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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)

Dryden and others (Appellants) v Johnson Matthey Plc (Respondent) (UKSC) - negligence - platinum salt sensitisation was an 'actionable personal injury' on basis of which workers could claim against employer - appeal allowed

The Commissioner of the Australian Federal Police v Steffan Treptower (NSWSC) - proceeds of crime - judgments and orders - orders sought for examination of respondent - Court not satisfied to hear matter ex parte - matter stood over

Reozone Pty Ltd v Rene Santoro & Ors (NSWSC) - funds in court - loans and mortgages - determination of competing claims to funds in court - orders made and stayed pending attempts to locate mortgagor

Akuna Capital LLC (Delaware) v Ainsley (NSWSC) - judgments and orders - interlocutory injunction - confidentiality - application for removal of material from defendant's application in Fair Work proceedings - application dismissed

Dickens v State of New South Wales (No 4) (NSWSC) - costs - defendant successful in proceedings - plaintiff sought that costs be reserved on basis of his proposed appeal - Court not satisfied to reserve costs - defendant granted gross sum costs order

Elwick 9 v Freeman (VSC) - administrative law - statutory interpretation - Tribunal's order restricting Gym's hours of operation limited right under *Planning and Environment Act 1987* (Vic) contrary to s140 *Owners Corporation Act 2006* (Vic) - appeal allowed - orders set aside

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Lien & Anor v Clontarf Residential Pty Ltd & Anor (QSC) - contract - joint venture agreement - implied terms - breach of contract established - repudiation established - termination of contract effective - plaintiffs granted declaration - counterclaim dismissed

Summaries With Link (Five Minute Read)

Dryden and others (Appellants) v Johnson Matthey Plc (Respondent) [2018] UKSC 18

Supreme Court of the United Kingdom

Lady Hale, President; Lord Wilson Lord Reed Lady Black & Lord Lloyd-Jones

Negligence - appellants worked for respondent company - respondent breached duty by failing ensure factories in which claimants worked were cleaned properly - appellants resultantly exposed to platinum salts which led to them to develop 'platinum salt sensitisation' - platinum salt sensitisation was asymptomatic but entailed that further exposure to platinum salts likely to cause allergic reaction - appellants no longer allowed to work in areas where they might be exposed to platinum salts - two appellants' employment terminated - other appellant took up other role which he claimed had a reduced payment rate - appeal's central issue was whether platinum salt sensitisation was an 'actionable personal injury' on basis of which appellants could claim against respondent for negligence and/or breach of statutory duty - whether, if platinum salt sensitisation not an actionable personal injury, appellants could claim for economic loss under implied term of contract and/or in negligence - held: concept of actionable personal injury broad enough to included damage which appellants had suffered - appeal allowed.

[Dryden](#) (I B C G W WI WB WC WG)

The Commissioner of the Australian Federal Police v Steffan Treptower [2018] NSWSC 677

Supreme Court of New South Wales

Button J

Proceeds of crime - judgments and orders - threshold question - applicant sought, pursuant to s180 or 180B *Proceeds of Crime Act 2002* (Cth), examination of respondent 'introducer' concerning affairs of 'principal' and other person - threshold question was whether appropriate to hear application ex parte - affected party's right to be heard - orders seeking derogation of citizen's right to silence - whether 'compelling reasons' to make orders ex parte without affected person being heard - complexity and controversial nature of topic - whether matter required both sides to be heard - held: Court not satisfied to hear matter ex parte - orders refused - matter stood over.

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Reozone Pty Ltd v Rene Santoro & Ors [2018] NSWSC 650

Supreme Court of New South Wales

Slattery J>

Funds in court - loans and mortgages - proceedings concerned determination of parties'

competing claims to funds in court - funds consisted of net proceeds of judicial sale of property - funds paid into Court under s95 *Trustee Act 1925* (NSW) and r55 *Uniform Civil Procedure Rules 2005* (NSW) - not in dispute first defendant former registered proprietor and mortgagor had equitable interest - other parties claimed interests as unsecured creditors of first defendant - held: orders made concerning competing claims - orders stayed pending final attempts to locate mortgagor.

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Akuna Capital LLC (Delaware) v Ainsley [2018] NSWSC 680

Supreme Court of New South Wales

McDougall J

Judgments and orders - interlocutory injunction - confidentiality - defendant was employed by third plaintiff - defendant and third plaintiff entered employment agreement (Letter of Engagement) and 'Restrictive Covenant and Employee Intellectual Property Agreement' - defendant's employment ended - .defendant commenced Fair Work Commission proceedings - plaintiffs sought to remove certain material, which they contended to be their property and confidential information, from defendant's application in proceedings - whether material confidential - whether agreements only operated between third plaintiff and defendant - held: basis not established for Court to grant interlocutory relief - application dismissed.

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Dickens v State of New South Wales (No 4) [2018] NSWSC 666

Supreme Court New South Wales

Adamson J

Costs - Court dismissed proceedings - Court held that plaintiff should pay defendant's costs, subject to application for other costs order - plaintiff sought that costs be reserved on basis of proposed appeal - defendant sought gross sum order in respect of costs under s98(4) *Civil Procedure Act 2005* (NSW) - held: Court not prepared to reserve costs on basis of proposed appeal - it was in interests of justice for Court to deal with outstanding issues before considering an appeal - defendant had been successful - costs should follow event - gross sum costs order granted.

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Elwick 9 v Freeman [2018] VSC 234

Supreme Court of Victoria

Quigley J

Administrative law - statutory interpretation - applicant operated business (Gym) on ground floor of apartment building - first respondent owned apartment above Gym - rules of Owners Corporation for Plan of Subdivision applied to parties - Victorian Civil and Administrative Tribunal ordered compliance with Rules and restricted Gym's hours of operation - restriction on hours of operation inconsistent with opening hours which planning permit authorised - applicant sought to appeal - held: Court satisfied Tribunal's order restricting Gym's hours of operation



was inconsistent with, and limited, a right under *Planning and Environment Act 1987* (Vic) contrary to s140 *Owners Corporation Act 2006* (Vic) - appeal allowed - orders set aside.

[Elwick](#)

Lien & Anor v Clontarf Residential Pty Ltd & Anor [2018] QSC 94

Supreme Court of Queensland

Jackson J

Contract - joint venture - plaintiffs and first defendant made joint venture agreement concerning development of land which plaintiffs owned - plaintiffs sought declaration that they had terminated contract following first defendants' breaches or repudiation of contract - plaintiff also sought relief including damages - first defendant sought declaration that contract was on foot, and relief including specific performance and damages - whether breach of implied terms - whether contract contained implied term of good faith - whether plaintiffs' termination effective - whether breaches of contract by first defendant - whether repudiation by first defendant - held: breaches of contract by first defendant established - first defendant had repudiated contract by evincing intention to fulfil it 'only in a manner substantially inconsistent with the first defendant's obligations' - plaintiffs' termination was effective - declaration granted - counterclaim dismissed.

[Lien](#)

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