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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Tomlinson v Ramsey Food Processing Pty Ltd (HCA) - issue estoppel - no issue estoppel arising from earlier Federal Court proceedings on which respondent could rely in common law proceedings - appeal allowed

The Australian Special Opportunity Fund LP v Equity Trustees Wealth Services Ltd (NSWCA) - equity - trusts and trustees - security trust deed - negligent failure to appoint controller - appeal allowed in part

Arida v Arida (No 2) (NSWCA) - judgments and orders - interest - appellant paid money to respondent pursuant to Court order later set aside on appeal - respondent to pay interest on amount to be repaid

Kuypers v Ashton Coal Operations Pty Ltd (No 3) (NSWSC) - evidence - workers compensation - permission to rely on statement provided to New South Wales Trade and Investment Mine Safety Unit

Famestock Pty Ltd v The Body Corporate for No 9 Port Douglas Road Community Title Scheme 24368 (QCA) - costs - respondent granted orders fixing amounts for costs payable to it by appellant under four costs orders

Petan Pty Ltd v Schult (TASFC) - conveyancing - entry of property in Heritage Register gave rise to legal restriction on property which may hinder purchaser's use - appeal dismissed

Corkhill v Commonwealth (ACTSC) - pleadings - negligent misstatement - superannuation -

pure economic loss - permission to amend pleadings

Summaries With Link (Five Minute Read)

Tomlinson v Ramsey Food Processing Pty Ltd [2015] HCA 28

High Court of Australia

French CJ; Bell, Gageler, Keane & Nettle JJ

Issue estoppel - employment law - work injury damages - appellant worker employed by respondent to work in abattoir - appellant sued respondent for injury suffered while working at abattoir - respondent contended appellant could not sue it for damages - respondent's argument depended on fact it was appellant's employer at time of injury - Court of Appeal of New South Wales held respondent had benefit of issue estoppel, that the issue whether appellant was employed by respondent at time of injury was principal issue determined in earlier Federal Court proceedings, and that while worker was not a party to Federal Court proceedings, the Fair Work Ombudsman was his privy for purposes of determining the issue - held: Court of Appeal erred in concluding Ombudsman was appellant's privy in Federal Court proceedings - claiming and making of declarations and orders created no issue estoppel for want of sufficient connection in interest between Fair Work Ombudsman and appellant - appeal allowed.

[Tomlinson](#)

The Australian Special Opportunity Fund LP v Equity Trustees Wealth Services Ltd [2015] NSWCA 225

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Emmett JJA

Equity - trusts and trustees - respondent was trustee for note holders under Convertible Notes Trust Deed and security trustee for secured note holders under Security Trust Deed in respect of notes issued by company - appellant held approximately 86% of secured notes and small number of convertible notes - appellant held fixed and floating charge over assets of company in order to secure its obligations under secured notes - company placed into voluntary administration - s441A *Corporations Act 2001* (Cth) provided that if property of company under administration subject to security interest and secured party enforced security interest before or during the "decision period", provisions of Act preventing or limiting enforcement of such rights did not apply - respondent did not enforce security by appointing controller during decision period - deed of company arrangement executed - appellant directed respondent to release and discharge its security over assets of company - appellant claimed respondent breached obligations by not appointing a controller during decision period and failing to comply with direction - primary judge found in favour of respondent - appellant appealed - held: Security Trust Deed obliged respondent to appoint controller - appellant did not waive respondent's breach of trust or right to sue for breach - respondent was negligent in failing to appoint controller - respondent not exempt from liability for failure to appoint controller - respondent not required to comply with direction - appeal allowed in part.

[Australian Special Opportunity](#)

Arida v Arida (No 2) [2015] NSWCA 226

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan JA & Sackville AJA

Judgments and orders - interest - Court allowed appeal in proceedings - parties disputed whether respondent should be required to pay interest on sum to be repaid - appellants relied on general principle that party who had paid money pursuant to judgment or court order later set aside had a common law right to restitution of money paid, with interest - held: respondent did not advance any cogent reason why he should not be required to pay interest - orders should provide for the payment of interest by respondent on amount to be repaid - orders made.

[Arida](#)

Kuypers v Ashton Coal Operations Pty Ltd (No 3) [2015] NSWSC 1126

Supreme Court of New South Wales

Campbell J

Evidence - workers compensation - driller involved in drilling coal mine that led to accident subject of case was giving evidence - whether Court should permit reliance on statement provided to New South Wales Trade and Investment Mine Safety Unit under compulsion of s155 *Work Health and Safety Act 2011* (NSW) - statement not served by first defendant in accordance with directions - held: contents of statement were relevant to determining issues concerning any duty owed by first defendant and whether it breached any duty - statement broadly consistent with contents of statement served by plaintiff - nothing in statement which ought to take second defendant by surprise - no unfairness in tender of document - Court admitted document under s64 *Evidence Act 1995* (NSW).

[Kuypers](#)

Famestock Pty Ltd v The Body Corporate for No 9 Port Douglas Road Community Title Scheme 24368 [2015] QCA 142

Court of Appeal of Queensland

Fraser JA & Douglas J

Costs - respondent sought orders fixing amounts for costs payable to it by appellant under four costs orders - substantive litigation concluded by judgment of Court of Appeal in late 2013.1 - r687(2)(c) *Uniform Civil Procedure Rules 1999* (Qld) - affidavit by solicitor sufficiently established amounts sought to be fixed reasonable and proper amounts to be fixed as costs payable under orders - appellant had not sought to be heard after being notified of application and that Court proposed to make orders as sought by respondent - appropriate to make orders substantially in form sought - orders made.

[Famestock](#)

Petan Pty Ltd v Schult [2015] TASFC 10

Full Court of the Supreme Court of Tasmania

Blow CJ; Porter & Wood JJ

Benchmark

Conveyancing - respondent contracted to purchase residential property from appellant containing three apartments - contract subject to condition precedent that there were no legal restrictions on use of property that may hinder or prevent purchaser from using property for residential use - respondent sought Court's determination under s39 *Conveyancing and Law of Property Act 1884* (Tas) whether heritage restriction under *Historic Cultural Heritage Act 1995* (Tas) gave rise to any legal restriction that may hinder applicant from using it as residential dwelling within meaning of contract - primary judge answered question in affirmative - appellant appealed - construction of 'use' in condition precedent - whether condition precedent included registration of property on Heritage Register - whether routine maintenance and repair usually subject to legal restriction - whether heritage listing amounted to 'a significant limitation' in respect of routine maintenance and repair work - held: primary judge correct to answer question in affirmative - appeal dismissed.

[Petan](#)

Corkhill v Commonwealth [2015] ACTSC 216

Supreme Court of the Australian Capital Territory

Refshauge J

Pleadings - negligent misstatement - pure economic loss - superannuation - plaintiff claimed against Commonwealth for recovery of damages suffered because husband did not join relevant superannuation scheme due to culpable conduct by Commonwealth or on Commonwealth's behalf - plaintiff sought to amend pleadings - limitation of actions - whether maintainable cause of action - whether action a new cause of action - whether arising from 'same or substantially the same facts' - held: large number of amendments permitted - due to complexity of matter Court made orders permitting amendment and required new document to be prepared consistent with reasons and endorsed by parties.

[Corkhill](#)

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