

Wednesday, 25 February 2015

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

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Executive Summary (1 minute read)

BlueScope Steel Ltd v Cartwright (NSWCA) – work injury damages – truck accident - excessive speed – BlueScope Steel and insurer not liable – appeal allowed (I B C)

McGeown v NSW Land and Housing Corporation (NSWCA) – landlord and tenant – breach of lease by ceasing personally to occupy premises – appeal dismissed (I B)

Clarke v State of NSW (NSWCA) – pleadings – bias – leave to appeal from dismissal of proceedings refused (I)

Snow v Snow (NSWSC) – summary disposal – family provision – abandonment of claim - proceedings dismissed (B)

Milstern Nominees Pty Ltd v Chief Commissioner of State Revenue (NSWSC) – taxation – exemption from landholder duty for acquisition of shares in company (B)

Ban v The Public Trustee of Queensland (QCA) – Wills – administration of estate – appeal from orders in respect of matter arising under Will dismissed (B)

Gardner v Mattila (NTCA) – evidence – equity – dispute arising from development of store and caravan park – appeal dismissed – cross-appeal allowed (I B C)

Summaries with links (5 Minute Read)

BlueScope Steel Ltd v Cartwright [2015] NSWCA 25

Court of Appeal of New South Wales

Beazley P; Ward & Emmett JJA

Work injury damages - workers compensation - motor vehicle accident - employer contracted with steel manufacturer for transport of steel in containers - truck driver was driving prime mover with attached trailer containing heavy container - truck driver claimed damages for injuries when trailer lurched and rolled - Court held accident caused by tipping of unstable load and that both manufacturer and employer breached duty of care to truck driver - manufacturer had primary liability due to its inadequate packing system, which employer was contractually required to follow - liability apportioned at 85% for steel manufacturer - 15% for employer - held: accident would not have occurred unless prime mover travelling at speed in excess of limit - truck driver failed to establish inadequacy of wedges caused accident - truck driver entirely responsible for injuries - appeal allowed.

[BlueScope Steel Ltd](#) (I B C)

McGeown v NSW Land and Housing Corporation [2015] NSWCA 23

Court of Appeal of New South Wales

McCull, Macfarlan & Sackville AJA

Landlord and tenant - parties entered lease in respect of residential unit - applicant sought leave to appeal from decision of Appeal Panel of New South Wales Civil and Administrative Tribunal to dismiss appeal from Tribunal's termination of residential tenancy agreement on basis applicant had ceased *personally to occupy* the premises - Appeal Panel upheld Tribunal's decision that applicant was in breach of lease and that respondent entitled to order requiring applicant to give up possession - construction of lease - *ceased personally to occupy the premises* - held: at time respondent served Notice of Termination, applicant had been incarcerated for about eight months - applicant had ceased to be in personal occupation of premises and thereby breached the lease - appeal dismissed.

[McGeown](#) (I B)

Clarke v State of NSW [2015] NSWCA 27

Court of Appeal of New South Wales

McCull & Ward JJA

Pleadings - applicant sought leave to appeal from dismissal of statements of claim in malicious prosecution proceedings and conspiracy proceedings (conspiracy judgment), and dismissal of amended statement of claim in wrongful arrest proceedings (bias judgment) - held: proposed appeal from conspiracy judgment hopeless and out of time - applicant did not demonstrate any arguable error in bias judgment - summons for leave to appeal dismissed with costs.

[Clarke](#) (I)

Snow v Snow [2015] NSWSC 90

Supreme Court of New South Wales

Hallen J

Summary disposal - succession - defendant sought order pursuant to r12.7 *Uniform Civil Procedure Rules 2005* (NSW) that plaintiff's proceedings be dismissed for failure to prosecute with due despatch - held: Court inferred on whole of evidence that plaintiff had effectively abandoned proceedings - Court satisfied plaintiff had not taken any steps to prosecute proceedings since July 2014 and that real attempts had been made to locate the plaintiff who appeared to wish not to be located - estate was likely to be insolvent - dismissal of proceedings justified.

[Snow](#) (B)

Milstern Nominees Pty Ltd v Chief Commissioner of State Revenue [2015] NSWSC 68

Supreme Court of New South Wales

White J

Taxation - plaintiff sought pursuant to s97 *Taxation Administration Act 1996* (NSW) to review decision of Chief Commissioner not to grant plaintiff exemption under s163H *Duties Act 1997* (NSW) in respect of its acquisition of shares in company - company was discretionary object of discretionary trust with meaning of Duties Act - company owned or was entitled to property subject of the trust for purpose of Duties Act - by acquiring shares plaintiff made a relevant acquisition of significant interest under Duties Act - Commissioner decided not to grant exemption - whether just and reasonable that Duties Act applied to acquisition of shares where company as matter of fact did not own or control land or have any expectation of receiving land or any proceeds of sale or any income from it - held: Court satisfied discretion should be exercised to exempt plaintiff from landholder duty in respect of value of assets of trust which it was taken to own for purposes of Duties Act.

[Milstern Nominees Pty Ltd](#) (B)

Ban v The Public Trustee of Queensland [2015] QCA 18

Court of Appeal of Queensland

Holmes, Gotterson & Morrison JJA

Succession - trusts and trustees - controversial administration of estate - appellant appealed from orders made by Chief Justice on application by Public Trustee in respect of various matter arising under Will of deceased - appellant also sought to set aside Supreme Court orders made in 2012 - appellant contended s134 *Public Trustee Act 1978* (Qld) was unconstitutional as being beyond power of State legislature - held: appellant's main challenge proceeded on misapprehension as to nature and operation of s 134 - grounds of appeal failed - applicant unable to identify any basis upon which Court had power to set aside perfected orders - appeal dismissed - application refused.

[Ban](#) (B)

Gardner v Mattila [2015] NTCA 1

Court of Appeal of the Northern Territory

Kelly, Barr & Hiley JJ



Evidence - equity - parties entered lease agreement to develop store and caravan park on land which respondent inherited from father's estate - development financed by sale of parcels of land which respondent also inherited - parcels sold by first appellant using power of attorney granted by respondent - respondent made various claims against first appellant - primary judge found in favour of respondent on undue influence claims, claims for misappropriation of money, negligent sale of land and claim for declaration that lease was void - primary judge gave judgment for first appellant on quantum meruit claim - parties appealed and cross-appealed - first appellant's essential complaint was that trial judge accepted respondent's submission that Mrs Gardner had lied in giving evidence - held: no reason why trial judge ought not to have accepted respondent's evidence - appeal dismissed - cross appeal against first appellant concerning alleged breaches of duty in relation to trust money spent on building works which were uncommercial allowed.

[Gardner](#) (I B C)

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