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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)

Rush v Nationwide News Pty Ltd (FCA) - defamation - pleadings - subpoena - justification defence struck out - paragraphs of amended defence concerning qualified privilege struck out - subpoena struck out - costs orders granted

Newell; Muriniti v De Costi (NSWCA) - costs - indemnification - legal practitioners - franchise agreements - dismissal of cross-claim in proceedings - solicitor and barrister ordered to indemnify 'De Costi parties' against 50% of costs - appeal allowed in part in each proceeding

Downer EDI Rail Pty Ltd v John Holland Pty Ltd; John Holland Pty Ltd v QBE Insurance (Australia) Ltd (No 5); Kellogg Brown & Root Pty Ltd v John Holland Pty Ltd (No 4) (NSWSC) - contract - consumer law - insurance - dispute arising from alleged deficiencies in detention system incorporated into maintenance centre - proceedings dismissed

Lake Vermont Marketing Pty Ltd v Coranar (Australia) Pty Ltd (QCA) - contract - marketing agreement - respondent granted permission to copy and obtain documents under appellant's control - appellant sought limitation on access to documents - appeal dismissed

Lake Vermont Marketing Pty Ltd v Coranar (Australia) Pty Ltd (No 2) (QCA) - judgments and orders - parties sought that paragraphs of Court's reasons be redacted - commercial sensitivity - confidentiality - public interest - certain redactions granted

GLS v Russell-Weisz (WASCA) - personal property - plaintiff entitled to require clinic to transport sperm from Western Australia to ACT - approval of Reproductive Technology Council of Western Australia not required - declarations granted

Summaries With Link (Five Minute Read)

Rush v Nationwide News Pty Ltd [2018] FCA 357

Federal Court of Australia

Wigney J

Defamation - pleadings - subpoena - amended interlocutory application - action arising from publications on billboard and in newspaper articles - applicant sought to strike out justification defence and three paragraphs of amended defence in purported relation to qualified privilege - applicant also sought that original defence be treated as confidential, that certain paragraphs of amended defence should remain confidential, to set aside subpoena served on Sydney Theatre Company and costs orders - whether particulars of justification defence 'inadequate and insufficient' - whether paragraphs of amended defence pleaded 'facts and allegations' irrelevant to qualified privilege defence - whether subpoena lacked legitimate forensic purpose - whether subpoena abuse of process - held: Court declined to continue interim confidentiality orders and refused further confidentiality orders - subpoena had no legitimate forensic purpose - subpoena was 'fishing' and an abuse of process - subpoena struck out - paragraphs of amended defence concerning qualified privilege struck out - defence of justification struck out due to 'deficiencies and inadequacies of the particulars of truth' - orders made.

[Rush](#)

Newell; Muriniti v De Costi [2018] NSWCA 49

Court of Appeal of New South Wales

Beazley P; Gleeson & White JJA

Costs - indemnification - legal practitioners - franchise agreements - District Court judge dismissed cross-claim brought by 'Wachtenheim parties' against 'De Costi parties' and Mr Schneider - judge ordered barrister and solicitor (appellants) who acted for Wachtenheim parties to indemnify De Costi parties against 50% of costs - appellants sought to appeal - whether erroneous finding appellants liable under s348 *Legal Profession Act 2004* (NSW) to indemnify De Costi parties - whether erroneous finding appellants liable under s99 *Civil Procedure Act 2005* (NSW) to provide indemnity against De Costi parties' costs - whether erroneous quantification of indemnity's extent - whether adverse inferences erroneously drawn against appellants - 'serious neglect, serious incompetence or serious misconduct' - *Jones v Dunkel* (1959) 101 CLR 298 - held: appeal allowed in part in each proceeding.

[View Decision](#)

Downer EDI Rail Pty Ltd v John Holland Pty Ltd; John Holland Pty Ltd v QBE Insurance (Australia) Ltd (No 5); Kellogg Brown & Root Pty Ltd v John Holland Pty Ltd (No 4) [2018] NSWSC 326

Supreme Court of New South Wales

Stevenson J

Benchmark

Contract - consumer law - insurance - maintenance centre provided services to trains - maintenance centre located on land Rail Corporation of New South Wales (RailCorp) owned - Council required stormwater detention system to be incorporated into maintenance centre - RailCorp contracted maintenance centre's design and construction to company (Reliance Rail) which sub-contracted design and construction to first plaintiff (Downer) and provision of "Through Life Services" to second plaintiff (EDI Rail) - EDI Rail was Downer's wholly owned subsidiary - Downer sub-subcontracted maintenance centre's design and construction to first defendant (John Holland) - alternative system to stormwater detention system adopted - John Holland sub-contracted alternative system's design to second defendant (Kellogg Brown & Root), and plastic cells' manufacture to third defendant (Atlantis Corporation Pty Ltd) - fourth defendant (QBE) was third defendant's insurer - dispute arose from alleged deficiencies in detention system - held: not open to Downer to complain against John Holland concerning manner of detention system's construction - Downer failed to prove collapse of carpark resulted from detention system's design, that detention system under rail area would not 'last its design life', that detention system under carpark would not have lasted design life if it didn't collapse no relevance to any alleged shortcomings in detention system's design - proceedings dismissed.

[View Decision](#)

Lake Vermont Marketing Pty Ltd v Coranar (Australia) Pty Ltd [2018] QCA 2

Court of Appeal of Queensland

Sofronoff P; Fraser JA & Mullins J

Contract - respondent and joint venturers entered joint venture agreement - appellant and respondent entered marketing agreement - other joint venture participants entered marketing agreement with appellant on substantially same terms - respondent sought to enforce appellant's obligation under marketing agreement to permit it to inspect and copy documents under appellant's control - appellant sought to limit respondent's use of documents - primary judge ordered appellant to allow respondent to inspect and copy documents - appellant appealed, seeking to limit access to documents for purpose of identifying whether it performed obligations under marketing agreement - appellant also sought confidentiality undertaking from persons accessing documents for that purpose - construction of terms of marketing agreement - held: appeal dismissed.

[Lake Vermont Marketing](#)

Lake Vermont Marketing Pty Ltd v Coranar (Australia) Pty Ltd (No 2) [2018] QCA 40

Court of Appeal of Queensland

Sofronoff P; Fraser JA & Mullins J

Judgments and orders - confidentiality - Court disposed of appeal in proceedings - parties sought that paragraphs of reasons of judgment should be redacted - 'commercial sensitivity' of agreements subject of proceedings - parties' 'confidentiality obligations' under agreements - public interest - held: parties had 'mechanically applied' contractual confidentiality stipulations without addressing whether public interest warranted redactions - certain redactions made,



fewer than sought by parties.

[Lake Vermont](#)

GLS v Russell-Weisz [2018] WASC 79

Supreme Court of Western Australia

Martin CJ

Personal property - plaintiff was de facto partner of deceased who died unexpectedly - plaintiff arranged for extraction of sperm from deceased's body for purposes of using it to conceive - permission granted for extraction under s22 *Human Tissue and Transplant Act 1982 (WA)* - sperm stored by licence holder of licence under *Human Reproductive Technology Act 1991 (WA)* - plaintiff sought declarations that she had right to direct clinic storing sperm to transfer it to ACT, that Reproductive Technology Council of Western Australia's approval not required to export the sperm, that if Directions of Chief Executive Officer of the Department of Health required Reproductive Technology Council of Western Australia's approval then Directions were invalid to that extent or should be read down so as not to require the approval - held: declarations granted.

[GLS](#)

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