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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)

Hamex Corporation Pty Ltd v Latrobe Street Ventures Pty Ltdz (No 2) (FCA) - transfer of proceedings - wills and estates - plaintiffs sought transfer of proceedings to Supreme Court of Victoria - interests of justice - proceedings transferred

Meetfresh Franchising Pty Ltd v Ivanman Pty Ltd (NSWCA) - stay - Court found in first respondent's favour in proceedings - appellant sought stay pending appeal - stay granted on condition appellant pay judgment sum into Court

Small v Phillips (No 3) (NSWCA) - costs - indemnity costs - wills and estates - succession - 'protective jurisdiction' - Court allowed appeal in proceedings - determination of costs

United Pacific Finance Pty Ltd (Receivers and Managers Appointed) v Govindasamy (NSWSC) - contract - deeds - loan - assignment - limitations - plaintiff sought to recover amounts from defendant allegedly 'payable under two loans' from company to defendant - proceedings dismissed

Tsamis v Victoria (No 8) (Costs) (VSC) - costs - defamation - jury entered verdict of plaintiff in proceedings - determination of costs - orders made

Coober Pedy Roadhouse Pty Ltd v District Council of Coober Pedy & Ors (SASC) - judicial review - planning and development - plaintiff sought extension of time and leave to bring judicial review action - application granted

Ezekiel-Hart v Ikoro (No 2) (ACTSC) - costs - leases and tenancies - unjust enrichment -

refusal of application for leave to appeal - applicant to pay respondent's costs in fixed sum

Summaries With Link (Five Minute Read)

Hamex Corporation Pty Ltd v Latrobe Street Ventures Pty Ltdz (No 2) [2020] FCA 199

Federal Court of Australia

Anderson J

Transfer of proceedings - wills and estates - proceedings concerned dispute between second plaintiff and fourth defendant father of second plaintiff - second plaintiff and fourth defendant were co-executors of deceased estate of fourth defendant's mother and co-trustees of trusts which deceased's 'Last Will and Testament' ('Will') established - second plaintiff and fourth defendant were beneficiaries under Will - plaintiffs, under *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth), sought transfer of proceeding to Supreme Court of Victoria - whether in interests of justice to transfer proceeding - delay - issues concerning 'composition of the executorship and trusteeship under the Will' - fourth defendant's 'poor health' - held: proceedings transferred.

[Hamex](#)

Meetfresh Franchising Pty Ltd v Ivanman Pty Ltd [2020] NSWCA 27

Court of Appeal of New South Wales

Macfarlan JA

Stay - first respondent brought action against appellant - Court found in first respondent's favour and dismissed appellant's cross-claim - appellant sought stay pending appeal on basis there was 'real risk' that judgment debt, if paid to first respondent, would not be recoverable if appellant's appeal succeeded - prejudice - *Alexander v Cambridge Credit Corporation Ltd* (1985) 2 NSWLR 685 - held: Court satisfied that risk was established constituting reason to grant stay - stay grant on condition appellant pay judgment sum into Court.

[View Decision](#)

Small v Phillips (No 3) [2020] NSWCA 24

Court of Appeal of New South Wales

Brereton & McCallum JJA; Emmett AJA

Costs - wills and estates - succession - 'protective jurisdiction' - Court allowed appeal in proceedings - appellant granted order under s18 *Succession Act 2006* (NSW) for making of statutory will of Mrs Phillips - determination of costs - parties agreed all parties' costs to be paid from Mrs Phillips' estate, and that third and fourth respondents' costs be paid on indemnity basis - first and second respondent accepted that payment of their costs should be on ordinary basis - whether appellant's costs should be paid on ordinary or indemnity basis - public interest - appellant's 'personal interest' in proceedings' outcome - held: appellant's costs to be paid on indemnity basis out of Mrs Phillips' estate - orders made.

[View Decision](#)

United Pacific Finance Pty Ltd (Receivers and Managers Appointed) v Govindasamy [2020] NSWSC 128

Supreme Court of New South Wales

Henry J

Contract - deeds - loan - assignment - limitations - plaintiff sought to recover amounts from defendant allegedly 'payable under two loans' from company (FEA) to defendant to enable defendant to invest in 'Plantations Projects' - plaintiff claimed it was assignee of FEA's rights concerning loans - whether FEA and defendant entered loan agreements - if FEA and defendant entered loan agreements, whether the agreements were 'binding deeds of loan or loan contracts' - whether plaintiff established loan funds were advanced to defendant or on behalf of defendant - whether plaintiff was 'time-barred' from recovering amounts from defendant - whether 'valid and binding deeds of loan' created by defendant's execution of 'finance application forms' - whether defendant entered loan contracts in relation to finance for 'Plantation Projects' and, if so, whether funds advanced under contracts - held: proceedings dismissed.

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Tsamis v Victoria (No 8) (Costs) [2020] VSC 67

Supreme Court of Victoria

John Dixon J

Defamation - costs - jury gave verdict for plaintiff in proceedings - defendant required to pay plaintiff \$90,000 - parties agreed that Court allow interest at 3% per annum on judgment from date of proceedings' issue until date of judgment - determination of costs reserved on application 'made shortly before' trial's commenced and costs of proceedings - defendant sought that Court make 'partial costs order' in plaintiff's favour on basis jury had only supported claim in respect of some imputations and one of two publications - 'pre-trial hearing' - s40 *Defamation Act 2005* (Vic) - whether unreasonable failure by defendant to make settlement offer - whether to grant indemnity costs order - whether in interests of justice to make partial costs order - *Chen v Chan* [2009] VSCA 233 - held: orders made.

[Tsamis](#)

Coober Pedy Roadhouse Pty Ltd v District Council of Coober Pedy & Ors [2020] SASC 25

Supreme Court of South Australia

Parker J

Judicial review - planning and development - plaintiff, under r 200(2) *Supreme Court Civil Rules 2006* (SA), sought extension of time and leave to bring judicial review action in respect of 'impugned decisions' of first defendant - *Development Act 1993* (SA) - *Local Government Act 1999* (SA) - delay - prospects of success - prejudice - 'important questions of statutory interpretation' - Council's failure to publish notice of approval of development application - held: application granted.

[Coober](#)



Ezekiel-Hart v Ikoro (No 2) [2020] ACTSC 31

Supreme Court of the Australian Capital Territory

Murrell CJ

Costs - leases and tenancies - unjust enrichment - applicant sought leave to appeal against Magistrate's orders out of time - Court refused application - determination of costs - r1720(3)(c) *Court Procedures Rules 2006* (ACT) - whether to grant respondent order for costs in sum fixed by Court - held: applicant to pay respondent's costs - fixed sum costs order granted.

[Ezekial-Hart](#)

Benchmark

On an Hour-Glass

By: John Hall (1627–1656)

MY life is measur'd by this glass, this glass
By all those little sands that thorough pass.
See how they press, see how they strive, which shall
With greatest speed and greatest quickness fall.
See how they raise a little mount, and then
With their own weight do level it again.
But when th' have all got thorough, they give o'er
Their nimble sliding down, and move no more.
Just such is man, whose hours still forward run,
Being almost finish'd ere they are begun;
So perfect nothings, such light blasts are we,
That ere we're aught at all, we cease to be.
Do what we will, our hasty minutes fly,
And while we sleep, what do we else but die?
How transient are our joys, how short their day!
They creep on towards us, but fly away.
How stinging are our sorrows! where they gain
But the least footing, there they will remain.
How groundless are our hopes, how they deceive
Our childish thoughts, and only sorrow leave!
How real are our fears! they blast us still,
Still rend us, still with gnawing passions fill;
How senseless are our wishes, yet how great!
With what toil we pursue them, with what sweat!
Yet most times for our hurts, so small we see,
Like children crying for some Mercury.
This gapes for marriage, yet his fickle head
Knows not what cares wait on a marriage bed:
This vows virginity, yet knows not what
Loneness, grief, discontent, attends that state.
Desires of wealth another's wishes hold,
And yet how many have been chok'd with gold?
This only hunts for honour, yet who shall
Ascend the higher, shall more wretched fall.
This thirsts for knowledge, yet how is it bought?
With many a sleepless night, and racking thought.
This needs will travel, yet how dangers lay
Most secret ambuscados in the way?
These triumph in their beauty, though it shall



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Like a pluck'd rose or fading lily fall.
Another boasts strong arms: 'las! giants have
By silly dwarfs been dragg'd unto their grave.
These ruffle in rich silk: though ne'er so gay,
A well-plum'd peacock is more gay than they.
Poor man! what art? A tennis-ball of error,
A ship of glass toss'd in a sea of terror;
Issuing in blood and sorrow from the womb,
Crawling in tears and mourning to the tomb:
How slippery are thy paths! How sure thy fall!
How art thou nothing, when th' art most all!

[https://en.wikipedia.org/wiki/John_Hall_\(poet\)](https://en.wikipedia.org/wiki/John_Hall_(poet))

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