

Wednesday, 11 March 2015

Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

New South Wales Land and Housing Corporation v Australia and New Zealand Banking Group Ltd (NSWSC) - contract - guarantee - misnomer of beneficiary of bank guarantee corrected

Wright by his tutor Wright v Optus Administration Pty Ltd (NSWSC) - negligence - worker contracted out to Optus by labour hire company - worker injured in attack by co-worker - Optus liable

Mitchell v Moore (NSWSC) - pleadings - statement of claim disclosed no reasonable cause of action - claim struck out - leave to replead

Boroondara City Council v 1045 Burke Road Pty Ltd (VSCA) - environment and planning - permit for demolition of heritage place - no error in Tribunal's determination

Idameneo (No 123) Pty Ltd v Suszko (SASC) - pleadings - contract - application to file and serve amended defence, set-off and counterclaim

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Summaries with links (5 Minute Read)

New South Wales Land and Housing Corporation v Australia and New Zealand Banking Group Ltd [2015] NSWSC 176

Supreme Court of New South Wales

Kunc J

Contract - plaintiff Corporation claimed it was intended beneficiary of two guarantees issued by bank at request of first defendant customer - bank cross-claimed against customer and other cross-defendants in respect of any liability bank might have to corporation under guarantees - guarantees issued in favour of nonexistent "New South Wales Land & Housing Department" - cross-defendants accepted that, if bank liable to corporation, then their clients liable to indemnify bank - whether bank liable to plaintiff under the guarantees - misnomer and absurdity - held: on its proper construction "New South Wales Land & Housing Department Trading As Housing NSW ABN 45754121940" in guarantees and Indemnity meant the Corporation - Corporation had complied with guarantees - bank liable to Corporation - cross-defendants liable to bank.

[New South Wales Land and Housing Corporation](#)

Wright by his tutor Wright v Optus Administration Pty Ltd [2015] NSWSC 160

Supreme Court of New South Wales

Campbell J

Negligence - plaintiff was employed by labour hire company - plaintiff and co-worker were undertaking training by Optus for work in call centre - plaintiff and co-worker employed to work for Optus by different agencies - plaintiff sued Optus for damages for injury suffered in attack by co-worker - plaintiff claimed that, at time of attack, Optus owed him a duty analogous to that owed by employer to employee - Optus denied it owed duty and contended the only relevant relationship was of occupier of premises and lawful entrant - applicability of personal agency agreement between labour hire company and Optus - application of s151Z *Workers Compensation Act 1987* (NSW) - Pt 3 *Civil Liability Act 2002* (NSW) - psychological injury - held: Optus owed duty of care to plaintiff - Optus breached duty of care by failing to take precautions against risk of harm - but for Optus's failure to take precautions, the harm suffered would not have occurred - no contributory negligence - judgment for plaintiff.

[Wright by his tutor Wright](#)

Mitchell v Moore [2015] NSWSC 180

Supreme Court of New South Wales

Wilson J

Pleadings - plaintiff filed statement of claim seeking declaration asserted debt amounted to charge on real property owned by defendant, pending repayment of claimed amount - defendant sought to have claim struck out as disclosing no reasonable cause of action and having tendency to cause embarrassment - held: statement of claim failed to identify reasonable cause of action - plaintiff had pleaded a conclusion of law, not material facts from which

conclusion drawn - there was at least some basis that plaintiff had triable case - statement of claim struck out with leave to file and serve further statement of claim.

[Mitchell](#)

Boroondara City Council v 1045 Burke Road Pty Ltd [2015] VSCA 27

Court of Appeal of Victoria

Warren CJ, Santamaria JA & Garde AJA

Planning - heritage policy - demolition of significant heritage place - applicant sought leave to appeal against decision of trial judge concerning considerations to be taken into account by responsible authority when determining whether to exercise discretion to allow demolition of heritage buildings - whether responsible authority or tribunal was entitled only to take into account considerations relating to Heritage Conservation Policy - held: considerations of non-heritage nature could be taken into account provided that they were relevant matters under provisions of *Planning and Environment Act 1987 (Vic)* or purposes, objectives or decision guidelines relating to, or incorporated into Heritage Overlay - Tribunal took into account consideration of non-heritage nature but did not stray from matters it was permitted to consider - no error in Tribunal's determination that it was satisfied a permit should issue under each applicable planning control on basis of conditions it specified - appeal dismissed.

[Boroondara City Council](#)

Idameneo (No 123) Pty Ltd v Suszko [2015] SASC 29

Supreme Court of South Australia

Stanley J

Pleadings - dispute arising out of sale deed and practitioner contract entered between plaintiff company and defendant medical practitioner - defendant sought to file and serve amended defence, set-off and counterclaim - substantial delay - wasted costs - failure of defendant to explain reasons for delay - held: Court satisfied that, if amendment permitted, trial would have to be adjourned - adjournment would result in significant costs being incurred - adjournment would prejudice plaintiff and have repercussions for other litigants - application refused.

[Idameneo \(No 123\) Pty Ltd](#)

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