



Thursday, 4 June 2015

Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

State of NSW v McCarthy (NSWCA) - trespass - police officers' entry of premises occupied by respondent was lawful - appeal allowed (I)

Secure Funding Pty Ltd (formerly known as Liberty Funding Pty Ltd) v Egan (NSWSC) - real property - possession - stay of execution of judgment refused (B)

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd (NSWSC) - corporations - voluntary administration - leave to proceed against company - access to documents relating to company's insurance arrangements refused (I B)

Westpac Banking Corporation v ZH International Pty Ltd (No. 2) (NSWSC) - costs - possession - unreasonable rejection of offer - indemnity costs awarded to bank (B)

James v Maxwell (QSC) - negligence - motorcyclist injured in collision with motor vehicle on bend in dirt road - driver of motor vehicle and insurer liable (I)

Hodgson v Rio Tinto Aluminium Ltd (QSC) - workers compensation - declaration in relation to entitlement to seek damages for workplace injury refused (I C)

Maynard v The Estate of Maynard (QSC) - Wills and estates - succession - evidence husband died while surfing - presumption of death had not yet arisen - wife at liberty to swear to death of husband (B)

Summaries With Link (Five Minute Read)

State of NSW v McCarthy [2015] NSWCA 153

Court of Appeal of New South Wales

Meagher & Gleeson JJA

Trespass - primary judge held appellant liable for damages for trespass to land when four police officers entered premises occupied by respondent - Court granted leave to appeal - ss9, 10 & 201 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) - whether primary judge erred in failing to find officers satisfied requirements in ss9 or 10 relating to exercise of power to enter - whether primary judge should have held that officers' entry unlawful because of failure to provide information required by s201 after exercising power - held: entry of each of the officers was lawfully authorised under ss9 or 10 - s201(2)(b) expressly provided that in case like present information in s201 must be provided after exercise of power - lawfulness of exercise not contingent on subsequent provision of information where information could not reasonably have been provided earlier - notice of contention rejected - appeal allowed.

[State](#) (I)

Secure Funding Pty Ltd (formerly known as Liberty Funding Pty Ltd) v Egan [2015]

NSWSC 669

Supreme Court of New South Wales

Davies J

Real property - possession - proceedings arising out of claim for possession and claim for debt - second defendant sought stay of execution of judgment in plaintiff's favour - second defendant submitted that lawyers acting for her during trial did not lead all appropriate evidence to claim contract should be varied or set aside under *Contracts Review Act 1980* - held: no real information about basis of appeal and likelihood of success - second defendant had used part of loan to refinance earlier mortgage - no offer to pay or secure that amount let alone amount outstanding to plaintiff - stay of execution of the writ of possession refused.

[Secure](#) (B)

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd [2015] NSWSC 666

Supreme Court of New South Wales

Ball J

Corporations - bank sought and was granted leave under s444E(3) *Corporations Act 2001* (Cth) to proceed against first defendant subject of deed of company arrangement - bank also sought access to documents disclosing details of first defendant's professional indemnity insurance - bank had also served notice to produce and subpoena seeking access to the documents - first defendant sought to set aside notice - ss56-61 *Civil Procedure Act 2005* - held: production of documents relating to first defendant's insurance arrangements not justified by modern case management principles - not in interests of justice for insurance policies to be disclosed - notice set aside - balance of amended notice of motion dismissed.

[Commonwealth](#) (I B)

Westpac Banking Corporation v ZH International Pty Ltd (No. 2) [2015] NSWSC 679

Supreme Court of New South Wales

Adamson J

Costs - indemnity costs - bank succeeded in claim for possession - bank sought costs on indemnity basis as a result of two offers - s98 *Civil Procedure Act 2005* - s131 *Evidence Act 1995* - held: first "walk away" offer did not contain requisite degree of compromise in circumstances - evidence of settlement negotiations in relation to second offer rejected - unreasonable for defendants to reject second offer - indemnity costs awarded.

[Westpac](#) (B)

James v Maxwell [2015] QSC 149

Supreme Court of Queensland

Henry J

Negligence - motorcyclist sought damages for injuries to leg in collision on bend in dirt road with motor vehicle driven by first defendant - held: evidence compelled inference that first defendant was travelling too fast to manoeuvre vehicle around bend without encroaching into path of oncoming traffic - collision was entirely due to first defendant's negligent driving - no contributory negligence - second defendant insurer also liable in respect of damages - judgment for motorcyclist.

[James](#) (I)

Hodgson v Rio Tinto Aluminium Ltd [2015] QSC 93

Supreme Court of Queensland

Boddice J

Workers compensation - applicant sought declaratory relief in relation to entitlement to seek damages workplace injury - whether applicant had applied for compensation under *Workers Compensation and Rehabilitation Act 2003* in respect of injury and if so whether second respondent made decision in relation to application or otherwise complied with statutory obligations - ss132, s 134, s 237, s 392, s 542 & 586 *Worker's Compensation and Rehabilitation Act 2003* - held: applicant had applied for compensation - applicant not entitled to declaration sought - second respondent did not make decision on application within time period specified by Act, but applicant subsequently notified of decision when provided with copy of letter - even if letter's reasons did not comply with Regulations, time commenced to run in respect of statutory right of review - applicant not entitled to the declarations in the alternative - application dismissed.

[Hodgson](#) (I C)

Maynard v The Estate of Maynard [2015] QSC 144

Supreme Court of Queensland

Atkinson J

Wills and estates - succession - circumstances in which Court able to make finding person deceased and allow widow to swear to his death - applicant's husband travelled to Bali and



checked into his accommodation but never checked out and was not seen again after he left accommodation to go surfing - fragment of surfboard was recovered by a local dive master that day - husband's body not found - there was evidence husband died while surfing - seven years had not expired so as to give rise to presumption of death - held: in all circumstances Court satisfied applicant should be at liberty to swear to the death of deceased - Court also satisfied grant of letters of administration upon intestacy should be made to applicant for his estate
[Maynard](#) (B)

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