



Thursday 23 October 2014

Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

In the matter of David Ireland Productions Pty Ltd (NSWSC) - corporations - company wound up on just and equitable ground

Makrypodis v Eleisawy (NSWSC) - real property - extension of caveats pending final determination of proceedings

ILC Group v Sydney Water Corporation (NSWSC) - security for costs against corporate plaintiff refused

Commonwealth Bank of Australia Ltd v Klapanis (VSC) - mortgage - joinder of third party for purposes of pursuing rights under *Wrongs Act 1958* (Vic)

Hartnett & Hartnett v Taylor (Costs) (VSC) - costs - testator's family maintenance - indemnity costs awarded due to executors' conduct

Kronenberg v Bridge (TASFC) - building contract - misleading conduct by builder - loss of chance to pursue more advantageous contract - damages

Summaries with links (5 minute read)

In the matter of David Ireland Productions Pty Ltd [2014] NSWSC 1411

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiffs sought that company be wound up under ss459A, 459P, 461(1)(k), 462 & 472 *Corporations Act 2001* (Cth) on just and equitable ground due to breakdown in relationship between its directors - held: company no longer undertaking activities for which it was incorporated - evidence was that company had effectively ceased to trade - relationship between directors had broken down and they could no longer work together - continuance of parties' association would be futile - just and equitable that company be wound up.

[In the matter of David Ireland Productions Pty Ltd](#)

Makrypodis v Eleisawy [2014] NSWSC 1429

Supreme Court of New South Wales

Lindsay J

Real property - caveats against dealings - plaintiffs sought order pursuant to s74K *Real Property Act 1900* (NSW) that operation of seven caveats, affecting seven distinct lots of land of which land developer was registered proprietor, be extended pending final determination of summons in which each plaintiff respectively claimed in relation to his or her particular contract for purchase of land - held: Court satisfied plaintiffs' claims *may have substance* within meaning of s74K(2) - extension of operation of caveats was appropriate - sufficiently seriously arguable case for final relief to justify maintenance of caveats.

[Makrypodis](#)

ILC Group v Sydney Water Corporation [2014] NSWSC 1407

Supreme Court of New South Wales

McDougall J

Security for costs - dispute arising from contract between parties under which corporate plaintiff agreed to 'maintain' properties owned by first defendant Sydney Water - contract superseded by further contract between plaintiff and second defendant - plaintiff claimed work performed by it exceeded, in substance, what had been suggested as an appropriate basis for tender in documents that gave rise to the contract - plaintiff claimed defendants were obliged on proper construction of contracts to measure, or remeasure, relevant areas accurately and thus to work out amounts actually payable - defendants sought security for costs - common ground corporate plaintiff would be unable to meet adverse costs order - held: individuals who stood behind company had given a personal guarantee with respect to any order as to costs made against plaintiff and undertaking to the court not to dissipate their assets - sufficient justice as to security for costs if applications dismissed on basis of guarantee and undertaking.

[ILC Group](#)

Commonwealth Bank of Australia Ltd v Klapanis [2014] VSC 532

Supreme Court of Victoria

Derham AsJ

Joinder - bank sued defendant on guarantee and supporting mortgage securing payment of loan made to a company - third party (Dunemann) sought leave to join another company (Zaia) as a second third party to proceedings - sole purpose of addition of company was to enable third party to pursue its rights under Pt IVAA *Wrongs Act 1958* (Vic) - Dunemann did not pursue any claims against Zaia for financial contribution or indemnity and sought no relief from it - application made to ensure Zaia was party to proceeding in order that Court could take into account its conduct in determining what liability, if any, should be attributable to Dunemann for defendant's alleged loss - whether joinder too late - held: appropriate to allow joinder on basis of prejudice to Dunemann in denying it statutory limitation of its liability under proportionate liability of Pt IVAA - joinder allowed.

[Commonwealth Bank of Australia Ltd](#)

Hartnett & Hartnett v Taylor (Costs) [2014] VSC 501

Supreme Court of Victoria

Sifris J

Costs - Court found plaintiffs should have been left one-third each of net estate of late mother - plaintiffs sought indemnity costs due to defendants' conduct as executors - plaintiffs submitted that, in relation to the only real issue of estrangement, defendants did not have any genuine grounds or evidence to contend they were responsible for the estrangement with consequence they were not entitled to any part of the estate - plaintiffs contended evidence was clear that estrangement was direct result of deceased's alcohol dependency - held: defendants' evidence and contentions in relation to deceased's alcohol consumption and estrangement from plaintiffs was made in wilful disregard of known facts and ought never have been made - sufficient basis for order for indemnity costs.

[Hartnett](#)

Kronenberg v Bridge [2014] TASFC 10

Full Court of the Supreme Court of Tasmania

Blow CJ; Porter & Pearce JJ

Building contract - appellants signed contract with respondent builder for building home - appellants contended contract contained fixed price and that they were overcharged, or that handwritten additions to contract allowed price to be varied within reasonable parameters with result they were still overcharged, or that there was no effective contract, or mutual and/or unilateral mistake, or that if court found there was a cost plus contract, they were misled by builder - s14 *Fair Trading Act 1990* (NSW) - primary judge held there was no binding contract between parties because they failed to reach agreement as to what was to be paid to builder - builder was entitled



to an amount, as fair and reasonable price for work done, which was greater than amount paid by plaintiffs - court was not satisfied appellants established what if any loss they suffered as consequence of entering into arrangement with builder - claims dismissed - builder successful on counterclaim - held: Court satisfied builder engaged in misleading conduct with result appellants lost chance of entering into a more advantageous contract for construction of a house on their land - damages assessed for contravention of Fair Trading Act - builder's proportionate liability defence on basis of architect's responsibility failed - appeal allowed.

[Kronenberg](#)

[Click Here to access our Benchmark Search Engine](#)