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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)

Letten v Templeton (FCAFC) - corporations - judicial direction obtained by receivers - non-party refused leave to appeal (I B)

Warren v Maclean-Lower Clarence Services Club Ltd (NSWSC) - damages - assault causing brain injury - damages assessed at \$1,708,309 (I)

Galagher v Merrywinebone Pty Ltd t/as Green Tree Farming; Dewson v Merrywinebone Pty Ltd t/as Green Tree Farming (NSWSC) - motor vehicle collision with steer - proceedings transferred to Supreme Court - liability to be determined separately and prior to damages (I)

Victorian Workcover Authority v Bayer Cropscience Pty Ltd (VSC) - accident compensation - claim for recovery of compensation payments - third party occupier of premises did not take reasonable care of worker - factor X was 50% (I G)

JD & KJ Zohs Properties Pty Ltd v Ferme (SASC) - summary judgment - contract for sale of land valid and enforceable - specific performance granted (B)

Woods and White as joint and several liquidators of Little Tiger Pty Ltd (in liq) as trustee of the BPH Trust v Little Tiger Pty Ltd (in liq) (WASC) - corporations - winding up - sale agreement - general security agreement - liquidators' remuneration - orders and directions (B)

Joondanna Investments Pty Ltd v City of Palmerston (NTSC) - separate trial of *locus standi* as preliminary point refused (I B C)

Summaries with links (5 minute read)

Letten v Templeton [2014] FCAFC 131

Full Court of the Federal Court of Australia

Besanko, Davies & White JJ

Corporations - managed investment scheme - receivers obtained direction they were justified in deploying funds held by them in a bank account designated as "Common Fund" to institute civil proceedings against applicant and another for knowing assistance in relation to alleged breaches of trust by corporate entities previously operated by applicant - applicant was not party to application for judicial advice but given leave to put submissions in opposition - primary judge rejected applicant's arguments and concluded that it was appropriate to give judicial advice and make direction - applicant sought to appeal pursuant to s24(1A) *Federal Court of Australia Act 1976* (Cth) - matters to be taken into account when non-party seeks leave to appeal from interlocutory judgment - held: Court rejected receivers' objection to competency of appeal but applicant's grounds of appeal did not raise arguable case that decision below was wrong - leave to appeal refused.

[Letten](#) (I B)

Warren v Maclean-Lower Clarence Services Club Ltd [2014] NSWSC 1374

Supreme Court of New South Wales

Schmidt J

Damages - plaintiff suffered brain injury when assaulted by second and third defendants at first defendant club - claim against first defendant not pursued - other defendants did not defend claim - plaintiff received default judgment for unliquidated damages - plaintiff sought damages in circumstances where neither defendant was in a financial position which would enable any orders made in plaintiff's favour to be satisfied - held: Court satisfied on the evidence that an order for substantial damages must be made in plaintiff's favour - Court satisfied that assault fell within exception in s3B *Civil Liability Act 2002* (NSW) which excludes application of the Act to intentional acts done with intent to cause death or injury, apart, relevantly, from s18 interest on damages - plaintiff sought no order as to interest - damages assessed - defendants ordered to pay plaintiff damages in sum of \$1,708,309.

[Warren](#) (I)

Galagher v Merrywinebone Pty Ltd t/as Green Tree Farming; Dewson v Merrywinebone Pty Ltd t/as Green Tree Farming [2014] NSWSC 1375

Supreme Court of New South Wales

Schmidt J

Transfer of proceedings - plaintiffs sought orders transferring two sets of proceedings commenced in District Court to Supreme Court - proceedings arose out of accident when car being driven by plaintiff in one proceeding, in which plaintiff in other proceeding was also travelling, struck a steer - defendants denied owning steer, or that it was under their care, control and management - driver was seriously injured - common ground she was likely to obtain considerable damages in excess of District Court's jurisdiction if she established liability - defendants sought separate determination of claim that steer had been under their care, control and management from other liability questions and damages - held: transfer of proceedings not opposed - orders for transfer made - Court not satisfied separate question should be ordered - proposed separation inappropriate and inconsistent with achievement of objectives of *Civil Procedure Act 2005* (NSW) - however force of separation of liability from damages was undeniable given what a damages hearing might involve - question of liability be heard separately from and prior to hearing on damages.

[Galagher](#) (1)

Victorian Workcover Authority v Bayer Cropscience Pty Ltd [2014] VSC 505

Supreme Court of Victoria

Bell J

Accident compensation - worker injured during course of employment with Bayer Australia Ltd (BAL) when she lost footing on bare metal edge of stairs in foyer of leased Bayer office premises - negligence action between worker and BAL settled - Victorian Workcover Authority claimed recovery of compensation payments against Bayer Cropscience Pty Ltd (BCS) as third party under s138 *Accident Compensation Act 1985* (Vic) - only issue in dispute was factor X in s138(3)(b), being extent to which BCS's act, default or negligence caused or contributed to worker's injury - held: BCS employees had primary and ultimate control and responsibility for safety and management of premises at relevant times - BCS as occupier did not take reasonable care of worker as required by s14B(3) *Wrongs Act 1958* (Vic) - contributory responsibility should be shared equally between BAL as employer and BCS as controller and manager of facility with respect to workplace safety - factor X was 50%.

[Victorian Workcover Authority](#) (1 G)

JD & KJ Zohs Properties Pty Ltd v Ferme [2014] SASC 146

Supreme Court of South Australia

Stanley J

Summary judgment - contract for sale of land entered into between defendant executors of deceased estate as vendors and two purchasers who assigned their right, title and interest in contract to plaintiff by deed of assignment - plaintiff executed memorandum of transfer (MOT) -

MOT executed by second defendant - plaintiff by letter required first defendant to execute MOT - first defendant did not execute MOT - plaintiff sought declaration contract was valid and enforceable and orders for specific performance of contract - plaintiff sought summary judgment -- held: plaintiff demonstrated need for relief sought - circumstances would justify making of vesting order - more convenient to make order pursuant so s40 *Trustee Act 1936* (SA) appointing second defendant to convey the land.

[JD](#) (B)

Woods and White as joint and several liquidators of Little Tiger Pty Ltd (in liq) as trustee of the BPH Trust v Little Tiger Pty Ltd (in liq) [2014] WASC 372

Supreme Court of Western Australia

Pritchard J

Corporations - winding up - joint and several liquidators of defendant companies sought orders that companies be wound up in insolvency and that liquidators be appointed liquidators of companies - liquidators also sought approval and directions relating to their decision to cause companies to enter into sale agreement for sale of an accounting practice, and approval to enter into general security agreement - liquidators also sought various ancillary orders in relation to liquidation of companies - held: appropriate to make order that companies be wound up in insolvency under s459A *Corporations Act 2001* (Cth) - leave granted *nunc pro tunc* to permit liquidators to apply for appointment as liquidator pursuant to s532(2)(c) - Court satisfied approval should be given to liquidators to cause companies to enter into sale agreement and security agreement - directions granted regarding liquidators' remuneration and accounts to be maintained.

[Woods and White as joint and several liquidators of Little Tiger Pty Ltd \(in liq\) as trustee of the BPH Trust](#) (B)

Joondanna Investments Pty Ltd v City of Palmerston [2014] NTSC 42

Supreme Court of the Northern Territory

Master Luppino

Locus standi - second defendant was developer of shopping complex to be constructed - plaintiff was owner of existing shopping centre near site of development - first defendant was municipal authority for area which included both site of development and plaintiff's shopping centre - municipal authority granted various rates concessions to developer pursuant to Pt 11.8 *Local Government Act* (NT) - plaintiff challenged validity of rates concessions and sought consequent declarations - developer sought order pursuant to r47.04 *Supreme Court Rules* (NT) that plaintiff's standing to bring proceedings be dealt with as a preliminary separate trial - *special interest* - held: Court satisfied that course which would best avoid multiplicity of hearings and therefore achieve earliest determination of substantive issues was for all issues to be heard together - application dismissed.

[Joondanna Investments Pty Ltd](#) (I B C)

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