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Daily Banking

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Executive Summary (1 minute read)

Zurich Insurance PLC UK Branch v International Energy Group Ltd (UKSC) - negligence - insurance - employee with mesothelioma - insurer's liability to indemnify employer - rule of proportionate recovery - appeal allowed

Adisan Pty Ltd v Irwin (NSWCA) - contract - loan agreement - consumer law - guarantee did not extend to cover amended loan facility - appeal dismissed

National Australia Bank v McCarthy (NSWSC) - stay - stay of writ of possession of property in bank's favour refused

Sullivan v Greyfriars Pty Ltd (VSCA) - summary dismissal - application for summary dismissal of application for leave to appeal - applicant given final opportunity to comply with Court orders - application adjourned

Hall v ASIC (VSC) - corporations - company restored to register of companies

Summaries With Link (Five Minute Read)

Zurich Insurance PLC UK Branch v International Energy Group Ltd [2015] UKSC 33
Supreme Court of the United Kingdom
Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption, Lord Reed, Lord Carnwath & Lord Hodge
Negligence - insurance - employee was negligently exposed to asbestos dust by employer - employee contracted mesothelioma - before his death from mesothelioma employee sued respondent as successor in title of employer and recovered compensation - during the 27 years of employee's exposure employer had two identifiable liability insurances one of which was with Midland Assurance Ltd - appellant (Zurich) was successor to Midland - appellant maintained it was only liable to meet 22.08% of respondent's loss and defence costs because Midland only insured employer for 6/27ths of 27 year period - trial judge ordered Zurich to meet 22.08% of compensation but 100% of defence costs - Court of Appeal ordered Zurich to pay 100% of both compensation and defence costs - Zurich appealed - appeal was from Guernsey where there was no equivalent of *Compensation Act 2006,* which had reversed ruling in *Barker v Corus* [2006] UKHL 20 that each employer was only liable pro rata to period which exposure by it bore to total of all periods of exposure - held: rule of proportionate recovery established in *Barker* remained part of common law in Guernsey - Zurich's appeal allowed in respect of compensation but dismissed in relation to defence costs - trial judge's order restored.
Zurich

Adisan Pty Ltd v Irwin [2015] NSWCA 217
Court of Appeal of New South Wales
Beazley ACJ, Meagher & Gleeson JJA
Contract - guarantee and indemnity - loan agreement between appellant lender and borrower - loan agreement guaranteed by six co-guarantors including respondent - borrower failed to pay money on agreed date - terms of loan renegotiated - proposed amendments included provision of mortgage over property owned by company and guarantee from company - lender, borrower and company agreed that company's liability as guarantor limited to amount realised from sale of property - Deed of Variation executed by appellant, borrower, guarantors and company - agreement as to company's liability not disclosed in Deed or otherwise - borrower failed to pay money due - appellant required payment from guarantors - respondent contended he was discharged from liability as guarantor because of agreement to cap company's liability - primary judge found in favour of respondent - held: respondent not liable as guarantor for money not paid in accordance with original loan facility - guarantee provided for extension of its application to cover amended facility with guarantor's consent - respondent's execution of Deed not effective to extend guarantee to cover moneys due under loan contract as varied as lender, in obtaining respondent's consent by execution of Deed, did not disclose that 'proposed new loan contract' included agreement to cap company's liability - statement in Deed reasonably to be understood as representing that company agreed to guarantee whole obligations of borrower, which was a misleading representation - however respondent not likely to suffer damage from

conduct as guarantee did not extend to cover amended facility - appeal dismissed.
Adison

National Australia Bank v McCarthy [2015] NSWSC 1040
Supreme Court of New South Wales
Adamson J
Stay - possession - defendant sought stay of writ of possession of property in respect of which bank had obtained default judgment - interests of justice - delay - whether arguable defence on the merits - *Contracts Review 1980* (NSW) - abuse of process - held: no arguable defence on the merits established - no proper basis to set aside default judgment - notice of motion dismissed.
National

Sullivan v Greyfriars Pty Ltd [2015] VSCA 196
Court of Appeal of Victoria
Whelan & McLeish JJA
Summary dismissal - respondent owned company title block of units in which applicant owed shares entitling him to occupy unit - series of disputes arose - associate judge dismissed appeal on question of law from order of Magistrate's Court that applicant pay sum to respondent - respondent sought dismissal of application for leave to appeal - held: there had been repeated non-compliance with Court orders for filing draft notice of appeal - grounds on which applicant sought to prosecute any appeal entirely unclear - applicant's defaults not inordinate - difficult personal circumstances excused defaults - respondent had not sought to establish prejudice - grounds raised before Court which might be embraced by applicant not fanciful - applicant granted one last opportunity to comply with Court orders - application for summary dismissal adjourned.
Sullivan

Hall v ASIC [2015] VSC 362
Supreme Court of Victoria
Sifris J
Corporations - plaintiffs sought order pursuant to s230 *Companies Act 1928* (Vic) (1928 Act) that company be restored to register because its deregistration as preventing a multi-lot property development - if company re-registered under 1928 Act plaintiffs would seek to have company brought within current Corporations legislation - held: application was many decades after deregistration but not out of time and specifically permitted and reserved - Court's jurisdiction survived repeal of 1928 Act - it was just that the company be restored to register - company restored to register of companies.
Hall

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