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VICTORIAN COURTS

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Updated commentary has been provided by **John Leung**:

Orders 26-40

Updated:

- A defendant's offer to pay a sum to the plaintiff "inclusive of interest" and the plaintiff's taxed costs was not ambiguous. See ***Selak v National Tiles Co Pty Ltd (No 5) [2024] VSC 504***, at [CPR26.02.120]
- The existence and content of any reasons justifying why the offer ought to be accepted will be relevant to the Court's determination of whether the offer was unreasonably rejected. See ***Selak v National Tiles Co Pty Ltd (No 5) [2024] VSC 504***, at [CPR26.08.20]
- The court found no error in a finding that the plaintiff's offer of compromise was such that the defendants were unable to make any meaningful assessment of the quantum of the claim against them. See ***Cargill Australia v Viterro Malt Pty Ltd [2023] VSCA 301***, at [CPR26.08.40].

Orders 57-63A

Updated:

- Priest JA surveyed the authorities and summarised the Court's general approach to applications to security for costs. See ***Yara Australia Pty Ltd v Oswal [2013] VSCA 156; (2013) 41 VR 245***, at [CPR62.02.20]
- Security was required where the plaintiff did not have assets in Australia. See ***ETG International Ltd v Century Group Aus Pty Ltd [2022] VSC 586***, at [CPR62.02.140]
- The court's role should not involve forensic accounting skills or such expert evidence to assess whether the corporation would be unable to pay an adverse costs order. See ***Roth Morgan Kolomanski Pty Ltd v Candlebrush Investments Pty Ltd [2018] VSC 288***, at [CPR62.02.180]
- Heytey AsJ summarised the approach to discounting. See ***Bogan v Smedley [2023] VSC 105***, [CPR62.02.360]
- Further work was required to be undertaken due to the interaction of French law with the defendant's local discovery obligations. See ***Jabiru Satellite Ltd (In liq) (recs & mgrs apptd) vs Societe Generale [2024] VSC 411***, at [CPR62.02.360]
- Guarantees or undertakings by company directors or interested parties are often provided or required where the plaintiff is impecunious. See ***DIF III Global Co-Investment Fund, LP v BBLP LLC [2016] VSC 401***, at [CPR62.03.20].

New and updated commentary has been provided by **Gerard Nash** and **Sandra Karabidian**:

Orders 64–85

Updated:

- In determining whether interlocutory relief should be granted pending appeal it is not the role of the court to express any view on the strength or weakness of the appeal. See *Yeshiva Synagogue Inc v Karimbla Properties (No. 10) Pty Ltd* [2017] NSWCA 331, at [CPR64.0.440]
- The appellant was permitted to raise on appeal a ground not raised in the court, in circumstances where the respondent did not object. See *DAJ22 as Litigation Representative for DAJ22 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 1677, at [CPR64.0.1080]
- For the appellate court to purport to evaluate the credibility of witnesses was to usurp the function of the jury. See *R v ZT* [2025] HCA 9, at [CPR64.0.1280].
- If there is a proper explanation for the delay, then the interests of justice ordinarily require an extension of time be granted. See *Slaveski v State of Victoria* [2009] VSCA 6, at [CPR77.06.40]
- The introduction of new evidence on appeal is a matter for the judge hearing the appeal and not entitlement to the appealing party. See *Wadren Pty Ltd v AIG Australia* [2024] VSC 807, at [CPR77.06.100]
- The majority decision considered the history of legal mechanisms available to redress the abuses. See *Bird v DP* (2024) 419 ALR 552; [2024] HCA 41, at [CPR85.02.20]

New:

- **Consolidation of appeals**, has been inserted, at [CPR 64.0.1360]
- **Intervening in an appeal**, has been inserted, at [CPR 64.0.1380]
- **Time for notice of appeal**, has been inserted, at [CPR77.06.60]
- **Investments on separate account**, has been inserted, at [CPR79.08.20]

New commentary has been provided by **Nicholas Bird**:

Supreme Court (Miscellaneous Civil Proceedings) Rules 2018

New:

- **Commencing a proceeding in the commercial list**, has been inserted, at [SCMCPR2.01.10]
- **Commencing a proceeding in the judicial review and appeals list**, has been inserted, at [SCMCPR4.01.10]

