



Monday 17 November 2014

## Insurance

### 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)

**BGC (Australia) Pty Ltd v Fremantle Port Authority (No 2)** (FCA) - leave refused to administer interrogatories to be answered by CEO of Port Authority

**Ke Qin Ren v Hong Jiang; Yi Cheng Jiang v Wan Ze Property Development (Aust) Pty Ltd (in liq)** (NSWCA) - summary judgment - failure to apply correct test - appeal allowed - matter remitted

**Gillies v The State of NSW (No 2)** (NSWSC) - malicious prosecution - unlawful arrest - claims bound to fail - statement of claim struck out - proceedings dismissed

**Leckenby v Note Printing Australia Ltd** (VSC) - corporations - deed of indemnity - CEO on criminal charges entitled to be indemnified by company

## Summaries with links (5 minute read)

### **BGC (Australia) Pty Ltd v Fremantle Port Authority (No 2) [2014] FCA 1195**

Federal Court of Australia

Siopis J

Interrogatories - applicant sought leave to administer nine interrogatories to be answered by CEO of respondent Port Authority - applicant's claim arose from fact it incurred demurrage charges in respect of ships it chartered - each ship delayed outside port because there was no berth available in port to discharge ship's cargo - applicant contended Port Authority acted unconscionably when it entered into each of five agreements with plaintiff for provision of port services in relation to ships - held: proposed interrogatories called for answers which were peripheral to, and had propensity to distract from, matters which were properly in issue in this proceeding - granting of leave likely to result in parties incurring unnecessary costs as well as unduly burdening CEO - granting leave would not facilitate the just resolution of dispute in efficient and cost effective manner - wide scope of terms of proposed interrogatories, their generality, and their lack of utility rendered them objectionable on the grounds of oppression - application dismissed.

[BGC \(Australia\) Pty Ltd](#)

### **Ke Qin Ren v Hong Jiang; Yi Cheng Jiang v Wan Ze Property Development (Aust) Pty Ltd (in liq) [2014] NSWCA 388**

Court of Appeal of New South Wales

Barrett, Gleeson & Leeming JJA

Summary judgment - primary judge entered summary judgment against applicants who, together with former solicitor, had shown egregious disregard of Court's pre-trial directions and obligations under ss56(3) & (4) *Civil Procedure Act 2005* (NSW) - applicants sought leave to appeal - held: notwithstanding defendants' defaults, it was a clear case of error - primary judge failed to apply correct test, and made no reference to evidence before him - primary judge not directed to correct test or to the salient evidence - if primary judge had received appropriate assistance, summary judgment would not have been ordered - no substance in respondents' motion that leave should be refused for discretionary reasons said to amount to an abuse of process - leave granted to appeal - appeals allowed - summary judgment set aside.

[Ke Qin Ren](#)

### **Gillies v The State of NSW (No 2) [2014] NSWSC 1598**

Supreme Court of New South Wales

Schmidt J

Want of prosecution - pleadings - plaintiff sought damages for unlawful arrest, assault, and battery by arresting police officers, for unlawful imprisonment and for unsuccessful prosecutions terminated in his favour - NSW sought dismissal of statement of claim, or that it be struck out or

dismissed for want of prosecution - held: pleading did not comply with *Uniform Civil Procedure Rules 2005* (NSW) - claims were bound to fail - aspects of claim were statute-barred - Court satisfied statement of claim should be struck out and proceedings dismissed.

[Gillies](#)

## **Leckenby v Note Printing Australia Ltd [2014] VSC 538**

Supreme Court of Victoria

Sifris J

Corporations - plaintiff was CEO of defendant company - plaintiff charged with conspiring to bribe foreign officials to secure bank note printing contracts for benefit of company - company entered into policy with insurer - limit of cover insufficient to meet plaintiff's costs of criminal proceedings - plaintiff claimed he had right to be indemnified under deed of indemnity between him and company - company claimed that if, plaintiff entitled to be indemnified, then the entitlement did not arise until and unless criminal proceedings had come to an end and there had been a not guilty verdict - s199A(3) *Corporations Act 2001* (Cth) - held: ordinary meaning of indemnity in clause of deed was that the right to indemnity arose immediately - it was clearly the intention of parties that company provide funding prior to verdict - 'indemnity' referred to in deed was no more than an agreement providing for advance which required repayment on a guilty verdict - plaintiff entitled to 'indemnity' in accordance with terms of deed.

[Leckenby](#)

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