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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)

The Dempsey Group Pty Ltd v Spotlight Pty Ltd (No 3) (FCA) - costs - copyright - Court ordered respondent to pay damages to applicant for loss of profits and of reputation - costs order reduced to take into account applicant's 'lack of success' - respondent to pay 65% of applicant's costs

Mylan Health Pty Ltd v Cipla Australia Pty Ltd (FCA) - intellectual property - patent - appellants sought 'interlocutory injunctive relief in appeal - application dismissed

Brose v Baluskas & Ors (No 2) (QDC) - costs - defamation - Court refused third, fifth and seventh defendants leave to replead honest opinion defences - third, fifth and seventh defendants to each pay one third of plaintiff's costs on indemnity basis

Cappello v Roads and Maritime Services & Anor. (NSWSC) - acquisition of land - environment and planning - 'proposed acquisition notices' were authorised - proceedings dismissed

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd (WASC) - stay - oppression - corporations - abuse of process - permanent stay of proceedings refused - stay granted pending payment of amount into Court - security for costs granted

Summaries With Link (Five Minute Read)

The Dempsey Group Pty Ltd v Spotlight Pty Ltd (No 3) [2019] FCA 519

Federal Court of Australia

Davies J

Costs - intellectual property - copyright - Court gave judgment in proceeding - Court ordered that respondent pay applicant damages for loss of profits and loss of reputation - applicant sought that respondent pay its costs of proceedings (except its costs of an interlocutory application) on party-party basis - respondent sought that applicant pay 50% of its costs on indemnity basis - whether applicant had 'substantial success' - whether costs order should be reduced to take into account applicant's 'lack of success' on 'infringement claims', 'additional damages claim' and failure to obtain damages in amount claimed - conduct - offer of settlement by respondent - whether to reduce costs pursuant to 40.08 *Federal Court Rules 2011* (Cth) (Rules) - r25.14(1) of the Rules - held: respondent to pay 65% of applicant's costs.

[The Dempsey Group](#)

Mylan Health Pty Ltd v Cipla Australia Pty Ltd [2019] FCA 506

Federal Court of Australia

Yates J

Injunction - intellectual property - patent - primary judge found appellant's 'claims in suit' invalid for 'lack of novelty' and 'lack of inventive step' - appellants sought 'interim injunctive relief' against respondents in appeal - whether appellant's appeal arguable - prospects of success - balance of convenience - s25(2B)(ab) *Federal Court of Australia Act 1976* (Cth) - held: application dismissed.

[Mylan](#)

Brose v Baluskas & Ors (No 2) [2018] QDC 239

District Court of Queensland

Muir DCG

Costs - defamation - third, fifth and seventh defendants sought leave to replead honest opinion defences - Court dismissed application - plaintiff sought that third, fifth and seventh defendants should 'be jointly and severally liable' for costs assessed on indemnity basis - fifth and seventh defendants sought separate costs orders against them - third defendant did not make submissions on costs and was bankrupt - rr681 & 703(1) *Uniform Civil Procedure Rules 1999* (Qld) - whether plaintiff sued defendants on basis they were jointly and severally liable - held: defendants had sought to maintain defence 'in the face of clearly established law' - plaintiff had given defendants notice that defence was 'hopeless and doomed to fail' - Court satisfied that third, fifth and seventh defendants should each pay one third of plaintiff's costs on indemnity basis.

[Brose](#)

Cappello v Roads and Maritime Services & Anor. [2019] NSWSC 439

Supreme Court of New South Wales

Campbell J

Acquisition of land - planning and environment - defendant issued acquisition notices ('proposed acquisition notices') under s11 *Land Acquisition (Just Terms) Act 1991* (NSW) - first and second plaintiffs were "landowners" who challenged proposed acquisition notices' validity - issue was whether defendant had 'statutory authority to acquire' plaintiffs' land - statutory interpretation - ss53, 63, 64, 71, & 177 *Roads Act 1993* (NSW) - *Environment and Planning Assessment Act 1979* (NSW) - held: Court satisfied the proposed acquisition notices were authorised - proceedings dismissed.

[View Decision](#)

Patrick Jebb as trustee for The Trafalgar West Investments Trust v Superior Lawns Australia Pty Ltd [2019] WASC 121

Supreme Court of Western Australia

Vaughan J

Stay - oppression - corporations - plaintiff alleged 'oppressive conduct' in first defendant's affairs - plaintiff sought relief under s233 *Corporations Act 2001* (Cth) - defendants sought that proceedings be stayed permanently for abuse of process, or that proceedings be stayed until payment into Court of 'earlier proceedings' 'likely taxed costs' - alternatively, defendants sought security for costs - in earlier proceedings, plaintiff had made oppression allegations which 'substantially' mirrored those in present proceedings - earlier proceedings 'deemed dismissed' on basis of want of prosecution - held: Court not satisfied proceedings' continuation abuse of process warranting proceedings' permanent stay - stay granted pending payment of earlier proceedings' likely taxed costs into Court - application for security for costs granted.

[Patrick Jebb](#)



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From: The Tempest

By: William Shakespeare, 1564 - 1616

Come unto these yellow sands,
And then take hands:
Court'sied when you have, and kiss'd,--
The wild waves whist--
Foot it featly here and there;
And, sweet sprites, the burthen bear.
Hark, hark!
Bow, wow,
The watch-dogs bark:
Bow, wow.
Hark, hark! I hear
The strain of strutting chanticleer
Cry, Cock-a-diddle-dow!

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