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

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Executive Summary (1 minute read)

Police & Community Youth Clubs NSW Ltd v Refurb Interiors Pty Ltd (in liq) (NSWCA) - claim for debt owed under building contract - security for costs refused - application for leave to appeal dismissed (I B C)

Quach v New South Wales Civil and Administrative Tribunal (NSWCA) - judicial review - NCAT had jurisdiction to hear complaint lodged with Medical Tribunal before its abolition - summonses dismissed (I G)

Jarrold v Registrar of Titles (VSCA) - real property - negligence - alleged forged signature on power of attorney - credit - new trial (I B)

P'Auer AG v Polybuild Technologies International Pty Ltd (VSCA) - contract - commission for sale of business - 'one off' transaction - inferred acceptance - appeal dismissed (I B)

Kennedy v Shire of Campaspe (VSCA) - negligence - trip on paver - *Road Management Act 2004* (Vic) - prospects of success - leave to appeal allowed (I)

BOQ Equipment Finance Ltd v Scott (QSC) - banking and finance - borrowers not induced to enter loan agreement - lender entitled to repayment of amount owing (B)

Consortium Holdings P/L v Maybell 1 P/L (QSC) - corporations - winding up - company proved solvency - application to wind up company dismissed (B)

Summaries with links (5 Minute Read)

Police & Community Youth Clubs NSW Ltd v Refurb Interiors Pty Ltd (in liq) [2015] NSWCA 67

Court of Appeal of New South Wales

Macfarlan & Leeming JJA; Sackville AJA

Security for costs - appellant sought to appeal against primary judge's rejection of its application for security for cost in proceeding in which respondent sued it for a debt alleged owed under a building contract - primary judge dismissed application on ground that an order for security would stultify the litigation - held: no error of principle or unreasonable exercise of primary judge's discretion - open to primary judge to take view that order for provision of security should not be made before liquidators had been given full opportunity to explore funding opportunities - application for leave to appeal dismissed.

[Police](#) (I B C)

Quach v New South Wales Civil and Administrative Tribunal [2015] NSWCA 63

Court of Appeal of New South Wales

Basten & Ward JJA; Sackville AJA

Judicial review - Health Care Complaints Commission lodged two notices of complaint against applicant medical practitioner - first notice filed in the Medical Tribunal before it was abolished and before establishment of New South Wales Civil and Administrative Tribunal (NCAT) - second Notice filed after Medical Tribunal abolished and NCAT created - NCAT gave judgment in Commission's favour - practitioner appealed by filing two summonses - held: NCAT had jurisdiction to hear notice of complaint lodged with Medical Tribunal before it was abolished - conditions imposed by Tribunal on practitioner's registration were not a reprimand and thus were within power to make interlocutory orders conferred by s165L(1) *National Law* -practitioner's motion to remove Commission as party to proceedings dismissed -summonses dismissed.

[Quach](#) (I G)

Jarrod v Registrar of Titles [2015] VSCA 45

Court of Appeal of Victoria

Osborn & Whelan JJA; Ginnane AJA

Real property - negligence - appellant alleged former husband forged her signature on power of attorney and used document to effect sale of jointly owned property - appellant commenced proceedings in negligence against conveyancing company, conveyancer and Registrar of Titles pursuant to s110 *Transfer of Land Act 1958* (NSW) - claim against conveyancer settled - trial judge found appellant failed to satisfy burden of proof with respect to forgery allegation and that appellant held legal interest in property on resulting trust for former husband - credit - held: primary judge made errors of fact which she relied on as a foundation for grave doubts concerning lay evidence relied on to prove appellant did not sign power of attorney - primary judge's reliance on errors also affected assessment of expert evidence - judgment could not

stand - Court not in position to reach own conclusion on credit issues - new trial ordered.

[Jarrold](#) (I B)

P'Auer AG v Polybuild Technologies International Pty Ltd [2015] VSCA 42

Court of Appeal of Victoria

Whelan, Ferguson & Kaye JJA

Contract - first applicant conducted printing business - second applicant was principal - respondents engaged to act as brokers in sale of business - applicants entered agreement for sale to company - applicants sought to appeal from decision in which trial judge found agreement as to commission was made in September 2010 which was varied in February 2011 and again in April 2011 - whether agreement made - whether brokers precluded from recovering commission because they were unlicensed 'estate agents' within meaning of *Estate Agents Act 1980* (Vic) - contracts in absence of clear offer and acceptance - credit - held: primary judge correct to imply term as to amount of commission into varied agreement - no error in conclusion that manifestation of mutual assent implied from circumstances - brokers not required to be licensed because transaction was 'one off' - no error in finding s50 did not apply - appeal dismissed.

[P'Auer](#) (I B)

Kennedy v Shire of Campaspe [2015] VSCA 47

Court of Appeal of Victoria

Whelan & Ferguson JJA

Negligence - applicant tripped on paver while walking along street - applicant sued respondent - trial judge found applicant may have had arguable case but *Road Management Act 2004* (Vic) prevented her from succeeding - applicant sought leave to appeal - prospects of success - s14A *Supreme Court Act 1986* (Vic) - held: trial judge referred to no applicable Victorian authorities on relevant statutory provisions - trial judge repeatedly referred to drafting problems, lack of clarity and difficulty in construing provisions - trial judge applied New South Wales Court of Appeal decision which applicant argued inapplicable - case raised difficult issues of application of *Jones v Dunkel* and *actual knowledge* - held: applicant should be given opportunity to obtain appellate determination of issues - prospect of success was real in sense it was not fanciful - applicant granted leave to appeal.

[Kennedy](#) (I)

BOQ Equipment Finance Ltd v Scott [2015] QSC 60

Supreme Court of Queensland

P McMurdo J

Banking - plaintiff claimed payment of money lent to by first and second defendants under written agreement - plaintiff also claimed same sum against third defendant, which had guaranteed the payments - defendants contended plaintiff's representative made misrepresentations which induced them to enter agreement - defendants conceded that absent alleged representations or promises they would be liable to plaintiff - held: defendants' case rejected - Court did not accept alleged statements made by representative - even if



representative made the statements, no resultant loss or damage was or was likely to be suffered by defendants - judgment for plaintiff.

[BOQ](#) (B)

Consortium Holdings P/L v Maybell 1 P/L [2015] QSC 55

Supreme Court of Queensland

Jackson J

Corporations - winding up - respondent company served with statutory demand to pay alleged debt - company failed to comply with demand - applicant sought to wind up company in insolvency - whether respondent had proved solvency - presumption of insolvency - s459C(3) *Corporations Act 2001* (Cth) - held: Court satisfied respondent proved sole director had made arrangements by which it was more probable than not she would be able to provide working capital required for respondent to pay debts - respondent proved director had required commitment of third party who proposed to supported otherwise insolvent company - company solvent - application dismissed.

[Consortium](#) (B)

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