

Tuesday, 3 March 2015

Insurance, Banking, Construction & Government 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)

Allianz Australia Insurance Ltd v Moo Ok Park (NSWSC) - motor accidents compensation - past economic loss - inadequate reasons – assessor's decision quashed (I G)

Bonifacio v NSW Trustee and Guardian acting as executor of the Estate of the late Woitala (NSWSC) – limitations – causes of action arising from fraudulent transfer of property statute-barred (I B)

Falkingham v Peninsula Kingswood Country Gold Club (VSCA) – costs – unsuccessful appellant – no order as to costs of appeal, notice of contention and appellants' summonses (I B C)

Majet v Goggin & Miller as Trustees of the Bankrupt Estate of Brett-Hall (QSC) – contract – conveyancing – bankruptcy – sellers entitled to return of deposit under contract for sale of land which did not complete (I B)

Bajaj v Beachtown Investments Pty Ltd (WASCA) – employment contract - scope of services – termination – onus – appeal dismissed (I B)

Swick Nominees Pty Ltd v Leroi International Inc [No 2] (WASCA) – product liability – multiple failures of air compressor unit – no breach of duty by manufacturer (I B)

Fogarty v CGU Insurance Ltd (ACTSC) – insurance contract – no breach by insurer of obligation to repair or duty of utmost good faith (I B C)

Benchmark

Summaries with links (5 Minute Read)

Allianz Australia Insurance v Moo Ok Park [2015] NSWSC 122

Supreme Court of New South Wales

Harrison AsJ

Motor accidents compensation - past economic loss - claimant injured in motor vehicle accident - Allianz was compulsory third party insurer for driver at fault - liability not in issue - Allianz sought to set aside decision of claims assessor - insurer contended assessor's reasoning for awarding past economic loss was erroneous - held: it was not clear how assessor arrived at weekly amounts - reasoning process that led assessor to make conclusions had not been set out as required by clause 18.4.3 *Claims Assessment Guidelines* - assessor failed to provide proper reasons - decision invalid and quashed

[Allianz Australia Insurance](#) (I G)

Bonifacio v NSW Trustee and Guardian acting as executor of the Estate of the late Woitala [2015] NSWSC 124

Supreme Court of New South Wales

Darke J

Limitation of actions - plaintiffs sought declaration executor of deceased's estate held half interest in property on constructive trust for them - plaintiffs alleged constructive trust arose in 1995 when deceased fraudulently registered transfer to himself of plaintiffs' interest in property - executor accepted transfer was fraudulent, but claimed causes of action statute-barred - common ground that plaintiffs became aware of fraud at least by February 1998 - proceedings not commenced until December 2013 - when cause of action accrued - adverse possession - held: deceased in adverse possession of property at least from the end of 1998 - cause of action to recover land had accrued by end of 1998 - plaintiffs had discovered fraud by that date - twelve year limitation period in s27(2) would have expired by end of 2010 - in relation to cause of action to recover trust property, limitation period in s47(1) also commenced by end of 1998 and expired by end of 2010 - actions statute-barred.

[Bonifacio](#) (I B)

Falkingham v Peninsula Kingswood Country Gold Club [2015] VSCA 30

Court of Appeal of Victoria

Costs - Court dismissed appeal - appellant sought that respondent indemnify him for costs of appeal and proceeding below, or there be no order for costs in relation to notice of appeal, and that respondent pay his costs of notice of contention, on which respondent was unsuccessful - respondent submitted costs should follow the event - success on separate issues - whether proceeding akin to derivative proceeding - held: in all circumstances, costs of appeal as between parties should be dealt with in same way as trial judge dealt with costs of proceeding at first instance - no order as to parties' costs of appeal, notice of contention, and appellant's summonses, save for order already made on joinder application.

[Falkingham](#) (I B C)

Majet v Goggin & Miller as Trustees of the Bankrupt Estate of Brett-Hall [2015] QSC 38

Supreme Court of Queensland

Henry J

Contract – conveyancing – bankruptcy - cross-applications concerning fate of deposit paid under contract for sale of land that did not complete – sellers sought order that the deposit be paid to their solicitor – trustees of buyer’s bankrupt estate sought order that deposit be paid to their solicitors - impact of bankruptcy trustee’s disclaimer pursuant to s133(2) *Bankruptcy Act 1966* (Cth) on rights, interests and liabilities of parties to contract – held: contract specifically preserved to seller a right in respect of deposit - entitlement or right was preserved by proviso to s133(2) so that it was unaffected by disclaimer – sellers entitled to deposit pursuant to contract.

[Majet](#) (I B)

Bajaj v Beachtown Investments Pty Ltd [2015] WASCA 37

Court of Appeal of Western Australia

McLure P; Newnes & Mazza JJA

Employment contract – parties entered employment contract – contract terminated – appellant sued former employer for failure to pay amounts under contract – manner in which contract came to be terminated - whether superannuation guarantee payable on travel time payments – construction of contract - held: appellant not a casual employee – employment contract terminable on 3 weeks’ notice – appellant did not discharge onus of establishing employer did not give three weeks’ notice of termination - superannuation guarantee not payable on travel allowance – appeal dismissed.

[Bajaj](#) (I B)

Swick Nominees Pty Ltd v Leroi International Inc [No 2] [2015] WASCA 35

Court of Appeal of Western Australia

Buss & Murphy JJA; Edelman J

Negligence – product liability – contract - action for damages against respondents in connection with appellant’s purchase by of air compressor unit - trial judge dismissed claim against manufacturer and allowed claim against supplier – appellant contended primary judge erred in dismissing claim against manufacturer and in assessment of quantum of damages – multiple failures of complex machinery - fitness for purpose – pure economic loss – whether trial judge should have found manufacturer breached duty of care - *res ipsa loquitur* – proof of negligence - held: trial judge correct to find no breach of duty by manufacturer – no issue of quantification of damages in relation to manufacturer – no error in assessment of damages for breach of contract by supplier – appeals dismissed.

[Swick Nominees Pty Ltd](#) (I B)

Fogarty v CGU Insurance Ltd [2015] ACTSC 44

Supreme Court of the Australian Capital Territory

Murrell CJ

Insurance contract – insurer entered contract with appellant to insure building and contents



against accidental loss or damage, including damage by fire – fire in kitchen of premises – insurer accepted claim and elected to repair damage – dispute arose in relation to damaged caused to three kitchen floorboards – insured sued insurer under s57 *Insurance Contracts Act 1984* (Cth) for cost of repairs - insured asserted insurer breached contract by failing to repair damage – Magistrate entered judgment for insured – parties appealed and cross-appealed – held: grounds of appeal and cross-appeal in relation to specific performance allowed - Magistrate erred in finding insurer breached contractual obligation to repair and in finding that insurer breached its duty of utmost good faith – cross-appeal upheld – verdict for insurer [Fogarty](#) (I B C)

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