

Tuesday 25 November 2014

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)

Australian Pipeline Ltd v Hastings Funds Management Ltd (NSWCA) - managed investment schemes - calculation of incentive fee payable to former responsible entity - appeal allowed (B)

Hart Security Australia Pty Ltd v Boucousis (NSWSC) - equity - directors' duties - company's claims against director and law firm failed (I B)

Hall v TCN Channel Nine Pty Ltd (NSWSC) - defamation - leave to amend pleading to include defendant's contextual imputations (I)

McVey v GJ & LJ Smith Pty Ltd (VSCA) - accident compensation - no error in opinion of medical panel - panel not bound by earlier opinion - appeal dismissed (I G)

Goldie Marketing Pty Ltd v Financial Services Ombudsman Ltd (VSC) - exclusion of dispute - interlocutory injunction restraining bank from appointing administrators (B)

Ericson v Queensland Building and Construction Commission (QCA) - administrative law - cancellation of contractor's licence - Appeal Tribunal erred on remitter - appeal allowed (C G)

Wallace v Rural Bank Ltd (QCA) - loans and mortgages - default judgment entered by Registrar in bank's favour not a nullity - appeal dismissed (B)

Summaries with links (5 minute read)

Australian Pipeline Ltd v Hastings Funds Management Ltd [2014] NSWCA 398

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Macfarlan JA

Contract - appellant was responsible entity of managed investment schemes - respondent was previous responsible entity until it was replaced - dispute arose over calculation of incentive fee payable to respondent - constitutions of funds provided for element to be determined by an Approved Valuer - parties requested court to determine proper construction of relevant element - primary judge found constitutions to be construed in manner for which respondent contended - appellant appealed - *traded on ASX* - held: appellant's construction of managed investment schemes' constitutions was correct - suggested anomalous results from appellant's construction did not compel a different conclusion - appeal allowed.

[Australian Pipeline Ltd](#) (B)

Hart Security Australia Pty Ltd v Boucousis [2014] NSWSC 1654

Supreme Court of New South Wales

Darke J

Equity - directors' duties - Hart alleged its director breached duties owed to it and that, as a consequence, it lost opportunity to enter contract to provide services to company - Hart further alleged partners of law firm were also liable to pay compensation for loss of opportunity - Hart contended law firm knowingly assisted director's breaches of fiduciary duty and partners, where persons involved in the contraventions - held: claims against director and law firm failed - director not engaged in any breach of fiduciary duty amounting to a dishonest and fraudulent design - no question arose of accessorial liability under second limb of *Barnes v Addy* - director not in contravention of any of the duties imposed on him by ss181(1), 182(1) & 183(1) *Corporations Act 2001* (Cth) - no question arose of liability as person involved in contravention - amended statement of claim dismissed.

[Hart Security Australia Pty Ltd](#) (I B)

Hall v TCN Channel Nine Pty Ltd [2014] NSWSC 1604

Supreme Court of New South Wales

McCallum J

Defamation - pleadings - action arising out of television broadcast - plaintiff sought to amend pleading to include three of defendant's contextual imputations as additional imputations of which he complained - effect of amendment would be to preclude defendants from relying on those three imputations as contextual imputations - s26 *Defamation Act 2005* (NSW) - held: there was no property in an imputation - leaving aside apparent unfairness of depriving defendants of aspect of defence, application to amend would readily be granted in accordance with accepted principle -

although plaintiff's original imputations and adopted contextual imputations technically met requirement of differing in substance, Court considered that defendants had respectable prospect of persuading jury that even plaintiff's original imputations were substantially true - leave to amend granted.

[Hall](#) (I)

McVey v GJ & LJ Smith Pty Ltd [2014] VSCA 293

Court of Appeal of Victoria

Santamaria, Beach & Kyrou JJA

Accident compensation - truck driver injured when struck by engine hood of truck - truck driver applied for lump sum impairment benefit pursuant to s98C *Accident Compensation Act 1985* (Vic) for schizophrenia injury he claimed he sustained as result of incident - truck driver appealed from dismissal of application for judicial review of opinion of medical panel - truck driver contended medical panel did not assess schizophrenia injury in accordance with s91 and failed to give effect to an early medical opinion obtained in relation to County Court proceedings for compensation for physical injuries suffered in incident in accordance with s68(4) - held: primary judge correctly dismissed judicial review application insofar as it alleged panel did not assess schizophrenia injury in accordance with s91 - judge correctly held medical panel not bound to give effect to earlier medical opinion - appeal dismissed.

[McVey](#) (I G)

Goldie Marketing Pty Ltd v Financial Services Ombudsman Ltd [2014] VSC 587

Supreme Court of Victoria

Macaulay J

Injunctions - plaintiff company in default on loans - plaintiffs lodged dispute with Financial Ombudsman Services Limited (FOS) - FOS excluded dispute from its consideration - plaintiffs sought orders quashing FOS's decision and requiring it to consider dispute - plaintiffs sought injunction restraining bank from appointing external administrators - plaintiffs claimed such action would have catastrophic effect on GM's business - held: plaintiff had made out prima facie case - plaintiffs had shown sufficient likelihood of success to justify preservation of the status quo pending trial - balance of convenience favoured granting injunction - injunction granted.

[Goldie Marketing Pty Ltd](#) (B)

Ericson v Queensland Building and Construction Commission [2014] QCA 297

Court of Appeal of Queensland

Holmes JA; Mullins & Henry JJ

Administrative law - contractor sought review of Building Services Authority's decision to suspend and cancel his licence - contractor sought leave to appeal against Appeal Tribunal's confirmation of QCAT's cancellation of licence - Appeal Tribunal had received fresh evidence but did not remit matter to member for fresh exercise of discretion in accordance with its decision - Court of Appeal

held Appeal Panel failed to exercise discretion under s48 and contractor entitled to further review - on remitter, Appeal Tribunal again confirmed decision to cancel licence - held: Appeal Tribunal erred by failing to identify basis on which it was dealing with matter and failing to reconsider it in accordance with Court's earlier decision - appeal allowed - matter remitted to differently constituted Tribunal.

[Ericson](#) (C G)

Wallace v Rural Bank Ltd [2014] QCA 295

Court of Appeal of Queensland

Fraser & Morrison JJA; Boddice J

Loans and mortgages - bank claimed money owing pursuant to trading and loan facilities granted in relation to rural properties - appellant appealed from dismissal of application to set aside default judgment - appellant contended that bank's failure to comply with r389 *Uniform Civil Procedure Rules 1999* (Qld) rendered default judgment one that could not be entered - appellant also claimed a deed of agreement was not valid and that the appellant had a viable defence - held: judgment by default entered by Registrar was not a nullity - while it was liable to be set aside by reason of non-compliance with r389, deed of agreement entered into by appellant provided a complete answer to application to set aside default judgment - futile to interfere with judgment - deed was valid and enforceable and had not been entered into unconscionably - no error in primary judge's decision - appeal dismissed

[Wallace](#) (B)

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