

Wednesday, 4 February 2015

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (1 minute read)

**Miao v Michell** (FCA) - bankruptcy - bankrupt permitted to travel overseas subject to undertaking and conditions (B G)

**Polias v Ryall (No 2)** (NSWSC) - costs - defamation - indemnity costs - proportionate liability - interest on costs (I)

**JR Consulting & Drafting Pty Ltd v Cummings** (NSWSC) - costs - separate determination of liability - issue of costs not deferred until quantification of loss (I B)

**ERO Georgetown Gold Operations Pty Ltd v Minister for Natural Resources & Mines** (QSC) - renewal of mining lease with conditions - public use of road - no grounds for review - application dismissed (C G)

**Z487 Ltd v Skelton** (QSC) - private international law - contract - exclusive choice of court agreement - stay refused (I B)

**Kasewieter v Galligan** (SASC) - summary judgment - order for sale of property - extension of time to bring cross-action for property adjustment order refused (I B)

**Bride v The Registrar of Titles** (WASC) - real property - vexatious litigant - extension of caveat refused (B)

## Summaries with links (5 minute read)

### **Miao v Michell [2015] FCA 22**

Federal Court of Australia

Beach J

Bankruptcy - applicant applied pursuant to s178(1) *Bankruptcy Act 1966* (Cth) to review trustee's to refuse consent for her to overseas travel in accordance with s272(1)(c) - Federal Circuit Court judge refused application - held: consent to overseas travel should be given - reasons for overseas travel were genuine - trip was only for short time - applicant prepared to give undertaking to Court to return to Australia on request by trustee - not a situation where there might be considered to be incentives for applicant not to return - given applicant had now completed Statement of Affairs, overseas trip would not unduly impede administration of estate - although trustee's decision on material before him was reasonable, changed circumstances justified setting aside decision - applicant permitted to leave Australia subject to undertakings and conditions.

[Miao](#) (B G)

### **Polias v Ryall (No 2) [2015] NSWSC 1**

Supreme Court of New South Wales

Rothman J

Costs - defamation - substantive judgment granted for plaintiff - plaintiff sought indemnity costs pursuant to s40 *Defamation Act 2005* (NSW) on basis defendants unreasonably failed to make settlement offer and unreasonably failed to agree to plaintiff's settlement offer - degree to which each defendant liable for costs - interest on costs - held: unreasonable of defendants to refuse plaintiff's offer of compromise - plaintiff awarded indemnity costs - orders made determining proportionate liability of defendants as between themselves but not as to affect plaintiff's entitlement - appropriate to make order for interest on costs - orders made.

[Polias](#) (I)

### **JR Consulting & Drafting Pty Ltd v Cummings [2015] NSWSC 10**

Supreme Court of New South Wales

Black J

Costs - proceedings related to ownership and control of software used in design and manufacture of items used in construction of buildings - principal judgment determined separate question of liability - defendants and cross-claimants substantially successful - whether Court should exercise discretion to make order for costs of hearing as to liability, or defer order until after quantification of loss determined - principles applicable to cases involving multiple parties and issues - s98 *Civil Procedure Act 2005* (NSW) - held: question of costs of liability stage should not be deferred - defendants did not succeed on all issues - departure from general rule that costs follow event - costs orders modified

[JR Consulting & Drafting Pty Ltd](#) (I B)

**ERO Georgetown Gold Operations Pty Ltd v Minister for Natural Resources & Mines [2015] QSC 1**

Supreme Court of Queensland

Martin J

Judicial review - holder of mining lease applied to renew lease - Minister granted application subject to certain conditions concerning public use of road which traversed mining lease - applicant sought to review decision under *Judicial Review Act 1991* (QSC) with particular reference to the conditions - requirements of public interest with respect to access across mining lease - ss2, 276(1)(d), 286A & 403 *Mineral Resources Act 1989* (Qld) - held: applicant not denied procedural fairness - no failure to take into account relevant considerations - Minister took view that public interest required that access be maintained - conditions drawn in order to achieve that objective - Minister's decision not shown to be unreasonable - no grounds for review - application dismissed.

[ERO Georgetown Gold Operations Pty Ltd](#) (C G)

**Z487 Ltd v Skelton [2014] QSC 309**

Supreme Court of Queensland

Atkinson J

Private international law - first defendant was horticulturalist who bred kiwifruit in New Zealand - horticulturalist entered licence agreement with plaintiff company - director of company who negotiated agreement lived and worked in Australia - company sought declaration license agreement not validly terminated - horticulturalist sought declaration pursuant to s17 *Trans-Tasman Proceedings Act 2010* (Cth) that claim not properly started for want of jurisdiction, order setting aside claim, and stay of proceeding, on ground New Zealand court was more appropriate forum - held: there was exclusive choice of court agreement between parties which designated Australian court to determine matters in issue - exclusive choice of court agreement not null and void - pursuant to s20(1)(b) Court must not stay proceeding before it - horticulturalist not entitled to any relief - application dismissed.

[Z487 Ltd](#) (I B)

**Kasewieter v Galligan [2015] SASC 5**

Supreme Court of South Australia

Dart J

Summary judgment - parties were formerly in domestic relationship - parties were joint owners of residential property - plaintiff sought judgment in claim for sale of property and that net proceeds of sale be divided equally between parties - plaintiff also sought that defendant's cross-action under *Domestic Partners Property Act 1996* (SA) be dismissed on grounds it was substantially out of time and there was no justification for extending time - *good reason to the contrary* - onus - delay -



held: no reasonable basis for defending plaintiff's claim made out - order made for sale of property - no reasonable basis for extension of time to make cross-claim for property adjustment order - summary judgment granted.

[Kasewieter](#) (I B)

**Bride v The Registrar of Titles [2015] WASC 11**

Supreme Court of Western Australia

Edelman J

Real property - caveats - applicant sought extension of caveat over property of second defendants in relation to which he was a vexatious litigant - 138C *Transfer of Land Act 1893* (WA) - balance of convenience - held: caveat should not be extended - on the evidence, applicant did not have claim which *has or may have substance* - if applicant had claim it was weak - balance of convenience did not favour extension of caveat - apart from weakness of claim applicant had offered no undertaking as to damages - application dismissed.

[Bride](#) (B)

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