



Friday, 18 October 2024

## Weekly Defamation Law

A Weekly Bulletin listing Decisions  
of Superior Courts of Australia covering Defamation Law

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### Executive Summary (One Minute Read)

**Farrell v Super Retail Group Limited (Cross-claim)** (FCA) - cross-claim seeking to have solicitors restrained from acting for the applicants dismissed

## HABEAS CANEM

Peace



# Benchmark

## Summaries With Link (Five Minute Read)

### **Farrell v Super Retail Group Limited (Cross-claim) [2024] FCA 1189**

Federal Court of Australia

Lee J

Solicitors' duties - a dispute arose between two senior employees of SRG and that company - the employees commenced separate proceedings, claiming that a binding settlement of the dispute had been reached - SRG and others cross-claimed, seeking to enjoin the applicants' solicitors from acting for them - SRG contended that there was the possibility of defamation actions by third parties against the applicants and their solicitors arising out of a purported "emergency disclosure" under s1317AAD of the *Corporations Act 2001* (Cth) and a related media statement made by the solicitors, and that the solicitors therefore had an interest in avoiding such liability - SRG also contended that the authorisation of the emergency disclosure may be found to have been repudiatory conduct that entitled SRG to terminate the applicant's employment, and the solicitors may therefore be liable in negligence for failure to advise - held: the Court has an implied jurisdiction to restrain legal representatives from acting in a particular case, as an aspect of its supervisory jurisdiction - the test is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a representative be prevented from acting in the interests of the protection of the integrity of the judicial process and the appearance of justice - the applicants had rationally formed the view that persons acting or purporting to act to promote the interests of SRG had suggested to at least one journalist that SRG believed they were engaged in some form of "shakedown" of a public company - it was against the background of such public suggestions that the solicitors for the employees had made the purported "emergency disclosure" and media statement - the approach to any conflict must be applied realistically to a state of affairs in assessing whether it discloses a real conflict of duty and interest and not to something theoretical or a rhetorical conflict - the possibility of defamation proceedings was no higher than a non-fanciful possibility - a more obvious conflict arose due to the fact that, despite advice given by the solicitors to the contrary, the media statement was expressly not a protected disclosure, meaning that SRG was not prevented, under Pt 9.4AAA of the *Corporations Act*, from enforcing contractual rights against the applicants in connexion with the media statement - however, although the solicitors had a reputational interest in having their advice not scrutinised, the Court was not convinced that this will cause any practical difficulty in the conduct of the case - cross-claim dismissed.

[Farrell](#)

[From Benchmark Friday, 18 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Aquino v Bondfield Construction Co (SCC)** - The fraudulent intent of a senior employee, found to be the directing mind of companies, can be attributed to the companies in a bankruptcy proceeding

### Summaries With Link (Five Minute Read)

#### **Aquino v Bondfield Construction Co 2024 SCC 31**

Supreme Court of Canada

Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Jamal, & O'Bonsawin JJ

The President of two family-owned construction companies had for years fraudulently taken tens of millions of dollars from the companies through a false invoicing scheme. In subsequent bankruptcy proceedings against the companies, the payments made under the invoicing scheme were challenged under the *Bankruptcy and Insolvency Act*. Under the Act, money paid by the debtor can be recovered if the transfers were made at undervalue with the intent to defraud creditors. The lower court concluded that these were payments made at undervalue with fraudulent intent. The bankrupt entities contended that the payments were made to creditors and that fraudulent intent was not present. The Court held that the executive's fraudulent intent could be attributed to the bankrupt companies and that the money should be paid back. The Supreme Court (Jamal J, joined by Wagner CJ, Karakatsanis, Côté, Rowe, Martin, O'Bonsawin JJ) dismissed the appeal and held that the courts could find that a debtor intended to defraud creditors even if the debtor was not insolvent at the time of the undervalue transfers. Specifically, the executive's fraudulent intent should be attributed to the debtor companies because he was their directing mind. The Supreme Court stated that the test for corporate attribution is simply whether the executive was the directing mind of the business and whether the actions were performed within the corporate responsibility assigned to him. If so, the fraudulent intent of the executive could be attributed to the corporation.

[Aquino](#)



## Poem for Friday

### In My Craft or Sullen Art

By Dylan Thomas (1914-1953)

In my craft or sullen art  
Exercised in the still night  
When only the moon rages  
And the lovers lie abed  
With all their griefs in their arms,  
I labour by singing light  
Not for ambition or bread  
Or the strut and trade of charms  
On the ivory stages  
But for the common wages  
Of their most secret heart.  
Not for the proud man apart  
From the raging moon I write  
On these spindrift pages  
Nor for the towering dead  
With their nightingales and psalms  
But for the lovers, their arms  
Round the griefs of the ages,  
Who pay no praise or wages  
Nor heed my craft or art.

**Dylan Marlais Thomas**, poet, writer and broadcaster, was born on 27 October 1914 in Swansea, Glamorgan, Wales. His well-known works include *Under Milk Wood*, "a play for voices", *Do not go gentle into that good night*, and, *And death shall have no dominion*. He loved Wales but was not a Welsh nationalist. His father wrote that he was "*afraid Dylan isn't much of a Welshman*". Robert Lowell, wrote of criticism of Thomas' greatness as a poet, "Nothing could be more wrongheaded than the English disputes about Dylan Thomas's greatness...He is a dazzling obscure writer who can be enjoyed without understanding." The Welsh Academy Encyclopedia of Wales described him, and particularly his life in New York City before his death as a "roistering, drunken and doomed poet."

**Dylan Thomas** reads "In My Craft or Sullen Art"

<https://www.youtube.com/watch?v=Tiw3uOT2eUc>

Read by **Colin McPhillamy**, actor and playwright. Colin was born in London to Australian



parents. He trained at the Royal Central School of Speech and Drama in London. In the UK he worked in the West End, at the Royal National Theatre for five seasons, and extensively in British regional theatre. In the USA he has appeared on Broadway, Off-Broadway and at regional centres across the country. Colin has acted in Australia, China, New Zealand, and across Europe. Colin is married to Alan Conolly's cousin Patricia Conolly, the renowned actor and stage

actress: [https://en.wikipedia.org/wiki/Patricia\\_Conolly](https://en.wikipedia.org/wiki/Patricia_Conolly) and <https://trove.nla.gov.au/newspaper/article/47250992>.

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