

Monday, 5 October 2015

Daily Composite 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)

Sakr v Australian Broadcasting Corporation; Australian Broadcasting Corporation v Sakr (NSWCA) - pleadings - defamation - applications concerning interlocutory rulings as to imputations which may be left to jury (I)

Rossi v Living Choice Australia Ltd (No 2) (NSWCA) - judgment and orders - outstanding issues - appellant partly successful on appeal - proceedings remitted to Land and Environment Court for determination of ameliorative orders - costs orders made (I B C)

In the matter of Entire Building Solutions Pty Ltd (NSWSC) - costs - applications to set aside statutory demands - statutory demands withdrawn voluntarily - each party to pay own costs (B C)

Roxo v Normandie Farm (Dairy) Pty Ltd (NSWSC) - possession - continuation of stay of orders for possession pending appeal refused (B)

Lupker v Shine Lawyers Pty Ltd (QSC) - legal practitioners - law firm did not have effective possessory lien over former client's file - declaration and orders made for delivery up of material to former client (I)

Hunter v Hunter (No 3) (QSC) - costs - applicant unnecessarily prolonged applications for review of assessments - application unsuccessful on applications - applicant to pay respondents' costs on indemnity basis (I)

Honey v Richardson (No 2) (SASC) - Corporation granted permission to intervene in proceedings granted - permission granted to re agitate orders sought to strike out particulars in first third party statement of claim once defendant's liability to plaintiffs determined or agreed (I)

Summaries With Link (Five Minute Read)

Sakr v Australian Broadcasting Corporation; Australian Broadcasting Corporation v Sakr [2015] NSWCA 310

Court of Appeal of New South Wales
Macfarlan & Ward JJA; Sackville AJA

Pleadings - defamation - applicant sued Australian Broadcasting Corporation (ABC) for defamation arising from ABC's publication of story on television program - applicant maintained matter complained of conveyed imputations that were defamatory of her - applications related to primary judge's interlocutory rulings as to imputations that may be left to the jury - applicant and ABC sought leave to challenge one or other of the rulings - r28.2 *Uniform Civil Procedure Rules 2005* (NSW) - held: applicant granted leave to appeal from primary judge's decision to strike out imputation 4(a) in initial statement of claim - appeal dismissed - ABC granted leave to cross-appeal from primary judge's decision not to strike out imputations 4(b) and 4(c) in initial statement of claim and to appeal from primary judge's decision not to strike out imputation 4(a) as re-pleaded in draft second amended statement of claim - word "willingly" struck out from imputation 4(a) in third amended statement of claim - applicant to file fourth amended statement of claim amending imputations 4(b) and 4(c) in accordance with reasons - ABC's cross-appeal otherwise dismissed in relation to imputations 4(b) and 4(c) in the initial statement of claim.

[Sakr](#) (I)

Rossi v Living Choice Australia Ltd (No 2) [2015] NSWCA 301

Court of Appeal of New South Wales
Basten, Ward & Emmett JJA

Judgments and orders - costs - Court allowed appellant's appeal in part from decisions made Land and Environment Court and dismissed cross-appeals and applications for leave to cross-appeal - resolution of outstanding issues - ameliorative relief in relation to unauthorised works - costs of proceedings in Land and Environment Court and Court of Appeal - held: in relation to ameliorative orders, proceedings remitted to Land and Environment Court for making of appropriate orders - first and second respondents to pay 70% of appellant's costs of proceedings in Land and Environment Court to date with liability to be joint and several - orders for apportionment made - first and second respondents to pay 75% of appellant's costs of proceedings in Court of Appeal disregarding costs incurred after hearing with liability to be joint and several - apportionment orders made - orders as to appellant's entitlement to interest made.

[Rossi](#) (I B C)

In the matter of Entire Building Solutions Pty Ltd. [2015] NSWSC 1421

Supreme Court of New South Wales

Robb J

Costs - dispute concerned services agreements between parties - defendant served two statutory demands on plaintiff under s459E *Corporations Act 2001* (Cth) - plaintiff sought order to set aside first statutory demand and subsequently sought order setting aside second statutory demand - defendant voluntarily withdrew both demands - on date defendant withdrew demands plaintiff offered to settle each application on basis demands be set aside and defendant pay plaintiff's costs on the usual basis on certain conditions - defendant filed statement of claim claiming total of sums in demands - principle in *Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin* (1997) 186 CLR 622 - held: it was reasonable for defendant to serve statutory demands on plaintiff - defendant had acted reasonably by withdrawing statutory demands and seeking to pursue relief in District Court - withdrawal was neither a capitulation nor a "clear victory" for plaintiff - appropriate costs order was that each party should pay its own costs of both proceedings

[Entire Building](#) (B C)

Roxo v Normandie Farm (Dairy) Pty Ltd [2015] NSWSC 1448

Supreme Court of New South Wales

Harrison J

Possession - defendant sought continuation of stay of possession orders pending appeal - defendant argued that refusal of stay would render appeal futile or cause defendant irreparable harm - prospects of success - plaintiff's entitlement to fruits of judgment - held: Court not satisfied defendant established any proper basis for making order extending stay - defendant had done nothing to give vacant possession of property to plaintiff in accordance with Court's judgment - stay discharged.

[Roxo](#) (B)

Lupker v Shine Lawyers Pty Ltd [2015] QSC 278

Supreme Court of Queensland

Bond J

Legal practitioners - possessory lien - applicant retained respondent law firm (Shine) to act for him in compensation claim for loss of spouse - solicitor with conduct of file resigned and commenced consultancy retained by another law firm (Maurice Blackburn) - applicant terminated Shine's retainer and provided authority to Shine to transfer file to Maurice Blackburn - Maurice Blackburn requested Shine to make applicant's file available - Shine contended it was entitled to exercise possessory lien over file until fees paid - applicant sought declaration Shine not entitled to retain applicant's file and order for delivery of material to applicant - rr14, 15 *Australian Solicitors Conduct Rules 2012* - ss319, 323, 327 & 347 *Legal Profession Act 2007* (Qld) - held: Shine did not have an effective possessory lien - existence of a possessory lien was only basis on which Shine had resisted orders - declaration and orders made.

[Lupker](#) (I)

Hunter v Hunter (No 3) [2015] QSC 277

Supreme Court of Queensland

P McMurdo J

Costs - applicant entirely unsuccessful in proceedings - trial judge ordered applicant to pay defendants' costs of proceeding on indemnity basis - applicant unsuccessfully appealed principal judgment and was ordered to pay costs of appeal on standard basis - applicant succeeded in having amounts claimed in costs statements reduced - applicant sought review of assessments for trial and appeal - Court refused application for review of both assessments - held: no basis for departing from ordinary rule that costs follow event - applications to review assessments unnecessarily prolonged by applicant - Court persuaded respondents should have costs on indemnity basis.

[Hunter \(I\)](#)

Honey v Richardson (No 2) [2015] SASC 142

Supreme Court of South Australia

Bampton J

Application to intervene - Corporation sought to intervene in proceedings and to strike out particulars of negligence in first third party statement of claim - statement of claim alleged first plaintiff's injuries due to driving of three vehicles in convoy and caused or contributed to by third parties' negligent use of vehicle or vehicles - solicitors for first third party sought indemnity from Corporation - Corporation contended claim pleaded against third parties was unsafe system of work statute-barred by s66 *Return to Work Act 2014* (SA) - held: Corporation permitted to intervene pursuant to s200 - permission to re-agitate orders sought to strike out particulars once defendant's liability to plaintiffs determined or agreed - Court to hear submissions regarding conditions to be imposed on permission to intervene.

[Honey \(I\)](#)

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