

Thursday, 18 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)

Shaw v Yarranova Pty Ltd (FCAFC) - bankruptcy - sequestration order - appeal dismissed (B)

Nominal Defendant v Ismail (NSWCA) - negligence - motor vehicle accident - inadmissible evidence - retrial on liability (I)

Zraika by his tutor Zraika v Walsh (NSWSC) - negligence - motor vehicle accident - alleged injury suffered in utero - orders for genetic testing (I)

Zafiriou v Saint-Gobain Administration Pty Ltd (VSCA) - termination of employment contract - entitlement to redundancy payment - fresh evidence - retrial (I B)

Palmgrove Holdings Pty Ltd v Sunshine Coast Regional Council (QCA) - environment and planning - conviction for depositing "prescribed water contaminant" in stormwater drainage - appeal dismissed (I C)

Cowen v Bunnings Group Ltd (QSC) - negligence - employee developed illness after sweeping up fertiliser - causation established - employer liable (I)

Hitchcock v Goldspan Investments Pty Ltd [No 2] (WASC) - costs - freezing orders - exercise of discretion where no contested hearing (B)

Summaries with links (5 minute read)

Shaw v Yarranova Pty Ltd [2014] FCAFC 171

Full Court of the Federal Court of Australia

Bennett, Flick & Yates JJ

Bankruptcy - respondent as nominee for company (MAB) sold apartment to appellant - respondent assigned benefit of contract to another company - appellant failed to pay balance of purchase price - appellant's claim for specific performance of contract dismissed - judgment entered in favour of respondent and MAB ('judgment creditors') - appellant contended judgment creditors suffered no loss or damage - appellant contended judgment creditors falsely represented they were part of group of companies owned by MAB and that they committed a "fraud" by falsely representing they had been held out of funds and unable to invest money - judgment creditors served bankruptcy notice on appellant - appellant appealed against sequestration order - ss43, 52 & 153B *Bankruptcy Act 1966* (Cth) - absence of evidence of fraud - refusal to go behind judgment - refusal of disqualification application - held: grounds of appeal not made out - application to adduce further evidence dismissed - appeal dismissed.

[Shaw](#) (B)

Nominal Defendant v Ismail [2014] NSWCA 432

Court of Appeal of New South Wales

Basten, Barrett & Emmett JJA

Negligence - motor vehicle accident - Ismail lost control of vehicle and collided with car - Ismail alleged loss of control caused when unidentified sedan made abrupt stop in front of her - truck driver behind Ismail claimed there was no sedan and that accident caused by unidentified semi-trailer attempting to merge - primary judge found there was both sedan and semi-trailer which contributed to accident - primary judge found for Ismail - Nominal Defendant challenged admissibility of traffic engineer's opinion and adequacy of trial judge's findings in reconciling inconsistent accounts of accident - Ismail cross-appealed on assessment of damages - held: report inadmissible as expert evidence as traffic engineer did not profess specialised knowledge in identifying how events perceived and recalled by different persons - approach taken by primary judge to reconcile accounts depended on admissibility of the evidence - finding on liability set aside - retrial ordered on liability

[Nominal Defendant](#) (I)

Zraika by his tutor Zraika v Walsh [2014] NSWSC 1774

Supreme Court of New South Wales

Davies J

Negligence - plaintiff diagnosed with microcephaly and developmental delay shortly after birth - plaintiff alleged he was injured by trauma sustained while he was in utero when mother injured in

motor vehicle accident - causation - one explanation for plaintiff's injuries was a genetic cause - defendants sought order for genetic testing - plaintiff opposed genetic testing on basis it would inevitably result in vacating of hearing date - delay - held: Court satisfied there was live issue as to causation of plaintiff's physical incapacity and intellectual difficulty - Court satisfied that proposed testing had capacity to throw light on the issue - orders for testing made.

[Zraika by his tutor Zraika](#) (I)

Zafiriou v Saint-Gobain Administration Pty Ltd [2014] VSCA 331

Court of Appeal of Victoria

Osborn & Whelan JJA; Ginnane AJA

Evidence - contract - appellant formerly employed by respondent - appellant's employment terminated - appellant claimed entitlement to amount under provision of written contract of employment which provided for a severance payment if his employment was terminated for reasons of redundancy/retrenchment - trial judge concluded employment not terminated for reasons of 'redundancy/retrenchment' and that primary claim should be dismissed - critical issue on appeal was whether fresh evidence had rendered trial judge's conclusions unsafe - held: not realistically possible for Court to form concluded judgment on ultimate probative significance of fresh evidence - fresh evidence raised sufficient basis to require further trial - appeal allowed in part - certain claims dismissed - matter otherwise remitted for further hearing by different judge of trial division.

[Zafiriou](#) (I B)

Palmgrove Holdings Pty Ltd v Sunshine Coast Regional Council [2014] QCA 333

Court of Appeal of Queensland

Holmes & Muir JJA; McMeekin J

Environment and planning - applicant convicted by magistrate of unlawfully depositing a "prescribed water contaminant" in stormwater drainage contrary to s440ZG *Environmental Protection Act 1994* (Qld) - primary judge dismissed appellant's appeal against conviction - applicant sought leave to appeal - held: applicant did not have any prospect of demonstrating error in primary judge's conclusion - on evidence adduced, no reasonable possibility consistent with innocence remained - evidence supported finding as to water's contamination did not leave open other rational possibilities - leave to appeal refused.

[Palmgrove Holdings Pty Ltd](#) (I C)

Cowen v Bunnings Group Ltd [2014] QSC 301

Supreme Court of Queensland

A Wilson J

Negligence - causation - plaintiff employed by defendant - plaintiff sued defendant for illness she developed after sweeping up fertiliser - employer admitted breach of duty and that it was foreseeable that work she performed might cause her injury - however employer denied breaches

caused plaintiff's serious illness - employer claimed illness coincidental with work she did - medical evidence - close relation in time between exposure and development of illness - held: Court satisfied work exposed plaintiff to large amount of dust which seriously aggravated her upper respiratory tract - there was causal connection between irritation of plaintiff's respiratory mucosa and subsequent grave illness - judgment for plaintiff.

[Cowen](#) (I)

Hitchcock v Goldspan Investments Pty Ltd [No 2] [2014] WASC 465

Supreme Court of Western Australia

Allanson J

Costs - freezing orders - plaintiff was shareholder of company - plaintiff sued director of company and other defendants - plaintiff sought damages or equitable compensation - plaintiff sought freezing orders restraining director from dealing with assets generally, and wife in relation to dealing with piece of land - Court made freezing orders - consent orders made - exercise of discretion as to costs where no contested hearing - O52A, r8 *Rules of the Supreme Court 1971* (WA) - held: no enforceable agreement as to costs - orders made reflected a compromise rather than total capitulation by either party - conduct of plaintiff was unreasonable, leading to costs being unnecessarily incurred by director and wife - plaintiff to pay costs of application.

[Hitchcock](#) (B)

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