



Monday, 26 June 2017

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Shaw v Yarranova Pty Ltd (FCAFC) - bankruptcy - dismissal of application for annulment of bankruptcy under s153B *Bankruptcy Act 1966* (Cth) - appeal dismissed

Probuild Constructions (Aust) Pty Ltd v DDI Group Pty Ltd (NSWCA) - administrative law - building and construction - security of payments - prevention principle - no denial of procedural fairness in making of adjudication determination - appeal dismissed

Bhusal v Catholic Health Care (NSWSC) - judicial review - workers compensation - plaintiff sought review of adverse decision out of time under s44BB *Workers Compensation Act 1987* (NSW) - relief refused - amended summons dismissed

United Petroleum Pty Ltd v Bonnie View Petroleum Pty Ltd (In Liquidation) (No 2) (VSC) - costs - corporations - winding up - no 'exceptional circumstances' warranting costs order against liquidators personally - application refused

Wilson v Bauer Media (Ruling No 7) (VSC) - evidence - expert evidence - defamation - plaintiff permitted to adduce expert evidence by video link from the United States

Karam v Palmone Shoes Pty Ltd (VSCA) - accident compensation - proceeding suspended until applicant submitted himself for medical examination by independent examiner provided by Victorian WorkCover Authority - stay of order refused - appeal dismissed

Summaries With Link (Five Minute Read)

Shaw v Yarranova Pty Ltd [2017] FCAFC 88

Full Court of the Federal Court of Australia

North, Perry & Charlesworth JJ

Bankruptcy - primary judge dismissed appellant's application under s153B *Bankruptcy Act 1966* (Cth) for annulment of bankruptcy - appellant appealed - 75 grounds of appeal - appellant's primary contentions were that primary judge erred: by refusing to go behind judgments on which debts were based; in failing to find that solicitor acting without respondent's authority had issued bankruptcy and present creditor's petition; in dismissing applications for discovery and production; in finding appellant failed to establish he was solvent when sequestration order made; in findings as to appellant's conduct; and in giving inadequate reasons - onus - held: appellant's grounds of appeal misconceived proceedings' nature and did not appreciate 'significant onus' on him to show why bankruptcy should be annulled - appeal dismissed.

[Shaw](#)

Probuild Constructions (Aust) Pty Ltd v DDI Group Pty Ltd [2017] NSWCA 151

Court of Appeal of New South Wales

Beazley ACJ; McColl & Macfarlan JJA

Administrative law - building and construction - procedural fairness - natural justice - appellant appealed against primary judge's refusal to quash adjudication determination made by adjudicator under *Building and Construction Industry Security of Payment Act 1999* (NSW) in first respondent's favour, in which adjudicator rejected appellant's liquidated damages claim - appellant contended primary judge erred in finding there was no denial of procedural fairness in making determination - whether erroneous application of prevention principle - held: open to adjudicator to find plaintiff did not establish claim for liquidated damages - no denial of procedural fairness - appeal dismissed.

[Probuild Constructions](#)

Bhusal v Catholic Health Care [2017] NSWSC 838

Supreme Court of New South Wales

Button J

Judicial review - workers compensation - plaintiff was injured worker who was required under s44BB *Workers Compensation Act 1987* (NSW) to seek review of adverse decision 30 days after she 'received' notice of it - plaintiff stated in form she signed that she had received notice of adverse decision on 2 May 2016 - document seeking review was dated 7 June 2016 - evidence placed before court was that plaintiff 'did not personally become aware of the adverse decision until 2 June 2016' - question was whether plaintiff should be granted relief against State Insurance Regulatory Authority Workers Compensation Merit Review Office's refusal to entertain plaintiff's application for review of adverse decision - held: plaintiff did not establish basis for relief sought - amended summons dismissed.

[Bhusal](#)

United Petroleum Pty Ltd v Bonnie View Petroleum Pty Ltd (In Liquidation) & Ors (No 2) [2017] VSC 334

Supreme Court of Victoria

Kennedy J

Costs - corporations - winding up - Court gave judgment for plaintiff in proceedings - plaintiff sought that defendants' liquidators pay plaintiff's costs of the proceeding - plaintiff contended that liquidators' conduct occasioned the litigation, that counterclaim would not have been to advantage of defendants' winding up even if successful, that liquidators did not seek or obtain Court's independent advice or directions and that liquidators' conduct caused unnecessary costs - s24 *Supreme Court Act 1986* (Vic) - held: Court not satisfied that 'exceptional circumstances' had been established - Court not satisfied that costs should be ordered against liquidators personally - application refused.

[United Petroleum](#)

Wilson v Bauer Media (Ruling No 7) [2017] VSC 357

Supreme Court of Victoria

John Dixon J

Evidence - expert evidence - defamation - plaintiff sought to adduce expert evidence by video link from witness resident in United States - whether evidence admissible - whether probative value of evidence was 'substantially outweighed by the risk that it might cause undue waste of time at trial' - ss55, 56, 76, 79, 135 *Evidence Act 2008* (Vic) - held: plaintiff permitted to adduce experts evidence by video link.

[Wilson](#)

Karam v Palmone Shoes Pty Ltd [2017] VSCA 145

Court of Appeal of Victoria

Ashley & Osborn JJA

Accident compensation - applicant sought accident compensation from respondent former employer - judge ordered that, pursuant to s112 *Accident Compensation Act 1985* (Vic), proceeding was to be suspended until applicant submitted himself for medical examination by independent examiner provided by Victorian WorkCover Authority - applicant sought stay of order and to appeal against order, contending it was not open to the judge to make the order - held: applicant failed to establish that appeal had prospects of success - leave to appeal refused - stay of order refused.

[Karam](#)

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