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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)

Brydon v Australian Rail Track Corporation Ltd (NSWSC) - cross-vesting - negligence - transfer of proceedings to Supreme Court of South Australia refused (I)

Colin Joss & Co Pty Ltd v Cube Furniture Pty Ltd (NSWSC) - commercial arbitration - arbitrator's award enforced as judgment of Court (I B)

Meldov Pty Ltd v Bank of Queensland (No. 2) (NSWSC) - costs - unreasonable rejection of Calderbank offer - indemnity costs awarded (I)

De Saram v Brown (VSCA) - summary judgment - strike-out of counter-claim - appeal allowed in part (I B)

Barrow v The Herald & Weekly Times Pty Ltd (VSC) - defamation - no real prospects of success - summary judgment (I)

Teoh v Greenway (ACTSC) - limitations - negligence - motor vehicle accident - evidence of settlement offer inadmissible - summary judgment for appellant (I)

Complete Crane Hire (NT) Pty Ltd v Marchetti Autogru (Italy) (NTSC) - orders for oral examination and particular discovery (I C)

Summaries With Link (Five Minute Read)

Brydon v Australian Rail Track Corporation Ltd [2015] NSWSC 722

Supreme Court of New South Wales

Hamill J

Cross-vesting - negligence - action arising from collision or accident that occurred on western side of New South Wales/South Australian border - defendant sought order that matter be transferred to Supreme Court of South Australia - defendant asserted most natural venue for litigation was Supreme Court of South Australia - plaintiff maintained choice of venue in originating process, which was Supreme Court of New South Wales, was appropriate venue - whether it was otherwise in interests of justice that relevant proceedings be determined by Supreme Court of South Australia - s5(2)(b)(iii) *Jurisdiction of Courts (Cross-Vesting) Act 1987* - held: having weighed various considerations and having given significant weight to fact that case was to be decided under South Australian law, Court concluded interests of justice favoured case remaining in Supreme Court of New South Wales - notice of motion dismissed.

[Brydon](#) (I)

Colin Joss & Co Pty Ltd v Cube Furniture Pty Ltd [2015] NSWSC 735

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - plaintiff challenged arbitral award against it - defendant sought enforcement of award as judgment of Court - plaintiff argued award in conflict with public policy of State as provided in s34(2)(b) *Commercial Arbitration Act 2010* (NSW) - defendant sought recognition and enforcement of award pursuant to s35(1) - held: plaintiff's challenges not made out - no basis established upon which statutory discretion under s34(2)(b) should be exercised - no basis on which Court should refuse to enforce Interim Award and Final Award.

[Colin](#) (I B)

Meldov Pty Ltd v Bank of Queensland [2015] NSWSC 740

Supreme Court of New South Wales

Slattery J

Costs - Court concluded plaintiff unsuccessful in proceedings - bank sought indemnity costs on basis of Calderbank letter - whether Calderbank letter inclusive of costs - uncertainty - held: unreasonable for plaintiff not to accept bank's offer - indemnity costs order made in bank's favour from date of expiry of offer.

[Meldov](#) (I)

De Saram v Brown [2015] VSCA 142

Court of Appeal of Victoria

Ashley & Tate JJA; Digby AJA

Summary judgment - County Court entered judgment for respondents and struck out counterclaim brought by appellants - whether judge erred in giving judgment on claim on basis

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defence had no prospect of success - whether judge justified in striking out counterclaim - held: no error in decision that appellant failed to establish real prospect of success in defending claim in relation to loan and associated sums - judge below correct to conclude matters raised by appellant as set-offs did not give rise to reasonable prospect of defending claims in relation to judgment on loan - no error as result of failure to consider discretion in s64 *Civil Procedure Act 2010* when his Honour gave summary judgment on claim - appeal allowed in relation to strike-out of counter-claim - appeal allowed in part.

[DeSaram](#) (I B)

Barrow v The Herald & Weekly Times Pty Ltd [2015] VSC 263

Supreme Court of Victoria

Macaulay J

Defamation - plaintiff claimed he was defamed by article published by defendant during defamation trial in which defendant was second defendant - defendant sought summary judgment on ground plaintiff's claim had no real prospects of success - held: Court satisfied defendant had no real prospect of success because article not capable of conveying defamatory meaning alleged - defendant had no real prospects of success in respect of some other presently unidentified defamatory meaning - Court not satisfied trial should proceed for any reason referred to in s64 *Civil Procedure Act 2010* - summary judgment given in defendant's favour.

[Barrow](#) (I)

Teoh v Greenway [2015] ACTSC 133

Supreme Court of the Australian Capital Territory

Burns J

Negligence - respondent injured in motor vehicle accident - insurer admitted liability for accident - respondent claimed damages for personal injury arising out of accident - appellant claimed proceedings statute-barred by s16B *Limitation Act 1985* (ACT) - appellant sought summary judgment - respondent sought to lead evidence before Master of settlement offers made by appellant - appellant conceded that if evidence admissible, offer would constitute confirmation of respondent's cause of action so that limitation period did not expire until after commencement of proceedings - Master ruled evidence admissible - whether Master erred in interpreting s131(2) *Evidence Act 2011* (ACT) - whether Master erred in finding settlement offer relevantly affected right of respondent under s 131(2) - held: Court satisfied order of Master admitting evidence of settlement offer made by and dismissing application for summary judgment should be set aside - summary judgment entered for appellant.

[Teoh](#) (I)

Complete Crane Hire (NT) Pty Ltd v Marchetti Autogru [2015] NTSC 32

Supreme Court of the Northern Territory

Master Luppino

Discovery - oral examination - defendant sought order for oral examination or order for leave to interrogate - defendant also sought orders for particular discovery - O31 *Supreme Court Rules* -



inability to obtain necessary information by other means -prerequisites for particular discovery - held: Court satisfied that at least leave to interrogate should be ordered - Court concluded there was advantage in ordering oral examination - order for particular discovery also granted.

[Complete](#) (I C)

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