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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

SAS Trustee Corporation v Woollard (NSWCA) - administrative law - police officer had not given notice to Commissioner of chronic post-traumatic stress disorder - Industrial Court's order quashed (I G)

In the matter of Cummings Engineering Holdings Pty Ltd (NSWSC) - corporations - redundancy payment to director of company void - director entitled to certain remunerations - orders made (B C)

Chapel Road Pty Ltd v Australian Securities Investments Commission (No 10) (NSWSC) - corporations - revocation of security dealers' licence - no misfeasance in public office or malicious prosecution - claim dismissed (I B G)

Secure Funding Pty Ltd v Deren; Deren v Secure Funding Pty Ltd (No 2) (NSWSC) - loans and mortgages - default on consumer loan agreement - delay in payment of insurance money - lender granted order for possession (I B)

Pentridge Village Pty Ltd v G & S Potenza Pty Ltd (VSCA) - contract - restitution - payment not made on basis of mistake or misleading or deceptive conduct - appeal dismissed (B C)



Cairns v Trowelcoat Pty Ltd (VSC) - accident compensation - no legal bar to admission sought for purpose of jury's use as evidence of employment injury (I)

Re Glew; ex parte the Hon Mischin MLC, Attorney General (WA) (WASC) - contempt - conduct disrespectful to judges and denigrated Court's integrity and dignity - no actual impediment to administration of justice - contempt order not made (I G)

Summaries with links (5 minute read)

SAS Trustee Corporation v Woollard [2014] NSWCA 75

Court of Appeal of New South Wales

Bathurst CJ, Basten JA & Tobias AJA

Administrative law - superannuation - police officer brought proceedings in Industrial Court of New South Wales challenging applicant's refusal to certify he was incapable of discharging his duties due to chronic post-traumatic stress disorder (CPTSD) - trustee concluded police officer had not notified Commissioner of Police of injury as required by s10B(2)(a) *Police Regulation (Superannuation) Act 1906* (NSW) - Industrial Court determined CPTSD was a disease of gradual onset and that police officer had notified Commissioner of symptomatology sufficient to demonstrate onset - trustee contended Industrial Court made jurisdictional error in misconstruing and misapplying s10B(2)(a) - Pt 4, ss1, 7, 7AA, 8, 8A, 10, 10B, 14 & 21 - *injury - notified* - held: Industrial Court erred in concluding it was consistent with the Act's purposes to give *injury* a different meaning depending on the nature of the injury - error was to impute to legislature an intention they regarded as desirable rather than one which could be derived from the legislation - Court erred in concluding police officer gave notice of injury giving rise to infirmity of CPTSD - error constituted jurisdictional error - order quashed.

[SAS Trustee Corporation](#) (I G)

In the matter of Cummings Engineering Holdings Pty Ltd [2014] NSWSC 25

Supreme Court of New South Wales

Brereton J

Corporations - contract - employment law - limitation of actions - company claimed compensation for *redundancy* payment made to defendant on termination of his employment as managing director - company claimed payment was made in breach of defendants' statutory or general law duties as directors of company - director cross-claimed for underpaid remuneration and leave entitlements - ss180, 181, 182, 200B, 200E, 200G, 200J, 236, 237, 1317H & 1318 *Corporations Act 2001* (Cth) – Sch 1, Pt 3 *Corporations Amendment (Improving Accountability on Termination Payments) Act 2009* (Cth) – reg 2D.2.03(1)(C) *Corporations Regulations 2001* (Cth) - held: *redundancy* payment was made in contravention of defendants' statutory and general law obligations to act in good faith in interests of company as a whole - payment voidable and



recoverable by company - directors liable to compensate company - director entitled to recover underpaid remuneration and long service leave - trustee of director's trust entitled to bonus under management agreement - directors did not act honestly in authorising redundancy payment and even if they did Court would not excuse them from liability on grounds of prejudice.

[In the matter of Cummings Engineering Holdings Pty Ltd](#) (B C)

Chapel Road Pty Ltd v Australian Securities Investments Commission (No 10)

[2014] NSWSC 346

Supreme Court of New South Wales

Schmidt J

Corporations - malicious prosecution - misfeasance in public office - plaintiff company claimed ASIC revoked its security dealer's licence for improper reasons and that ASIC had intended to do it harm - company sued ASIC seeking damages for misfeasance in public office and malicious prosecution - elements of tort of misfeasance in public office - pleadings - credit - held: even if tort of misfeasance in public office could be established by aggregating conduct of various ASIC officers as had company sought to do, officers' alleged acts and common intentions should have been pleaded expressly and proved by reliable evidence that acts were the result of pursuit of a common intention to damage company - company did not set out to establish that case - evidence did not establish that any officer involved in decision to pursue surveillance acted maliciously - decision to issue notice of hearing to seek revocation of or conditions on licence not unlawful or for malicious purpose - delegate's decision to revoke licence not unlawful or for malicious purpose - claim dismissed.

[Chapel Road Pty Ltd](#) (I B G)

Secure Funding Pty Ltd v Deren; Deren v Secure Funding Pty Ltd (No 2) [2014] NSWSC 348

Supreme Court of New South Wales

Schmidt J

Possession of land - mortgages - insurance - borrower's property severely damaged by storms - borrower made claims under his insurance policy - insurance dispute resolved after proceedings commenced and loan had fallen into arrears - lender used payment by insurer to reduce amount outstanding under loan - lender sought possession of property - borrower cross-claimed for relief of obligation to repay amount outstanding under loan because of lender's alleged unfair conduct in relation to dispute over insurance claims - borrower claimed loan agreement and mortgage were unconscionable - construction of consumer loan agreement - whether relevant delay or inactivity by lender in relation to payment or receipt of insurance money - *Australian Securities and Investments Commission Act 2001* (Cth) - held: lender not responsible for property being underinsured - lender had right to take possession of property in event of default - loan was in default - not established that delays in payment of insurance money to lender were result of its unconscionable conduct or any unfairness in contracts - borrower's position was result of his



refusal of offers which both insurer and lender had made to him - cross-claim dismissed - judgment for lender - order for possession granted.

[Secure Funding Pty Ltd](#) (I B)

Pentridge Village Pty Ltd v G & S Potenza Pty Ltd [2014] VSCA 50

Court of Appeal of Victoria

Nettle & Neave JJA; Sifris AJA

Contract - restitution - misleading or deceptive conduct - respondent contractor claimed appellant developer owed it money based on alleged agreement pursuant to which it performed work at housing project - alternative quantum meruit claim - developer denied agreement as alleged and counterclaimed for repayment of part of sum already paid - trial judge held there was no agreement or basis for quantum meruit claim and that contractor's agreement was with a sub-contractor and claim was dismissed - developer appealed against dismissal of its counterclaim - developer claimed payment to contractor was money had and received, made under mistake, for consideration that failed or on basis of misleading or deceptive conduct by director of contractor - held: evidence did not establish it was more likely than not that payment was made by developer because of any mistake on its part - no misleading or deceptive conduct - no error in the reasoning of trial judge - appeal dismissed.

[Pentridge Village Pty Ltd](#) (B C)

Cairns v Trowelcoat Pty Ltd [2014] VSC 129

Supreme Court of Victoria

Rush J

Accident compensation - plaintiff lodged WorkCover claim form which was accepted by defendant - in industrial accident claim, plaintiff's counsel sought admission from employer that employer had paid and continued to pay plaintiff's medical expenses - purpose of seeking admission was jury could be invited to infer that plaintiff suffered injury in the course of his employment - at trial employer had alleged injury had arisen in course of performance of work unrelated to his employment - employer's counsel claimed the sought after admission was irrelevant distracting the jury from key issues of causation and that administrative processes that were part of the no fault Workcover scheme should not be led in evidence in a common law trial - ss82(1) & 99(1) *Accident Compensation Act 1985* (Vic) - held: admission sought was no more than that the acceptance of the claim form by payment of medical expenses was capable of being used by the jury as evidence that plaintiff suffered back injury in the course of his employment in manner set out in the claim form - no legal bar to admission sought

[Cairns](#) (I)



Re Glew; ex parte the Hon Mischin MLC, Attorney General (WA) [2014] WASC 107

Supreme Court of Western Australia

EM Heenan J

Contempt of court - disrespectful conduct in court by litigant on person - Attorney General sought order under O 55 *Rules of the Supreme Court 1971 (WA)* that contemnor be committed to prison and/or required to pay a fine for contempt of court in the face of the Court of Appeal – O 50, r3 & O 50, r4 - s16(1)(a) *Supreme Court Act 1935 (WA)* - effect of impugned conduct - held: litigant's behaviour singularly inappropriate and disrespectful - conduct constituted gross disrespect to judges and Court, constituted denigration of the dignity and authority of the Court and had the capacity to diminish the respect for the Court, judges and the administration of justice - however actual course of justice not impeded and despite his bad behaviour litigant was not actually an obstacle or an impediment to the administration of justice - finding of contempt in the face of the Court not made.

[Re Glew; ex parte the Hon Mischin MLC, Attorney General \(WA\) \(I G\)](#)

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