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Weekly Business Law

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Executive Summary (1 minute read)

Pfizer Ireland Pharmaceuticals v Sandoz Pty Ltd (FCA) - patent - prospective applicants sought preliminary discovery from prospective respondent - application dismissed

Hewatt Pty Ltd v Orange City Council (NSWSC) - security of payments - defendant sought separate determination of merits of plaintiff's claim *Building and Construction Industry Security of Payment Act 1999* (NSW) - notice of motion dismissed

The Trust Company Ltd v Visa Global Logistics Pty Ltd (No 3) (NSWSC) - privilege - lease - plaintiff sought production of documents discovered by defendant - defendant claimed legal professional privilege over documents - privilege claim upheld

Castle v Perisher Blue Pty Limited (NSWSC) - negligence - consumer law - collision between plaintiff skier and ski instructor employed by defendant - judgment for defendant

DPG Project 33 Pty Ltd & Anor v Aqualand Chatswood 3 Pty Ltd & Anor (NSWSC) - contract - "Notice of Exercise of Option" served by developer on plaintiffs was 'effective to cause' options' assignment to assignee

State of Victoria v Kozarov (VSCA) - accident compensation - respondent claimed against appellant for damages arising from injuries sustained during employment in 'Specialist Sexual Offences Unit' of Victorian Office of Public Prosecutions - appeal against judgment in respondent's favour allowed

Summaries With Link (Five Minute Read)

Pfizer Ireland Pharmaceuticals v Sandoz Pty Ltd [2020] FCA 1648
Federal Court of Australia
Burley J
Patent - prospective applicants ('Pfizer'), under r7.23 *Federal Court Rules 2011* (Cth) (FCR), sought preliminary discovery from prospective respondent ('Santoz') - whether requirements of r7.23(1)(a) FCR met - whether application misconceived - whether to exercise discretion in r7.23(2) FCR in Pfizer's favour - s37AF(1)(b) *Federal Court of Australia Act 1976* (Cth) - s119A *Patents Act 1990* (Cth) - held: application dismissed.
Pfizer
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Hewatt Pty Ltd v Orange City Council [2020] NSWSC 1662
Supreme Court of New South Wales
Stevenson J
Security of payments - separate question - parties entered agreement for works concerning expansion of airport - defendant terminated agreement following plaintiff's 'entry into voluntary administration' - plaintiff, 'evidently now out of administration', sought judgment for sum on basis of its service of payment claim under *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payment Act), or damages for contractual breach, or 'on quantum meruit' - defendant sought, under r28.2 *Uniform Civil Procedure Rules* 2005 (NSW), sought separate determination of merits of plaintiff's claim under Security of Payment Act - held: notice of motion dismissed.
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The Trust Company Ltd v Visa Global Logistics Pty Ltd (No 3) [2020] NSWSC 1666
Supreme Court of New South Wales
Hammerschlag J
Privilege - lease - plaintiff was premises' landlord - defendant was tenant - plaintiff sought rectification of lease - plaintiff sought production of documents discovered by defendant - defendant claimed legal professional privilege over documents - whether waiver - whether documents' production necessary 'to enable a proper understanding of documents' concerning which there had been 'earlier voluntary waiver of privilege' - ss122(2) & 126 *Evidence Act 1995* (NSW) - held: privilege claim upheld.
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Castle v Perisher Blue Pty Limited [2020] NSWSC 1652
Supreme Court of New South Wales
Cavanagh J

Negligence - consumer law - proceedings arising from collision between plaintiff skier and ski instructor employed by defendant - plaintiff contended ski instructor's negligence caused collision and defendant vicariously liable - whether collision caused by ski instructor's negligence - whether contributory negligence - whether skiing "dangerous recreational activity" - whether "obvious risk" - whether defence under s5L *Civil Liability Act 2002* (NSW) (CLA) established - whether 'relevant risk warning' was 'risk warning' under s5M CLA - whether failure to comply with 'consumer guarantee under' s60 *Competition and Consumer Act 2010* (Cth) (CCA) - s139A CCA - contract - 'exclusion of liability' - "reckless conduct" - held: judgment for defendant.
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DPG Project 33 Pty Ltd & Anor v Aqualand Chatswood 3 Pty Ltd & Anor [2020] NSWSC 1663
Supreme Court of Supreme New South Wales
Stevenson J
Contract - plaintiffs held options 'from 20 property owners' on proposed development's site - options subject to 'Option Holder Deed' ('Deed') between plaintiffs, first defendant developer and second defendant assignee - proceedings concerned Deed's 'proper construction' - 'critical question' was whether "Notice of Exercise of Option" ('Notice') served by developer on plaintiffs effectively enlivened developer's right under clause of Deed and caused equitable assignment of options to assignee - held: Notice 'effective to cause' options' assignment to assignee.
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State of Victoria v Kozarov [2020] VSCA 301
Court of Appeal of Victoria
Beach & Kaye JJA; Macaulay AJA
Accident compensation - respondent formerly employed by Victorian Office of Public Prosecutions - respondent worked in 'Specialist Sexual Offences Unit' - respondent claimed against appellant for personal injury damages arising from injuries sustained during employment in 'Specialist Sexual Offences Unit' - respondent claimed negligence, breach of contract and breach of statutory duty - primary judge gave judgment for respondent - appellant appealed - whether 'relevant 'evident signs' warning of' possibility of 'plaintiff suffering psychiatric injury' - causation - whether plaintiff established that, had appellant taken 'steps specified by' primary judge, the steps would have prevented respondent's psychiatric injury - held: appeal allowed.
State of Victoria
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Summer Night

By: Alfred, Lord Tennyson

NOW sleeps the crimson petal, now the white;
Nor waves the cypress in the palace walk;
Nor winks the gold fin in the porphyry font:
The firefly wakens: waken thou with me.

Now droops the milk-white peacock like a ghost,
And like a ghost she glimmers on to me.

Now lies the Earth all Danaë to the stars,
And all thy heart lies open unto me.

Now slides the silent meteor on, and leaves
A shining furrow, as thy thoughts in me.

Now folds the lily all her sweetness up,
And slips into the bosom of the lake:
So fold thyself, my dearest, thou, and slip
Into my bosom and be lost in me.

https://en.wikipedia.org/wiki/Alfred,_Lord_Tennyson

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