; Lord Wilson, Lord Sumption, Lord Carnwath & Lord Briggs

Service - service by email - limitations - solicitors' duties - appellant was litigant in person who claimed against defendant solicitors for breach of duty in acting for him against other law firm and in relation to coming off the record after fee dispute - appellant served claim form by email on defendant's solicitors - appellant had not obtained indication whether solicitors prepared to accept email service - common ground it was not good service - on following day, claim form expired unserved - issue on appeal was whether Court should validate service - appeal conducted on assumption that if Court declined to validate service and appellant was required to commence new action, that action would be statute-barred - Pt 6 *Civil Procedure Rules* - Court's power to 'waive compliance with procedural conditions' - whether 'good reason' to validate service which was non-compliant - whether prejudice to defendant - whether reasonable steps by claimant to serve in compliance with rules - whether defendant or solicitor knew claim's contents when claim expired - whether result in Court below incompatible with appellant's right to fair trial in Article 6 European Convention on Human Rights - held: non-compliant service not validated - appeal dismissed.

[Barton](#)

### **Smith v Aircraft Maintenance Services Australia (AMSA) Pty Ltd [2018] FCA 264**

Federal Court of Australia

Rangiah J

Evidence - appellant contended respondent contravened ss44, 45 & 357 *Fair Work Act 2009* (Cth) - appellant challenged decision of primary judge to refuse admission of applicant's affidavit as evidence - primary judge found affidavit admissible under s63 *Evidence Act 1995* (Cth) but excluded it under s135 of the Act - whether primary judge erroneously refused to admit the affidavit - held: primary judge failed to consider whether evidence's 'misleading, confusing and prejudicial effect' was able to be overcome by 'ascribing appropriate weight' to evidence - primary judge's 'evaluative judgment' under s135 of the Act miscarried due to failure to consider this matter - appeal allowed.

[Smith](#)

### **Ryde Developments Pty Ltd v The Property Investors Alliance Pty Ltd (No 2) [2018] NSWCA 40**

Court of Appeal of New South Wales

Beazley P, Payne JA & Barrett AJA

Costs - appellant succeeded on appeal in one respect - primary judge made no order for costs so that parties could make submissions - determination of order for costs of appeal and order for costs of trial - appellant sought that respondent pay its appeal costs, or 80 per cent those costs, that respondent pay 50 per cent of its costs of amended summons, and that appellant should pay 50 per cent of respondent's costs of amended first cross-summons - respondent sought that it should pay 30 per cent of appellant's appeal costs, that appellant should pay 70 per cent of its appeal costs, and that appellant should pay its costs of trial - alternatively, respondent sought that if appellant was entitled to discount for its success, then that discount should not exceed 10 per cent - whether costs order should reflect successful party's lack of success on issues which took up significant part of proceedings - held: respondent to pay 30 per cent of appellant's costs of appeal - appellant to pay 75 per cent of respondent's costs of amended summons and amended first cross-summons - orders made.

[View Decision](#)

## **D.R. Design (NSW) Pty Limited v Grand City International Development Pty Ltd (No 2) [2018] NSWSC 287**

Supreme Court of New South Wales

Ball J

Costs - contract - Court gave judgment in plaintiff's favour in proceedings - plaintiff sought costs on ordinary basis pursuant to r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - defendant sought that Court depart from general rule in reliance on offers of compromise and r42.34 of the Rules - defendant also contended that Court should refuse to order costs in plaintiff's favour because proceedings' costs were 'completely disproportionate' to amount recovered - whether defendant required to explain how it calculated offer of compromise - held: defendant to pay plaintiff's costs up to date of offer of compromise - plaintiff to pay defendant's costs on indemnity basis after date of offer of compromise.

[View Decision](#)

## **National Australia Bank Ltd v Bluanya Pty Ltd & Anor [2018] QSC 49**

Supreme Court of Queensland

Brown J

Summary judgment - possession - loan agreements - dispute arising from alleged default on loan agreements - plaintiff pursuant to r292 *Uniform Civil Procedure Rules 1999* (Qld) sought summary judgment against second defendant as to part of claim in which it sought possession of land or payment of money under loan agreement - plaintiff alternatively sought to strike out paragraphs of defence and counterclaim pursuant to r171 - whether real prospect of successful defence - whether need for trial on relevant part of claim - whether triable issue could be raised concerning whether alleged misleading and deceptive conduct by plaintiff caused second defendant to be in default on home loan facility - held: Court not satisfied defendant had no prospect of success or was 'so devoid of any factual basis' to warrant summary judgment -

summary judgment refused - amended defence and counterclaim struck out with leave to replead.

[National Australia Bank Ltd](#)

## **Lake Laurel Pty Ltd & Anor v Nichols Constructions Pty Ltd & Ors [2018] QSC 46**

Supreme Court of Queensland

Brown J

Joinder - pleadings - plaintiffs sought to join individual (Mr Ryan) as third plaintiff under r69 *Uniform Civil Procedure Rules 1999* (Qld) and to amend pleadings including to add claim for further money owing under loan agreement, guarantee and mortgage - plaintiffs contended many of plaintiffs' claims belonged to Mr Ryan as first plaintiff had assigned to him half interest in loan agreement and mortgage - Mr Ryan consented to being joined - held: Mr Ryan's joinder was appropriate - leave to amend granted - orders made.

[Lake Laurel](#)

## **Hassan v Calvary Private Hospital Health Care Canberra Ltd t/a Calvary John James Hospital [2018] ACTSC 53**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Pleadings - summary judgment - limitations - medical negligence - plaintiff sued doctors and hospital in negligence in relation to injuries she allegedly suffered due to surgeries - three interlocutory applications by defendants who were seeking summary judgment, or to strike out parts or whole of statement of claim - whether vicarious liability claim and/or claim based on *Human Rights Act 2004* (ACT) should proceed - whether limitations issue could be determined in advance - *Limitation Act 1985* (ACT) - held: limitation issue to be determined at hearing - no causes of action struck out - certain paragraphs of claim struck out - claim to be amended to comply with Rules - plaintiff to file medical report in support of allegations against each defendant.

[Hassan](#)

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