



Friday, 30 August 2024

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

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Executive Summary (One Minute Read)

Farrell v Super Retail Group Limited (Confidentiality Applications) (FCA) - Court largely rejected a wide application for suppression orders

Daynes v I-MED Central Queensland Pty Ltd (NSWSC) - employer had not been entitled to summarily dismiss radiologist - damages awarded

Ferris v Sanguine Investment Managers LLC (NSWSC) - judgments of a Qatari Court recognised by the NSW Supreme Court in an employment dispute

HABEAS CANEM

McGregor the puppy



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Summaries With Link (Five Minute Read)

Farrell v Super Retail Group Limited (Confidentiality Applications) [2024] FCA 954

Federal Court of Australia

Lee J

Confidential information - a dispute arose between two senior employees of SRG and that company - one of the employees commenced proceedings, claiming that a binding settlement of the dispute had been reached - the Court now determined an application for a suppression order by SRG - held: the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice which is a statutory obligation pursuant to s37AE of the *Federal Court of Australia Act 1976* (Cth) - a confidentiality or suppression order is not justified simply because it may be "convenient, reasonable or sensible", and nor is it sufficient that a confidentiality order may be viewed as serving "some notion of public interest" - parties and witnesses must accept the embarrassment, damage to reputation and the possible consequential loss which can be inherent in litigation - assessing whether to make an order does not involve some form of balancing exercise weighing up, on the one hand, the interests of open justice and, on the other hand, the prejudice which may occur if information is released - the necessity of an order for a relevant purpose must be demonstrated - whether a suppression order is necessary has to be judged by reference to all the circumstances, including what relevant information is already in the public domain - the best point for SRG was that it fell between two stools: if the case has settled as alleged by the employee, it would have been entitled to enforce a confidentiality term; if it has not, then settlement discussions would not have been revealed - however, this was just the inevitable and sometimes potentially embarrassing by-product of a specific performance suit over an alleged settlement agreement, being a type of litigation which, perforce, allows for the adduction into evidence of material that would, but for the nature of the suit, been subject to settlement privilege - the better course was for final confidentiality orders to be made for a limited time, but on an entirely different basis than had been by SRG.

[Farrell](#)

[From Benchmark Friday, 30 August 2024]

Daynes v I-MED Central Queensland Pty Ltd [2024] NSWSC 1064

Supreme Court of New South Wales

Cavanagh J

Employment law - the plaintiff was a very experienced radiologist, who obtained specialist registration as a radiologist in 1987 and worked in that capacity until 2022, when his employment was summarily terminated by the defendant following complaints about his behaviour - he claimed damages for wrongful termination - held: the starting point for an assessment of whether summary dismissal was justified is the terms of the contract of employment - however, the general law of summary dismissal is relevant to determining the contract's proper construction - the right of an employer to terminate the employment of an employee summarily or without notice is a right that should only arise in exceptional

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circumstances, which will generally involve some form of serious wrongdoing or misconduct - the court will construe the employment contract reasonably and purposefully, having regard to the fact that it could not have been the intention of the parties that an employer would have an unfettered or broad right to summarily dismiss an employee in respect of just any breach of the employment contract - describing something as bullying does not of itself lead to a particular result, and the fact that a particular act of an employee might fall within the meaning of bullying as defined in a particular workplace handbook may not of itself justify summary dismissal - the defendant bears the onus of proving those matters of fact on which it relies to justify its termination, and it must prove those matters to a high degree of satisfaction, having regard to *Briginshaw v Briginshaw* - the Court was unable to be satisfied to the required standard that the plaintiff engaged in conduct of a sexual nature at a Christmas party - the plaintiff's conduct had also fallen short of bullying - the Court did not consider that the plaintiff had engaged in serious misconduct as that term is understood, as set out in the relevant clause of the contract - the conduct engaged in by the plaintiff had not entitled the defendant to dismiss the plaintiff without notice - damages of about \$367,000 awarded.

[View Decision](#)

[From Benchmark Monday, 26 August 2024]

Ferris v Sanguine Investment Managers LLC [2024] NSWSC 1073

Supreme Court of New South Wales

Schmidt AJ

Private international law - there was a dispute about Ferris' employment by SIM - there was litigation in Qatar, which the parties settled - the settlement agreement was reflected in orders of the First Instance Circuit, Civil and Commercial Court of the Qatari International Court and Dispute Resolution Centre - Ferris later obtained further orders from the same Court requiring SIM and a director of SIM to disclose their assets worldwide, and against both SIM and the director for contempt of that Court - Ferris sought orders from the NSW Supreme Court recognising the five judgments of the Qatari Court - held: the Court was satisfied that Ferris had entered into a deed of settlement with SIM and its director, which compromised aspects of the proceedings which he had brought in Qatar - the settlement agreement contained a term giving the Qatari Court exclusive jurisdiction in relation to that agreement and any legal action or proceedings arising out of it - none of the agreed payments were made under the settlement agreement - the Court was satisfied that the summons and supporting affidavit were served on both the director in Australia and on SIM in Qatar - the Court was satisfied that the evidence established that service has been effected on the director in accordance with r20.26 of the *Uniform Civil Procedure Rules 2005* (NSW), the director being a person who keeps house at the address at which he had been served, in accordance with the requirements of r20.26 - Ferris should have leave to proceed against SIM as a foreign company - there was a real issue about the enforcement of the Qatari judgments in Australia - the evidence did not suggest that the NSW Supreme Court was a clearly inappropriate forum for the enforcement of the judgments and orders of the Qatari Court - further, Ferris had a real issue to pursue in respect of their enforcement in Australia - at common law, a foreign judgment is prima facie capable of



recognition and enforcement if (1) the foreign court exercised jurisdiction of the requisite type over the defendant (also known as jurisdiction 'in the international sense'); (2) the judgment was final and conclusive; (3) there was identity of parties between the judgment debtors and the defendants in any enforcement action; and (4) the judgment was for a fixed, liquidated sum - the Court was satisfied of each of those matters - orders made recognising the Qatari judgments.

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[From Benchmark Thursday, 29 August 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd (UKSC) - Manchester Ship Canal company was not barred from bringing a common law damages claim for trespass and nuisance against a public utilities company that discharged raw, untreated and foul sewage into the canal from outfalls lawfully maintained by the sewerage authority

Summaries With Link (Five Minute Read)

Manchester Ship Canal Co v United Utilities Water Ltd [2024] UKSC 22

Supreme Court of the United Kingdom

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Burrows, Lord Stephens, Lady Rose, Lord Richards

In a declaratory ruling, the Supreme Court was asked to decide whether the Manchester Ship Canal Company could bring a claim against the statutory sewerage authority for discharges of foul sewage into the canal. The defendant, United Utilities, was the statutory sewerage authority for North West England and owned about 100 outfalls from which treated sewage was discharged into the canal. However, sometimes untreated sewage was discharged into the canal as well. No allegation was made that the discharge of untreated sewage was caused by negligence. However, it could have been avoided through improved infrastructure. The High Court, upheld by the Court of Appeal, found that a canal owner could not bring a claim based on nuisance or trespass against a sewerage operator unless the discharge was the result of negligence or deliberate wrongdoing. The Supreme Court unanimously allowed the Canal Company's appeal. Sewerage is regulated by the *Water Industry Act 1991* and the Supreme Court held that nothing in the legislation permitted or authorised a sewerage authority to discharge foul water through outfalls. Inasmuch as the statute did not authorise the activity, common law remedies were available. The Court rejected the defence that the only way to avoid fouling the canal would be to construct sewerage infrastructure and that was a matter for Parliament. The Court found that there was nothing in the legislation indicating that Parliament intended to extinguish common law rights of action. While an injunction against further discharge presented questions relating to the process of regulatory approval for capital expenditures by the sewerage authority, that did not mean that common law-based awards for damages for invasion of property rights were precluded.

[Manchester Ship Canal Co](#)



Poem for Friday

i carry your heart with me

by e.e. cummings (1894-1962)

i carry your heart with me (i carry it in
my heart) i am never without it (anywhere
i go you go, my dear; and whatever is done
by only me is your doing, my darling)

i fear

no fate (for you are my fate, my sweet) i want
no world (for beautiful you are my world, my true)
and it's you are whatever a moon has always meant
and whatever a sun will always sing is you

here is the deepest secret nobody knows
(here is the root of the root and the bud of the bud
and the sky of the sky of a tree called life; which grows
higher than soul can hope or mind can hide)
and this is the wonder that's keeping the stars apart

i carry your heart (i carry it in my heart)

Edward Estlin Cummings (e.e. cummings), an American poet, essayist and playwright was born on 14 October 1894 in Cambridge Massachusetts. His parents encouraged his creativity, and included in their circle of friends artists, philosophers and writers. Cummings's father was a professor at Harvard, and later a minister of the Unitarian church. Cummings wrote poetry from the age of 8. Cummings was an ambulance driver during the first world war. He was interned in a camp in Normandy in the first world war, for having expressed anti-war sentiments. During his life he wrote about 2900 poems. He returned to Paris many times throughout his life. It has been written of Cummings that "No one else has ever made avant-garde, experimental poems so attractive to the general and the special reader," and "Cummings is a daringly original poet, with more vitality and more sheer, uncompromising talent than any other living American writer."

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 and <https://trove.nla.gov.au/newspaper/article/47250992>.

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