

Thursday, 19 February 2015

Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Attorney General of NSW v Homeland Community Ltd (NSWCA) - trusts - company did not hold property on charitable trust (B)

Russell Gould Pty Ltd v Ramangkura (No 2) (NSWCA) - restitution - leave to re-open appeal - no failure to make essential finding - appeal dismissed (I B)

Commonwealth Bank of Australia Pty Ltd v Quinn (NSWSC) - possession - summary judgment granted in favour of bank (B)

Parque Pty Ltd v Chungs Oriental Trading Pty Ltd (VSC) - corporations - onus to show genuine dispute not discharged - statutory demand not set aside (B)

Smith v Marshall [No 2] (WASC) - defamation - impugned imputations struck out (I)

McFadyen v Jenson (ACTSC) - motor vehicle accident - liability admitted - credit - medical evidence - damages assessed (I)

Lend Lease Building Contractors Pty Ltd t/as Sitzler Boulderstone Joint Venture v Honeywell Ltd t/as Honeywell Building Solutions (NTSC) - security of payments - adjudicator's determination within jurisdiction - claim dismissed (C G)

Benchmark

Summaries with links (5 Minute Read)

Attorney General of NSW v Homeland Community Ltd [2015] NSWCA 15

Court of Appeal of New South Wales

Macfarlan & Meagher JJA; Sackville AJA

Trusts - Attorney General of NSW sought declaration that respondent company held property upon a charitable trust for purposes identified in deed - primary judge dismissed proceedings - Attorney General appealed - held: primary judge did not err in permitting company to withdraw concession that it did not contest validity of charitable trust and to amend defence so as to withdraw admission it was bound by a trust - finding that company bound by trust required finding that it took transfer to it with notice that trustees intended it to hold property on trust - primary judge did not err in declining to make that finding - appellant's application to adduce further evidence refused - no significant prospect a different outcome would have ensued - appeal dismissed.

[Attorney General of NSW](#) (B)

Russell Gould Pty Ltd v Ramangkura (No 2) [2015] NSWCA 14

Court of Appeal of New South Wales

Bathurst CJ; Barrett & Ward JJA

Restitution - appellant company sought leave to re-open appeal in which judgment was given - company contended Court did not make finding essential to conclusion it reached, which was that director (Mr Gould) had company's authority to cause amount of company's money to be expended in satisfaction of indebtedness of company to director - held: Mr Gould had authority to cause company to pay amount to him by way of reduction of company's on-demand indebtedness to him and to effectuate payment by drawing on company's account with bank - leave granted to re-open - appeal dismissed.

[Russell Gould Pty Ltd](#) (I B)

Commonwealth Bank of Australia Pty Ltd v Quinn [2015] NSWSC 78

Supreme Court of New South Wales

Beech-Jones J

Summary judgment - possession - bank sought to strike out amended defence or summary judgment in proceedings - amended defence raised general unconscionability - also sought to invoke *Contracts Review Act 1980* (NSW) - held: amended defence raised sufficiently clear claim under *Contracts Review Act* and of unconscionability - Court declined to strike out amended defence - no material from defendant to resist otherwise straightforward claim of default in repayment of loans - summary judgment granted to bank.

[Commonwealth Bank of Australia Pty Ltd](#) (B)

Parque Pty Ltd v Chung's Oriental Trading Pty Ltd [2015] VSC 30

Supreme Court of Victoria

Gardiner AsJ

Corporations - plaintiff applied pursuant to s459G *Corporations Act 2001* (Cth) to set aside statutory demand served on it by defendant on basis it had genuine dispute in respect of debts subject of claim - held: plaintiff did not discharge onus it bore that it had a genuine dispute in respect of debt remaining on statutory demand - plaintiff's position not supported by contemporaneously generated documentation - defendant's evidence inherently plausible - application dismissed.

[Parque Pty Ltd \(B\)](#)

Smith v Marshall [No 2] [2015] WASC 62

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - action arising out of publication to Australian Shareholders' Association as well as three other persons by open letter - defendants challenged natural and ordinary meaning imputations in plaintiff's amended statement of claim - popular or false innuendos - defendants claimed imputations were manifestly groundless or untenable meanings, and that they were also embarrassing - held: three of four impugned imputations struck out.

[Smith \(I\)](#)

McFadyen v Jenson [2015] ACTSC 12

Supreme Court of the Australian Capital Territory

Burns J

Damages - negligence - plaintiff was driving motor vehicle which was stationary in traffic when vehicle driven by first defendant collided with rear of plaintiff's vehicle - second defendant was first defendant's third party insurer - plaintiff injured as result of collision - extent of injury in dispute - defendants admitted liability - assessment of damages - medical evidence - credit - held: plaintiff was honest witness - damages assessed at \$104,447.95 - judgment for plaintiff.

[McFadyen \(I\)](#)

Lend Lease Building Contractors Pty Ltd t/as Sitzler Boulderstone Joint Venture v Honeywell Ltd t/as Honeywell Building Solutions [2015] NTSC 10

Supreme Court of the Northern Territory

Kelly J

Security of payments - plaintiff and first defendant entered subcontract - payment dispute arose - first defendant sought adjudication under *Construction Contracts (Security of Payments) Act* (NT) - plaintiff sought to quash adjudicator's determination - first defendant contended adjudicator made finding that plaintiff was not liable to pay amount to first defendant, and that, having so found, had no jurisdiction to determine amount should be paid - held: nothing to indicate adjudicator misconstrued s33(1)(b) or went outside allocated role in determining whether plaintiff owed money to first defendant - adjudicator's remarks did not constitute finding that plaintiff had no liability to pay amount to first defendant - claim dismissed.

[Lend Lease Building Contractors Pty Ltd t/as Sitzler Boulderstone Joint Venture \(C G\)](#)



Benchmark

[Click Here to access our Benchmark Search Engine](#)