

Monday, 15 December 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

White v Forster (NSWSC) - professional negligence - limitation of actions - advocates' immunity - claims against solicitor and barrister struck out (I)

Banks v Alpatise Pty Ltd (NSWSC) - pleadings - corporations - leave to amend statement of claim - strike-out application refused (I B)

In the matter of Elsmore Resources Ltd (NSWSC) - failure to comply with order to pay security for costs - motion for dismissal of proceedings adjourned (B)

Monadelphous Engineering Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd (QCA) - equity - no error in refusal to grant interlocutory injunction restraining respondent from calling on bank guarantees - appeal dismissed (B C)

Fletcher v Fortress Credit Corporation (Australia) II Pty Ltd (QSC) - discovery - legal professional privilege - certain documents to be produced for inspection (I B)

McInnes v Davies (SASC) - contract for sale of residential property - caveat extended until purchaser's claim for specific performance of contract determined (B)

Electricity Generation and Retail Corporation t/as Synergy v Woodside Energy Ltd (WASC) - commercial arbitration - sale and purchase agreement - leave to appeal from arbitral award fixing gas price refused (B C)

Summaries with links (5 minute read)

White v Forster [2014] NSWSC 1767

Supreme Court of New South Wales

Button J

Professional negligence - solicitors' duties - plaintiffs sued solicitor and barrister for professional negligence - solicitor and barrister sought to have proceedings struck out pursuant to r13.4 *Uniform Civil Procedure Rules 2005* (NSW) on basis they were statute barred pursuant to s14 *Limitation Act 1969* (NSW) and on basis of advocate's immunity - held: claim against barrister statute-barred and struck out - if Court wrong that claim against barrister was statute-barred, Court would nevertheless strike out claim on basis it was precluded by advocate's immunity - claim against solicitor not clearly statute-barred - bases of claim against solicitor either work done in court or work out of court that led to decision that affected conduct of case in court - claim precluded against solicitor by immunity - claim against solicitor struck out.

[White](#) (I)

Banks v Alphatise Pty Ltd [2014] NSWSC 1437

Supreme Court of New South Wales

Brereton J

Pleadings - corporations - plaintiff sued defendants for relief arising out of agreement between first defendant and plaintiff - plaintiff alleged first defendant did not perform agreement - alternatively, plaintiff alleged term of agreement amounted to representation as to future matter which was misleading and deceptive because first defendant did not have reasonable grounds for making it - sole case against second defendant was that he was knowingly concerned in making of misrepresentation - second defendant sought dismissal of proceedings against him or that paragraphs of statement of claim be struck out - original statement of claim did not contain distinct allegation that second defendant knew first defendant did not have reasonable grounds for making representation - held: facts from which it was contended an inference of actual knowledge should be drawn were not required to be pleaded - leave to amend statement of claim granted - strike out application refused.

[Banks](#) (I B)

In the matter of Elsmore Resources Ltd [2014] NSWSC 1687

Supreme Court of New South Wales

Robb J

Security for costs - third defendant sought dismissal of plaintiff's claim against him because plaintiff failed to comply with order that it provide security for costs - held: plaintiff had not provided security as required by orders - effect of orders was that proceeding was stayed - third defendant had demonstrated that continuation of proceedings against him was likely to cause continuing

damage to his reputation - in the circumstances, not appropriate to make order for dismissal - equally inappropriate to dismiss notice of motion - qualms flowed from inadequate notice given to plaintiff - possibility that lack of notice contributed to any misjudgment made by plaintiff may be resolved by plaintiff being given short additional time to provide security for costs - motion adjourned.

[In the matter of Elsmore Resources Ltd](#) (B)

Monadelphous Engineering Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd [2014] QCA 330

Court of Appeal of Queensland

Muir, Fraser & Morrison JJA

Equity - primary judge refused application by appellants for interlocutory injunction to restrain respondent from calling on bank guarantees supplied by appellants under two contracts and seeking return of bank guarantees - primary judge held there was no serious question to be tried and that interlocutory injunction should be refused because damages were an adequate remedy - held: interlocutory injunction refused in relation to one contract - serious question to be tried whether other contract was a *building contract* as defined in s67AAA(1) *Queensland Building and Construction Commission Act 1991* (Qld) - serious question to be tried whether appellants entitled to injunction restraining respondent from having recourse to guarantees - no evidence that refusal of an interlocutory injunction would cause material harm to appellant - primary judge did not err in refusing to grant an interlocutory injunction - appeal dismissed.

[Monadelphous Engineering Pty Ltd](#) (B C)

Fletcher v Fortress Credit Corporation (Australia) II Pty Ltd [2014] QSC 303

Supreme Court of Queensland

P McMurdo J

Discovery - legal professional privilege - plaintiffs sued defendants alleging breaches of statutory and fiduciary duties arising out of collapse of group of companies - plaintiffs sought production of documents disclosed by Fortress defendants - defendants claimed legal professional privilege over documents - rr5, 166(3) & 213 *Uniform Civil Procedure Rules 1999* (Qld) - dominant purpose - sufficiency of proof of claim for privilege - held: requisite purpose established in relation to documents - plaintiffs did not establish a prima facie case of an impropriety on the part of Fortress as to make it right to deprive it of legal professional privilege in documents relevant to certain transaction - certain documents to be produced for inspection.

[Fletcher](#) (I B)

McInnes v Davies [2014] SASC 184

Supreme Court of South Australia

Stanley J

Contract - sale of residential property - contract subject to condition that purchaser obtain finance by certain date, which did not occur - vendors sent email to agent enclosing signed termination notice addressed to purchaser with instruction to return purchaser's deposit - notice not given at that time nor was deposit returned - bank emailed vendors' agent copy of letter to purchaser advising finance approved - on same day vendors executed contract with third party to purchase property - purchaser asserted at date of bank's letter contract still on foot and had become unconditional - purchaser lodged caveat over property and sought specific performance of contract and extension of caveat - District Court rejected application pursuant to ss191G and/or 191K *Real Property Act 1886* (SA) to extend caveat over land until purchaser's claim for specific performance of contract was determined at trial - held: no dispute that purchaser had caveatable interest in property - nothing in purchaser's conduct justified judge in depriving him of protection of caveat pending trial of action - judge's conclusion that balance of convenience did not favour extending caveat was failure to properly exercise discretion - appeal allowed.

[McInnes](#) (B)**Electricity Generation and Retail Corporation t/as Synergy v Woodside Energy Ltd [2014] WASC 469**

Supreme Court of Western Australia

Martin CJ

Commercial arbitration - buyer sought leave to appeal from an arbitral award fixing price at which gas will be sold to buyer by sellers pursuant to provisions of sale and purchase agreement - leave to appeal sought on ground there were manifest errors of law on the face of the award which could substantially affect buyer's rights - construction of provision of agreement - adequacy of reasons - ss29, & 38 *Commercial Arbitration 1985* (WA) - held: buyer failed to establish any error of law manifest on the face of the award - application for leave to appeal refused.

[Electricity Generation and Retail Corporation t/as Synergy](#) (B C)

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