



Friday, 30 August 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)

Min & Orton (No 3) (FedCFamC1F) - application for adjustment of property dismissed where no principled basis had been shown to disturb the parties' existing property interests

HABEAS CANEM

McGregor the puppy



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Summaries With Link (Five Minute Read)

Min & Orton (No 3) [2024] FedCFamC1F 387

Federal Circuit and Family Court of Australia (Division 1) First Instance
Harper J

Property - before marriage, the parties entered into a financial agreement which was expressed to be a Pt VIIIAB Financial Agreement pursuant to s90UB of the *Family Law Act 1975* (Cth) applying to parties in a relationship prior to marriage - after separation, the wife commenced property proceedings seeking division of the property pool pursuant to s79 of the *Family Law Act* - the husband sought the rectification of the agreement on the basis that it was mutually intended to apply during both the de facto relationship and a subsequent marriage - the Court had found that the husband had failed to establish that, at the time the Agreement was executed, there was a common intention that it would continue to operate if the parties married, and dismissed the application for rectification - held: the Court is required to make orders which are not only "just and equitable" but also "appropriate" - it is necessary to begin consideration of whether it is just and equitable to make a property settlement order by identifying, according to ordinary common law and equitable principles, the existing legal and equitable interests of the parties in the property - the under s79 must be exercised in accordance with legal principles and must not proceed on an assumption that the parties' interests in the property are or should be different from those determined by common law and equity - the cessation of common use of property by the parties, and their express or implicit assumptions that existing arrangements of marital property interests were sufficient or appropriate during the marriage, are some indication that a property adjustment order would be just and equitable - a written financial agreement, which is not binding so as to oust the Court's jurisdiction, may still be relevant as evidence of what the parties intended and of the financial arrangements in place at the time it was made, and subsequently, but is not determinative - the parties' subjective intentions regarding the agreement could properly be taken into account in ways which were not inconsistent with the findings and decision previously made regarding the agreement - the wife had allowed the husband to provide an affluent lifestyle and financial largesse on the basis of what was, according to her, a mistaken belief on the part of the husband that the parties had a mutual understanding about keeping their property interests separate - the Court was unable to find that admitted taunts by the husband made the wife's contributions significantly more difficult so as to justify any adjustment in her favour or otherwise support a conclusion that adjusting the parties' existing property interests would be just and equitable - the Court was not satisfied that any deficiencies in disclosure warranted any particular finding adverse to the husband - the relationship had been relatively short, and there had been no practical union of lives and property - no principled basis had been shown to disturb the parties' existing property interests - wife's application dismissed.

[Min & Orton \(No 3\)](#)

[From Benchmark Friday, 30 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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