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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bagg v Gordon as liquidator of Salfa Pty Ltd (in liq) (NSWCA) - service - leave to proceed against non-resident defendant - leave to appeal refused (B)

Powell v Stone (NSWSC) - real property - right to proceeds of sale under Family Court order did not create caveatable interest in property (B)

Lewance Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd (NSWSC) - security of payments - failure to establish that payment schedule not provided - summons dismissed (C)

Bowering v Knox and Bowering (No 2) (NSWSC) - Wills - special disability trust - construction questions answered - relief refused on grounds of lack of utility (B)

Little v McCarthy (QSC) - damages - motor vehicle accident - economic loss - damages assessed (I)

Findley v Morand (QSC) - defamation - extension of time to bring proceedings granted (I)

Insurance Australia Ltd t/as NRMA Insurance v Iuli (ACTCA) - insurance - insurer's appeal from interlocutory decision of Master incompetent (I)

Summaries with links (5 minute read)

Bagg v Gordon as liquidator of Salfa Pty Ltd (in liq) [2014] NSWCA 420

Court of Appeal of New South Wales

Ward JA & Sackville AJA

Service - applicant was former director of company in liquidation - respondent was liquidator of company - applicant resident in South Africa - applicant sought leave to appeal from interlocutory decision granting leave to proceed against him - held: Court accepted applicant had arguable case he was not served with initiating process in South Africa in conformity with requirements of r11.6 *Uniform Civil Procedure Rules 2005* (NSW) - Court also prepared to accept applicant had arguable case that r10.14(3) did not apply to a defendant outside jurisdiction - however, other considerations militated against grant of leave, including applicant's delay in filing summons and strong argument that applicant had already submitted to Court's jurisdiction - no significant prejudice if leave to appeal refused - leave to appeal refused.

[Bagg](#) (B)

Powell v Stone [2014] NSWSC 574

Supreme Court of New South Wales

Brereton J

Real property - caveat - plaintiff husband sought an order that defendant wife withdraw a caveat lodged over certain property - underlying the claim were orders made between parties in Family Court of Australia - caveat claimed an interest as a person with a right to have the land sold and to receive a portion of the proceeds of sale - held: a right to proceeds of sale of property was not an interest in property - wife never had an interest in land - husband ordered to sell land and had obligation akin to that of a trustee for sale to do so and account for proceeds including in part to wife - no caveatable interest in the land itself - caveat doomed to fail and was eventually removed by agreement - wife to pay husband's costs.

[Powell](#) (B)

Lewance Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd [2014] NSWSC 1726

Supreme Court of New South Wales

Nicholas AsJ

Security of payments - plaintiff sought judgment against first defendant (SHBP) under s15(2)(a) *Building and Construction Industry Security of Payment Act 1999* (NSW) - plaintiff claimed it was entitled to recover amount claimed as a debt due as consequence of failure of SHBP to provide payment schedule to plaintiff within time prescribed under s14(4), or at all - held: plaintiff failed to establish that payment schedule was not provided by SHBP - summons dismissed.

[Lewance Construction Pty Ltd](#) (C)

Bowering v Knox and Bowering (No 2) [2014] NSWSC 1749

Supreme Court of New South Wales

Sackar J

Wills - plaintiff sought determination of Court in relation to proper construction of father's Will - plaintiff and first defendant were joint trustees and executors of the estate, and also beneficiaries - Will purported to establish a special disability trust for benefit of the second defendant brother of both plaintiff and first defendant - first defendant was sole trustee of trust - construction of Will - public policy - position of special trustee - conflict of interest - consistency of clauses with primary objects of trust - held: construction questions answered but Court not persuaded it was appropriate to grant declaratory relief as it appeared futile.

[Bowering](#) (B)

Little v McCarthy [2014] QSC 274

Supreme Court of Queensland

McMeekin J

Damages - motor vehicle accident - first plaintiff claimed damages for personal injuries suffered in motor vehicle accident - liability admitted - plaintiff sought large amount of damages, just over \$1,000,000 - defendants contended proper assessment should be quite modest - a little over \$60,000 - first plaintiff's case had none of the usual features associated with a million dollar personal injuries' claim - contest principally over economic loss - application of provisions in *Civil Liability Act 2003* (Qld) and *Civil Liability Regulation 2003* (Qld) - credit - effect of injury on earning capacity - damages assessed at \$254,560.42.

[Little](#) (I)

Findley v Morand [2014] QSC 297

Supreme Court of Queensland

A Wilson J

Limitations - defamation - applicant had rented property from respondents - applicant sought extension of time to bring defamation proceedings against respondents arising from alleged posting of entries in tenancy database - first entry lodged 9/3/11 - second entry lodged 25/1/12 - ss10AA & 32A *Limitation of Actions Act 1974* (Qld) - whether not reasonable in circumstances for plaintiff to have commenced action in relation to matter complained of within one year from the date of publication - held: applicant's evidence sufficient to establish t he was not alerted to alleged defamatory statements in the database until June 2014 - too late to save any remedy he might have had in respect of first entry on 9/3/11 as three year period had already expired by time applicant discovered it however extension of time warranted under s32A to permit him to file proceedings for defamation by 25/1/15.

[Findley](#) (I)

Insurance Australia Ltd t/as NRMA Insurance v Iuli [2014] ACTCA 50

Court of Appeal of New South Wales

Penfold, Burns & Ross JJ

Insurance - motor vehicle accident - vehicle ran out of control - first defendant cyclist injured when he fell from bike after colliding with debris created by accident 40 minutes later when vehicle was still in position but not moving - driver held a CTP policy with appellant insurer issued under *Road Transport (Third Party Insurance) Act 2008 (ACT)* - Master refused to declare that accident involving cyclist was not a motor accident within the meaning of s7 - held: appeal to Court of Appeal was not competent - Master's refusal of declaration sought by appellant was an interlocutory order - any appeal lay, not to the Court of Appeal, but to a single judge of the Supreme Court - matter not within jurisdiction of Court of Appeal and should be referred to single judge for further consideration.

[Insurance Australia Ltd t/as NRMA Insurance \(I\)](#)

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