



Friday, 18 October 2024

## Weekly Family Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering family law

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### Executive Summary (One Minute Read)

**Sarkozy & Sarkozy (No 3)** (FedCFamC1A) - appeal against parenting orders dismissed

## HABEAS CANEM

Peace



# Benchmark

## Summaries With Link (Five Minute Read)

### **Sarkozy & Sarkozy (No 3) [2024] FedCFamC1A 178**

Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction

Austin, Williams, & Schonell JJ

Parenting - the parties had five children, two of whom still lived with them upon their separation - not long after separation, the father and the children returned to live at the family home but, following the mother choking one child, he and the children again moved elsewhere - a single expert said the mother was suffering from a mental health disorder which was fuelling her erratic behaviour and caused her to pose "an unacceptable risk [of harm]" to the children - the primary judge ordered the father have sole parental responsibility, for the children to live with him, and for them to spend only very confined time with the mother once every three months under supervision - the mother was authorised to correspond with the children, but was restrained from attending the children's church, school, and other extra-curricular events - the mother appealed - held: an adjournment of time to allow the mother to file further evidence should be refused - the mother could not clearly identify the further documents she wanted to adduce, besides those rejected by the primary judge at the start of the trial and more records from the children's school - the mother could not explain how further school records could make any difference to the outcome of the appeal - the mother's complaint that the primary judge had been biased did not make clear whether this was actual or apprehended - this was a significant lacuna as the tests for each are quite different - the primary judge had not shown bias by allowing the parties' eldest child to remain in Court before her cross-examination, as she was not cross-examined at all - the primary judge had not prejudged the mental health issue - the primary judge's refusal of an adjournment application did not result in the mother being denied procedural fairness - the mother was afforded the opportunity to present her own case and to challenge the case made against her by the father and the ICL, which is the basal requirement of procedural fairness - allegations of factual errors by the mother did not identify the facts said to be mistaken - the mother had failed to explain how the primary judge failed to adequately assess the reliability of the father's evidence - the primary judge's acceptance of the single expert's evidence was thoroughly explained in the reasons for judgment - appeal dismissed.

[Sarkozy & Sarkozy \(No 3\)](#)

[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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