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Update Summary

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NSW CIVIL PROCEDURE

JP Hamilton, G Lindsay and C Webster

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Uniform Civil Practice Rules 2005 (Annotated)

Commentary by Dr Sonya Willis

Recent authority supporting the principles applied in exercising the court's discretion to may make whatever use of the referee's report it thinks fit, are discussed. See [r 20.24.60].

The *Trans-Tasman Proceedings Act 2010* (Cth) does not apply proceedings for contempt of court such that a subpoena to produce in such proceedings is not governed by the Act. See [r 32.3.80].

In *LFDB v Deputy District Registrar* [2024] FCA the Court held that the judge in the decision being appealed had not erred in holding that "the fact the power in s 68(1) had been reposed in a court meant that it must be characterised as judicial" and that, even if the Registrar lacked jurisdiction to make the order, this made the decision voidable not void. See [r 32.8.60].

The existence of litigation between the parties in Australia contributes to Australia being appropriate for registration pursuant to s 6(2) of the *Foreign Judgments Act 1997* (Cth): *Michael Wilson & Partners Ltd v Emmott* [2024] NSWSC 1258. See [r 53.2.20].

An ex parte application, pursuant to r 53.2(3), to register a foreign judgment must include evidence that the judgment creditor is entitled to enforce the judgment in the original country and the extent to which the judgment remains unsatisfied. See [r 53.2.80].

In *Michael Wilson & Partners Ltd v Emmott* [2024] NSWSC 1258 the Court stayed registration of foreign judgments on the basis that s 6(6)(b) of the *Foreign Judgments Act 1997* (Cth) should have precluded their registration at the time of registration due to ongoing set off proceedings in the foreign country. See [r 53.3.80].

In *Michael Wilson & Partners Ltd v Emmott* [2024] NSWSC 1258, the Court noted that, pursuant to r 53.3, the judgment creditor must provide evidence of its entitlement to enforce a foreign judgment and the extent to which the judgment remained unsatisfied and that these were factors for the Court to consider in determining whether the registration could occur ex parte. See [r 53.3.100].

The failure of notice by the judgment creditor is a relevant factor in the decision to stay or set aside registration of enforcement proceedings. See [r 53.7.120].

Commentary by Mandy Tibbey, Barrister

Recent examples of variation of the freezing order in changed circumstances are provided. See [r 25.11.20].

For an example of where "apparent dishonesty" was found see r 25.11.20].

Re Summit Hotel Bondi Beach Pty Ltd (No 2) [2023] NSWSC 487 is an example of where refusal to accept a reasonable carve out proposal whilst the freezing order application was before the Court was taken into account in awarding costs. See [r 25.17.20].

NSW Trustee and Guardian v Payne [2024] NSWSC 1371 involved Hmelnitsky J determining for the purpose of r 54.3(2)(b) whether a couple were a de facto couple with consequences for distribution of an intestate estate. See [r 54.3.20].

Commentary by Joanne Shepard, Barrister

The position of the receiver appointed over trust assets, regarding the drawing of their remuneration, is addressed at [r 26.4.20].

A recent distillation of the relevant principles and authorities relevant in determining an application to approve the remuneration of a receiver are set out in *Stojanovski v Stojanovski* [2023] NSWSC 1645. See [r 26.4.40].

It is noted that the dual appointment as receiver and manager over trust assets does not absolve a liquidator from the need to obtain an order from the Court in the exercise of its inherent equitable jurisdiction permitting payment of the liquidator's remuneration in an amount determined by the Court to be reasonable remuneration. See [r 26.4.60].

The requirement to produce and pass accounts may be dispensed with in certain circumstances. See [r 26.5.40].

If a subpoena is oppressive in its terms, it is not for the Court to redraft it and, in those circumstances, the subpoena will be set aside in full. See [r 33.4.160].

The application and scope of "apparent relevance" as a "touchstone" (cf "test") for production, and other principles, is extensively reviewed in *Health Administration Corporation v Toll Global Forwarding Pty Ltd* [2024] NSWSC 285. See [r 34.2.40].

It had been the practice in New South Wales for contentious evidence of conversations or oral statements to be presented in the form of direct speech. Note that there has been conflicting authority as to whether the principles set out in *Kane's Hire Pty Ltd v Anderson Aviation Australia Pty Ltd* [2023] FCA 381 apply in proceedings in the New South Wales Supreme Court. See [r Pt35.40].

Practice Notes

[SC Gen 17] Practice Note SC Gen 17 – SC Gen 17 - Supreme Court Representative Proceedings ("Class Actions")

This Practice Note replaces the Practice Note SC Gen 17 issued on 31 July 2017 and commences on 1 August 2024.

[SC Gen 22] Pronunciation of Names and Forms of Address

This Practice Note is relatively new and was issued 12 April 2024 and commenced 22 April 2024.

[SC Eq 4] Practice Note SC Eq 4 – Corporations List

This Practice Note was issued on 10 October 2024 and commenced on 17 October 2024. It replaces former Practice Note SC Eq 4 issued on 13 October 2023.

[LPN 3] Local Court Practice Note Civ 1 – Case Management of Civil Proceedings in the Local Court

This Practice Note, as amended, commences on 3 June 2024.