

Friday, 14 December 2018

## Weekly Wills Estates and Superannuation Law Selected Bulletins covering Weekly Wills Estates and Superannuation Law

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### Executive Summary (1 minute read)

**Macras v Nulis Nominees (Australia) Limited** (FCA) - administrative law - superannuation - appeal against Superannuation Complaints Tribunal's affirmation of decisions of insurer and trustee - appeal dismissed

**Australian Education Union v Royal Melbourne Institute of Technology** (FCA) - industrial law - application for interlocutory relief concerning 'voting process' in relation to 'proposed agreement' - application dismissed

**Esined No 9 Pty Limited v Moylan Retirement Solutions Pty Ltd; P&S Kauter Investments Pty Ltd ATF the Kauter Superannuation Fund v Moylan Retirement Solutions Pty Ltd; Graeme Manning v Arch Underwriting At Lloyds Limited on Behalf of Syndicate 2012** (NSWSC) - evidence - hearsay rule - corporations - insurance - evidence sought to be adduced by plaintiffs was an admission - evidence admissible

**Epov v Epov** (NSWSC) - costs - family provision - defendant did not have excuse for failing to comply with orders of Hallen J - defendant to 'personally pay' plaintiff's costs of proceedings she brought to enforce judgment

**Mekhail v Hana; Mekail v Hana; In the Estate of Nadia Mekhail (No 4)** (NSWSC) - judgments and orders costs - injunctions - Court granted probate of testator's will to defendant and dismissed plaintiffs' claims for family provision - costs determined - injunctions over property continue pending appeal - orders and directions

## Summaries With Link (Five Minute Read)

### **Macras v Nulis Nominees (Australia) Limited [2018] FCA 1867**

Federal Court of Australia

Davies J

Administrative law - superannuation - Superannuation Complaints Tribunal affirmed second respondent insurer's decision that it could not determine applicant's entitlement to 'total and permanent disablement and/or income protection benefits', and first respondent trustee's decision not to decide on benefits' payment to applicant until insurer had decided on applicant's claims - Tribunal found decisions "fair and reasonable in the circumstances" - applicant appealed against Tribunal's determination pursuant to s46 *Superannuation (Resolution of Complaints) Act 1993* (Cth) - whether insurer had right under policy 'to ask for further proof or information' from applicant - whether evidence for insurer's position that it 'required further information' - whether trustee had right under trust deed not to make decision until insurer made decision - whether Tribunal made finding concerning whether applicant had made full disclosure - held: grounds of appeal failed - appeal dismissed.

[Macras](#)

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### **Australian Education Union v Royal Melbourne Institute of Technology [2018] FCA 1985**

Federal Court of Australia

Wheelahan J

Interlocutory injunction - industrial law - applicant claimed respondent made misleading representations in 'information package' concerning "RMIT Vocational Education Workplace Agreement 2018" ('proposed agreement') - applicant claimed respondent contravened s345(1) *Fair Work Act 2009* (Cth) (Fair Work Act) and s18 Australian Consumer Law - applicant sought interlocutory concerning 'voting process' in relation to proposed agreement's approval - whether prima facie case established concerning 'representations about superannuation entitlements' and/or 'representations about attendance times' - balance of convenience - whether 'arguable case' concerning 'mental element' under s345 Fair Work Act - balance of convenience - held: application dismissed.

[Australian Education Union](#)

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### **Esined No 9 Pty Limited v Moylan Retirement Solutions Pty Ltd; P&S Kauter Investments Pty Ltd ATF the Kauter Superannuation Fund v Moylan Retirement Solutions Pty Ltd; Graeme Manning v Arch Underwriting At Lloyds Limited on Behalf of Syndicate 2012 [2018] NSWSC 1706**

Supreme Court of New South Wales

Slattery J

Evidence - corporations - insurance - Molan Retirement Solutions Pty Ltd (Moy=lan) was an 'investment advisor', now deregistered - plaintiffs were former clients of Molan - plaintiffs

brought 'three related sets of proceedings'- some proceedings brought in 2012 and 2013 - other proceedings brought after Moylan's deregistration in 2014 - plaintiffs joined underwriters as defendants under 'professional indemnity insurance policies' which Molan held - in proceedings brought in 2015, underwriters were joined directly by plaintiffs - proceedings advanced against underwriters under s601AG *Corporations Act 2001* (Cth) - plaintiffs sought to adduce statements by Molan's principal to some plaintiffs - whether evidence admissible - whether statements were 'admissions' under s81 *Evidence Act 1995* (NSW) - whether to admit evidence as 'evidence of the truth of what is asserted' - whether evidence excluded by hearsay rule - held: Court satisfied statements were an admission - evidence admissible.

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### **Epov v Epov [2018] NSWSC 1819**

Supreme Court of New South Wales

Kunc J

Costs - family provision - proceedings concerned enforcement of orders of Hallen J - under 'Principal Judgment' plaintiff was found entitled to receive legacy from part of proceeds of property's sale - defendant refused to pay plaintiff the legacy to which she was entitled - plaintiff commenced present proceedings to enforce orders - defendant conceded payment of funds should be made to plaintiff's solicitor - defendant explained that delay in payment was due to concerns about plaintiff's capacity and 'how the funds would be 'personally pay' her costs of proceedings on indemnity basis - held: defendant did not have excuse for failing to comply with orders of Hallen J's orders - plaintiff's application granted.

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### **Mekhail v Hana; Mekail v Hana; In the Estate of Nadia Mekhail (No 4) [2018] NSWSC 1788**

Supreme Court of New South Wales

Slattery J

Judgments and orders - costs - injunctions - wills and estates - family provision - Court granted probate of testator's will to defendant and dismissed plaintiffs' claims for family provision - determination of costs - whether unsuccessful plaintiffs' costs should be paid from deceased's estate - whether plaintiffs unreasonable to reject Calderbank offers made by defendant - rr42.20, 42.21 *Uniform Civil Procedure Rules 2005* (NSWSC) - held: costs determined - injunctions over property continue pending appeal - orders and directions made.

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## **Summer Wind**

**By:** William Cullen Bryant

It is a sultry day; the sun has drunk  
The dew that lay upon the morning grass;  
There is no rustling in the lofty elm  
That canopies my dwelling, and its shade  
Scarce cools me. All is silent, save the faint  
And interrupted murmur of the bee,  
Settling on the sick flowers, and then again  
Instantly on the wing. The plants around  
Feel the too potent fervors: the tall maize  
Rolls up its long green leaves; the clover droops  
Its tender foliage, and declines its blooms.  
But far in the fierce sunshine tower the hills,  
With all their growth of woods, silent and stern,  
As if the scorching heat and dazzling light  
Were but an element they loved. Bright clouds,  
Motionless pillars of the brazen heaven—  
Their bases on the mountains—their white tops  
Shining in the far ether—fire the air  
With a reflected radiance, and make turn  
The gazer's eye away. For me, I lie  
Languidly in the shade, where the thick turf,  
Yet virgin from the kisses of the sun,  
Retains some freshness, and I woo the wind  
That still delays his coming. Why so slow,  
Gentle and voluble spirit of the air?  
Oh, come and breathe upon the fainting earth  
Coolness and life! Is it that in his caves  
He hears me? See, on yonder woody ridge,  
The pine is bending his proud top, and now  
Among the nearer groves, chestnut and oak  
Are tossing their green boughs about. He comes;  
Lo, where the grassy meadow runs in waves!  
The deep distressful silence of the scene  
Breaks up with mingling of unnumbered sounds  
And universal motion. He is come,  
Shaking a shower of blossoms from the shrubs,  
And bearing on their fragrance; and he brings  
Music of birds, and rustling of young boughs,  
And sound of swaying branches, and the voice  
Of distant waterfalls. All the green herbs



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Are stirring in his breath; a thousand flowers,  
By the road-side and the borders of the brook,  
Nod gayly to each other; glossy leaves  
Are twinkling in the sun, as if the dew  
Were on them yet, and silver waters break  
Into small waves and sparkle as he comes.  
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