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Daily Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Dig It Landscapes Pty Ltd (in liq) v Bupa Aged Care Australia Pty Ltd (No 2) (FCA) - statements by a principal that induced a subcontractor to return to work had not caused a contract to be formed between the principal and the subcontractor, and were not misleading or deceptive

Secretary, Department of Education v Dawking (NSWCA) - Court upheld a teacher's entitlement to workers compensation for psychological injury suffered after being told teachers would have to be double vaccinated against COVID-19

J&Z Holding (Aust) Pty Ltd v Vitti Pty Ltd (NSWCA) - an amount paid under a poorly worded contract was an option fee and not a deposit, and did not have to be refunded

Christian Community Ministries Ltd v Minister for Education and Early Learning (NSWCA) - the Minister for Education had validly required Christian Community Ministries Ltd to repay about $4million of monies received while operating a school for profit

Tarkine National Coalition Inc v Director, Environment Protection Authority (No 2) (TASSC) - applicant in unsuccessful public interest litigation ordered to pay one half of the mining company's costs

Summaries With Link (Five Minute Read)

Dig It Landscapes Pty Ltd (in liq) v Bupa Aged Care Australia Pty Ltd (No 2) [2024] FCA 31

Federal Court of Australia

Jackson J

Contracts - a principal commissioned a builder to build a residential aged care facility, and the builder engaged a number of subcontractors - one of the subcontractors sued the principal, claiming that the principal had assumed contractual obligations directly to the subcontractor, when it induced the subcontractor to return to work by assuring it that it would be paid for the work it still had to do on the project - the subcontractor also claimed that the principal had engaged in misleading or deceptive conduct in this respect - held: the magnitude and complexity of the subject matter of an alleged contract will bear upon the likelihood that the parties intended to reach legally binding terms in an informal manner - the principal's communications to the subcontractor were that the principal had procured payment of existing arrears, and put a contractual framework in place to give increased confidence about future payments, and that the subcontractor should accept that enough had occurred to make it reasonable to go back to work - the principal did not convey that, in return for the subcontractor going back to work, the principal would assume an obligation to ensure payment in future - no contract had been formed between the principal and the subcontractor - the subcontractor had established that certain representations had been made, but not that those representations were misleading or deceptive - proceedings dismissed.

Dig It Landscapes Pty Ltd (in liq)

Secretary, Department of Education v Dawking [2024] NSWCA 4

Court of Appeal of New South Wales

Gleeson, Mitchelmore, & Kirk JJA

Workers compensation - a teacher claimed that advice from the Education Department that a Public Heath Order expected to made by the Minister for Health would require mandatory double doses of vaccinations for COVID-19 for all public school and preschool staff had caused her to develop a psychological injury (adjustment disorder with anxiety) - the Personal Injury Commission determined she had sustained psychological injury with her employment as the main contributing factor - the Department's appeal to a Deputy President was unsuccessful - the Department appealed on a question of law to the Court of Appeal under s353(1) of the *Workplace Injury Management and Workers Management Act 1998* (NSW) - held: the failure to give adequate reasons may be an error of law depending on the statutory context - here, the statutory obligation was to attach a "brief statement of reasons" to the certificate of determination - the reasons were adequate - the Deputy President had not made an error of law in stating that the conclusion that the employment was the main contributing factor to the injury was a conclusion of fact - a failure to respond to a substantial, clearly articulated argument relying on established facts is both a constructive failure to exercise jurisdiction and a failure to accord natural justice - the Deputy President had not done so here, and had not ignored the Department's submissions - appeal dismissed.

View Decision

J&Z Holding (Aust) Pty Ltd v Vitti Pty Ltd [2024] NSWCA 2
Court of Appeal of New South Wales
Payne & Kirk JJA, & Griffiths AJA
Contracts - parties entered into an option agreement regarding land, and a later amending deed - the documents required the purchaser to pay a an option fee equal to 20% of the purchase price, and that the fee would be subtracted from the purchase price if the put option were exercised, and the documents also made reference to the fee being part of the deposit - the seller exercised the put option, causing a contract for sale to come into existence - the purchaser subsequently terminated the contract for sale on the ground of repudiation by the seller - a dispute arose as to whether the option fee was a deposit (and therefore refundable) or a mere option fee that became the property of the seller subject to being credited against the purchase price should the contract be completed - the primary judge held that it was merely an option fee and therefore the seller did not have to refund it to the purchaser - the purchaser appealed - held: the contract was poorly worded, and contained numerous errors - although the disputed sum was described in various parts of the documentation as the deposit, this was not determinative of its true legal character - in determining whether an amount is a deposit, the nature of the obligation agreed between the parties is more important than the terminology the parties use - the essential character of a deposit is that it is an earnest of the bargain or its performance - cases that applied the principle that a deposit which is released to the vendor may be recovered by the purchaser on restitutionary principles where the purchaser terminates the contract for breach by the vendor were distinguishable - in those cases, the consideration for which the deposit had been paid was the seller's performance of the contract by conveying the land to the purchaser, whereas here the consideration for which the disputed sum was paid was for the grant of the option - appeal dismissed.
View Decision

Christian Community Ministries Ltd v Minister for Education and Early Learning [2024] NSWCA 1
Court of Appeal of New South Wales
Gleeson & Mitchelmore JJA, & Griffiths AJA
Administrative law - the Minister for Education made a decision under s83J of the *Education Act 1990* (NSW) requiring Christian Community Ministries Ltd (CCM) to repay about $4million to the New South Wales government, being monies received while operating a school for profit and therefore ineligible to obtain government funds - CCM sought judicial review - the primary judge dismissed the proceedings - CCM appealed - held: s83C provides that financial assistance is not to be provided to schools that operate for profit - s83E(2) provides that a school is a non-complaint school if the Minister is satisfied that the school or its proprietor had failed to provide reasonable assistance in relation to an investigation, or failed to comply with a direction of the Minister - s83E(3) provides that a school is a non-compliant school if it does or did operate for profit, but the Minister is satisfied that termination of financial assistance is not justified because of the minor nature of the conduct, or because more appropriate action can be taken under

s83E - s83F(1) empowers the Minister to declare a school to be a non-compliant school - s83J(1) empowers the Minister to recover financial assistance provided to a school in respect of a period when the school operated for profit or was a non-compliant school - a school can be a non-compliant school for the purpose of s83E(3) before the Minister forms the state of satisfaction required by that subsection - s83F(1) permits the Minister to declare a school is, or was, a non-compliant school with respect to periods before the Minister formed the state of satisfaction required by either s83E(2) or (3) - s83J(1) permits the Minister to recover financial assistance provided for a period before the Minister formed the state of satisfaction required by s83E(3) and before the Minister had made a declaration under s83F(1) - appeal dismissed.
View Decision

Tarkine National Coalition Inc v Director, Environment Protection Authority (No 2) [2024] TASSC 1
Supreme Court of Tasmania
Blow CJ
Environmental law - the Tarkine National Coalition applied for judicial review of a decision of the Director of the Environment Protection Authority to relax conditions imposed on a planning permit for the development and use of a hematite mine by Venture Minerals - the Court had previously dismissed the proceedings - Venture applied for an order that the Tarkine National Coalition pay its costs - held: a hematite mine in the Tarkine wilderness area was a controversial matter, and the development was and is opposed by a significant number of people who are interested in the preservation of Tasmania's wilderness areas - as a general rule, an unsuccessful party to litigation will be ordered to pay the costs of each successful party - there can be circumstances warranting a departure from the general rule when the unsuccessful party has conducted proceedings in the public interest - Venture's status as a private company rather than a public sector entity was a factor that weighed against departure from the ordinary rule and must be given appropriate weight - however, in environmental litigation it will often be the case that a developer is a more appropriate contradictor than a public authority or statutory decision-maker who would ordinarily be expected to remain impartial and submit to whatever decision the court might make - the protection of the Tasmanian devil population and other native fauna was a matter of public importance - it could not be said that ground 1 of the judicial review application had lacked merit, although grounds 2 and 3 had - it seemed to the Court that the work done by the parties' lawyers regarding ground 1 was distinct form but roughly equal to the work done on grounds 2 and 3 - Tarkine National Coalition ordered to pay one half of Venture's costs.
Tarkine National Coalition Inc

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