



Friday, 28 June 2024

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

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Executive Summary (One Minute Read)

Hunt Leather Pty Ltd v Transport for NSW (No 5) (NSWSC) - unsuccessful defendant in complex nuisance action ordered to pay 65% of the plaintiffs' costs

HABEAS CANEM

First beach holiday



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Summaries With Link (Five Minute Read)

Hunt Leather Pty Ltd v Transport for NSW (No 5) [2024] NSWSC 776

Supreme Court of New South Wales

Cavanagh J

Costs in nuisance cases - Transport for NSW planned, designed, and managed the construction of the Sydney Light Rail from Circular Quay to Randwick and Kensington - major roads were closed during construction, which was prolonged for over a year beyond that contemplated - a CBD business and a Kensington business commenced representative proceedings on behalf of all persons who had suffered from either private nuisance or public nuisance during construction - the businesses succeeded in their claim for private nuisance (see Benchmark 21 July 2023) - the Court now then answered common questions regarding the litigation funding arrangements (see Benchmark 26 February 2024) - the Court now determined costs - held: the Court has a broad discretion to award costs under s98(1) of the *Civil Procedure Act 2005* (NSW) - r42.1 of the *Uniform Civil Procedure Rules 2005* (NSW) provides that costs will follow the event unless it appears that some other order should be made as to the whole or any part of the costs - at least generally, the corporate plaintiffs have won, as they had succeeded in nuisance and recovered substantial damages, and the fact that one of the corporate plaintiffs did not succeed in respect of one of the two stores for which it sought damages did not mean that that plaintiff did not succeed - generally, in a case as complex as this which had interwoven issues, the Court will not apportion costs between successful and failed issues, particularly if it cannot be said that the issue on which the successful party failed took up a significant portion of the hearing time - costs are not punitive and a party should not be discouraged from pursuing all issues at the same time but, when there is some clear identification of matters on which the otherwise successful party has not succeeded, it may be appropriate to vary the usual costs order - the Court did not accept the position urged by the defendant, that the Court should the individual plaintiffs' claims in public nuisance with the corporate plaintiffs' claims in private nuisance and then assess what costs order should be made based on the number of stores involved, which would lead to the plaintiffs recovering only one third of their costs - the Court also did not accept the position urged by the plaintiffs that the costs involved in the issues on which the plaintiff did not succeed would be de minimis - subject to some more general apportioning exercise, the plaintiffs should be ordered to pay the defendant's costs in respect of and relating to the common questions regarding the funding arrangements - otherwise, the defendant to pay 65% of the plaintiffs' costs.

[View Decision](#)

[From Benchmark Wednesday, 26 June 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

United States v Rahimi (SCOTUS) - Federal statute that prohibits individuals who are subject to a domestic violence restraining order from firearm possession does not violate the Second Amendment right to keep and bear arms

Summaries With Link (Five Minute Read)

United States v Rahimi 602 US __ (2024)

United States Supreme Court

In an 8-1 decision (Thomas, J dissenting), the Supreme Court upheld the validity of what are known as 'red flag' laws that prohibit firearm possession by domestic abusers. During a dispute with his girlfriend, Rahimi fired a gun that he kept in his car. She obtained a restraining order from a court in Texas. The Texas Court further suspended Rahimi's gun license for two years on the grounds that the violence was likely to occur again. During this period, Rahimi threatened additional women with a gun and was a suspect in an additional five shootings. When police searched his home, they found firearms, ammunition, and a copy of the restraining order. Rahimi was indicted for violating a federal statute that prohibits firearm possession while subject to a domestic violence restraining order. Rahimi claimed that the statute was unconstitutional because it established a restriction on the right to keep and bear arms that was not part of firearm regulation at the time the Second Amendment was adopted in the 18th Century. The District Court rejected this argument, but the US Court of Appeals agreed that the statute was unconstitutional. In the opinion by Roberts CJ, the Court pulled back from a purely historical approach to gun rights. The Chief Justice stated that recent court decisions expanding firearm rights 'were not meant to suggest a law trapped in amber'. By this the Court moved away from the history and tradition test and recognised that the Second Amendment permits regulations that may not have existed in 1791. The Court held that, while the right to keep and bear arms was a fundamental right, prohibitions on going armed were accepted as part of the common law at the time the Second Amendment was adopted. The Court said that the statute only prohibited possession while the restraining order was in effect and where a court had found that the individual represented a credible threat to the physical safety of others in a domestic situation.

[United States v Rahimi](#)

Poem for Friday

Adlestrop

By Edward Thomas (1878-1917)

Yes. I remember Adlestrop
The name, because one afternoon
Of heat the express-train drew up there
Unwontedly. It was late June.

The steam hissed. Someone cleared his throat.
No one left and no one came
On the bare platform. What I saw
Was Adlestrop only the name

And willows, willow-herb, and grass,
And meadowsweet, and haycocks dry,
No whit less still and lonely fair
Than the high cloudlets in the sky.

And for that minute a blackbird sang
Close by, and round him, mistier,
Farther and farther, all the birds
Of Oxfordshire and Gloucestershire.

Edward Thomas, an English poet biographer, author, essayist, and critic was born on 3 March 1878, the son of Welsh parents, a railway clerk, politician and preacher Phillip Thomas, and Mary Townsend. His connection to Wales was important throughout his life. He was described by Aldous Huxley as "*one of England's most important poets*". Thomas wrote poetry from 1914, when he was 36, encouraged by his new neighbour, the then relatively unknown Robert Frost. During his life, his only published poetry was *Six Poems* (1916) under the pseudonym Edward Eastaway. Thomas struggled with the burden of constant production of what some critics described as "hack work" to support his family, and the work he wished to produce. At times he was reviewing up to 15 books each week. He made many attempts at suicide, suffering marital disharmony and depression. Adlestrop is considered one of Thomas' finest poems. The poem describes the ordinary circumstances of Thomas' train from Paddington to Malvern, stopping at Adlestrop station at 12:15pm with images of the surrounding English countryside. However the poem elicits profound feelings in the reader through those descriptions. Thomas was killed in the Battle of Arras, in France on 9 April 1917, having enlisted for service in the British infantry in 1915. Ted Hughes described Thomas as "*the father of us*"

all’.

Adestrop by Edward Thomas, composed by Susanna Self- the third of six “Songs of Immortality”

<https://www.youtube.com/watch?v=2NYUdo12yfg>

Reading by Patricia Conolly. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world’s leading theatrical centres. She has worked extensively in her native Australia, in London’s West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love’s Labour’s Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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