



Monday, 23 March 2015

Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

The Nominal Defendant v Aychahawchar (NSWCA) - motor accidents compensation - appeal against assessment of damages allowed

QBE Insurance (Australia) Ltd v Jovanovic (NSWSC) - motor accidents compensation - decisions of proper officer and claims assessor set aside

Citigroup Pty Ltd v Middling (No. 4) (NSWSC) - contract - mortgage - agency - contracts between borrower and lender not unjust

Gann v Hosny (VSCA) - damages - assault - appeal on sole basis judgment procured by fraud - issue of fraud remitted to County Court

Parker v BHP Billiton Iron Ore Pty Ltd (WASC) - application to set aside subpoena refused - application for further and better particulars granted - corporation joined as defendant to counterclaim

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Summaries with links (5 Minute Read)

The Nominal Defendant v Aychahawchar [2015] NSWCA 58

Court of Appeal of New South Wales

Basten & Gleeson JJA; Adamson J

Damages - motor accidents compensation - appellant challenged assessment of damages on basis awards of non-economic loss and past economic loss were excessive - appellant contended primary judge failed adequately to take into account respondent's lack of attempts to find work and utilize alternate work skills - appellant also contended primary judge failed to find respondent had failed to mitigate loss - ss39(2) & 39(1A) *Motor Accidents Act 1988* (NSW) - ss126, 131, 134 & 136 *Motor Accidents Compensation Act 1999* (NSW) - statutory interpretation - held: no basis to disturb assessment of damages for non-economic loss - primary judge failed to identify rational basis for expectation of total incapacity - primary judge made inadequate allowance for failure to mitigate and limited effect of psychiatric evidence - damages for past and future economic loss recalculated - appeal allowed.

[Nominal](#)

QBE Insurance (Australia) Ltd v Jovanovic [2015] NSWSC 241

Supreme Court of New South Wales

Garling J

Motor accidents compensation - QBE sought declarations and orders with respect to conduct of Motor Accidents Authority of NSW and various officers - first defendant alleges injuries as result of motor vehicle accident and made claim pursuant to *Motor Accidents Compensation Act 1999* (NSW) - QBE submitted decision of proper officer to refer impairment dispute for further assessment affected by legal and jurisdictional error, and that decision of claims assessor to refer treatment dispute to similarly flawed - shortly before hearing Court informed that defendants consented to orders in nature of those claimed - whether Court had jurisdiction to make orders sought - requirements of administrative decision-maker - held: QBE's arguments correct - decision to refer impairment dispute for further medical assessment wholly irrational - claims assessor's decision also set aside as it depended on decision of proper officer.

[QBE](#)

Citigroup Pty Ltd v Middling (No. 4) [2015] NSWSC 221

Supreme Court of New South Wales

Adamson J

Contract - loan agreement - agency - plaintiff claimed possession of property of which defendant borrower was registered proprietor - borrower filed cross-claim to which earlier lender (Perpetual) and plaintiff were cross-defendants - defendant granted leave to amend defence and cross-claim to include claims for relief under *Contracts Review Act 1980* (NSW) - proceedings between plaintiff and borrower resolved by deed of release - remaining matter for determination was cross-claim against Perpetual - held: Court not satisfied contracts between borrower and Perpetual were unjust - mortgage originator which prepared and submitted loan

application to Perpetual's mortgage manager (Challenger) not acting as agent for Perpetual or Challenger - dishonest conduct of mortgage originator could not be imputed to Perpetual - judgment for Perpetual.

[Citigroup](#)

Gann v Hosny [2015] VSCA 43

Court of Appeal of Victoria

Whelan & Ferguson JJA

Fraud - damages - assault - applicant granted extension of time to appeal from judgment on sole ground judgment procured by fraud - issue whether judgment procured by fraud to be contested - appellant sought order that appeal be allowed to extent of remitter - respondent contended appeal should be dismissed and appellant should be required to issue new proceeding - held: inappropriate for Court of Appeal to determine issues involving oral evidence and cross-examination - appeal allowed to extent that issue whether judgment procured by fraud of respondent referred to County Court for hearing and determination - appeal otherwise dismissed without an adjudication on the merits.

[Gann](#)

Parker v BHP Billiton Iron Ore Pty Ltd [2015] WASC 95

Supreme Court of Western Australia

Edelman J

Discovery - pleadings - joinder - three applications - application to set aside subpoena to produce or restrict inspection of documents produced - application for further and better particulars of amended defence and counterclaim - application to join corporation as defendant to counterclaim - held: subpoena issued for legitimate forensic purpose and was not oppressive - application to set aside dismissed - defendants to replead paragraphs to provide required particulars - joinder of corporation would not have any substantial detrimental effect upon management and progress of proceeding - corporation joined.

[Parker](#)

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