



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Granitgard Pty Ltd v Termicide Pest Control Pty Ltd - *Trade Practices Act 1974* (Cth) - website - CSIRO appraisal (I, B, C)

Management 3 Group Pty Ltd (in liq) v Lenny's Commercial Kitchens Pty Ltd (No 3) - Costs (I, B, C)

Crossman v Taylor (No 3) - *Fair Trading Act 1987* (SA) - misleading & deceptive conduct (I, B)

Northern Pastoral Development Company v Banibi Pty Ltd (No 2) - Application for an order authorising it applicant to proceed with cattle muster (B)

Chilcott v HomeSec Finance Express Pty Ltd & Anor - *Trade Practices Act 1974* (Cth) - alleged misleading and deceptive conduct - claim dismissed (I, B, C)

Thai Airways International Public Company Ltd v FaragMenzies Aviation Group (Ground Services) Australia Pty Ltd v Thai Airways International Public Company Ltd - Contracts - settlement agreement binding - appeal allowed (I, B, C)



Davis v Veigel; Davis v Broughton; Bell v Veigel; Bell v Broughton - Personal injuries - motor accident - appeals dismissed (I)

Kearney v Ballyfore Engineering & Excavations Pty Ltd - Personal injuries - work injuries - apportionment of liability between tortfeasors - judgment for plaintiff (I)

Lifehealthcare Distribution Pty Ltd v Stewart Allen Nicholas - *Fair Trading Act 1987* (NSW) - contracts - share purchase agreement - due diligence process - plaintiff's claim dismissed (I, B)

SMEC Australia Pty Ltd v Valentine Falls Estate Pty Ltd - Contracts - consultancy agreement - appeal against interlocutory decision (I, C)

Roe v the Director General, Department of Environment and Conservation for the State of Western Australia - Costs (C)

Summaries with links (5 minute read)

Friday 1 July 2011

Granitgard Pty Ltd v Termicide Pest Control Pty Ltd [2011] FCAFC 81

Full Court of the Federal Court of Australia

Kenny, Lander & Reeves JJ (in Brisbane)

Trade Practices Act 1974 (Cth) - competitors in market for supply & installation of barrier systems to prevent termite infestation - granite particles & crushed glass particles - whether respondent had made three representations primary judge had found it did not make - appellant partially successful in relation to two aspects of representation issue but had failed to establish that any of the representations made by respondent were in breach of relevant provisions of the Act in the sense that they were false, misleading, or deceptive.

[Granitgard](#) (I, B, C)

[Granitgard](#) - decision 31 March 2010: see 'Benchmark' I, C & IBC Wednesday 7 April 2010- s51A, 52 & 53 *Trade Practices Act 1974* (Cth)- representations as to future matters - CSIRO appraisal - whether respondent adopted statements of another through display on website - application dismissed - detailed analysis of Australian case law.



Management 3 Group Pty Ltd (in liq) v Lenny's Commercial Kitchens Pty Ltd (No 3) [2011] FCA 725

Federal Court of Australia

Dodds-Streeton J (in Melbourne)

Costs - settlement offer - deadline for acceptance one day before commencement of trial - what constitutes a Calderbank offer - extensive analysis of Australian case law.

[Management 3 Group](#) (I, B, C)

[Management 3 Group](#) - decision 10 June 2011: see 'Benchmark' I, C & IBC Monday 20 June 2011 - torts - conversion - alleged breach of s440C *Corporations Act* 2001 (Cth) - restitution - goods purchased prior to commencement of voluntary liquidation for installation in mining workers' accommodation camp MCG constructing - interpretation of construction contract - applicant's claims not established - application dismissed - a lengthy judgment with detailed consideration of case law from the United Kingdom & Australia.

[s440C](#) *Corporations Act* 2001 (Cth)

Crossman v Taylor (No 3) [2011] FCA 734

Federal Court of Australia

Besanko J (in Adelaide)

Fair Trading Act 1987 (SA) - joint venture involving acquisition & operation of a marina for houseboats on River Murray near Mannum - misleading & deceptive conduct under s56 established - ss232 & s233 *Corporations Act* 2001 (Cth) - plaintiff did not succeed in oppressive conduct case or fiduciary duty case - extensive examination of Australian case law.

[Crossman](#) (I, B)

Northern Pastoral Development Company v Banibi Pty Ltd (No 2) [2011] FCA 736

Federal Court of Australia

Mansfield J (in Adelaide) (via video link with Darwin)

Application by applicant to join second respondent Permanent Custodians Ltd as a party (a step which was not resisted) & for an order authorising it to proceed with cattle muster - application granted.

[Northern Pastoral Development](#) (B)

[Northern Pastoral Development](#) - decision 24 May 2011 of Mansfield J in Darwin - applicant had sought injunctive relief to restrain the respondent from mustering cattle owned by the respondent & further cattle presently in the care and control of the applicant at Elsey Station in the Northern Territory - stock mortgage - applicant granted summary judgment: injunction of limited duration.

**Chilcott v HomeSec Finance Express Pty Ltd & Anor [2011] FCA 729**

Federal Court of Australia

Marshall ACJ in Hobart

Trade Practices Act 1974 (Cth) - alleged misleading and deceptive conduct - representations made by agent of first respondent lender regarding home loan strategy - alleged unconscionable conduct by short term lender - claim dismissed.

[Chilcott](#) (I, B, C)

Thai Airways International Public Company Ltd v FaragMenzies Aviation Group (Ground Services) Australia Pty Ltd v Thai Airways International Public Company Ltd [2011] NSWCA 172

Court of Appeal of New South Wales

Bathurst CJ, Allsop P, Tobias AJA

Contracts - agreement to settle defamation action - party imposed time limit upon execution of settlement documents - no repudiation - settlement agreement binding - appeal allowed.

[Thai Airways International](#) (I, B, C)

Davis v Veigel; Davis v Broughton; Bell v Veigel; Bell v Broughton [2011] NSWCA 170

Court of Appeal of New South Wales

Hodgson, Macfarlan, Young JJA

Personal injuries - motor accident - witness for two defendants had given evidence indicating that non-party likely cause of accident - hearing adjourned to enable plaintiffs to join non-party as defendant - costs - appeals dismissed.

[Davis](#) (I)

Kearney v Ballyfore Engineering & Excavations Pty Ltd [2011] NSWSC 210

Supreme Court of New South Wales

Rothman J

Personal injuries - apportionment of liability between tortfeasors - *Civil Liability Act 2002 (NSW)* - quantum of damage - two incidents at construction site - plaintiff truck driver employed by first defendant - second defendant principal contractor & occupier of site had had engaged first defendant to provide plaintiff's services - as to first incident, plaintiff alleging fall from a ladder permanently attached to side of truck - as to second incident, plaintiff alleging that while attempting to lift draw bar to reattach it to tip truck, he suffered back injury - liability of second



defendant assessed at seventy percent, of first defendant at thirty percent - contributory negligence fifteen percent - judgment for plaintiff.

[Kearney \(I\)](#)

Lifehealthcare Distribution Pty Ltd v Stewart Allen Nicholas [2011] NSWSC 661

Supreme Court of New South Wales

Hammerschlag J

Fair Trading Act 1987 (NSW) - contracts - share purchase agreement - plaintiff alleging breach of warranties & misleading & deceptive conduct - due diligence process - indemnity clause in agreement - plaintiff's claim dismissed - defendant's cross-claim dismissed.

[Lifehealthcare Distribution](#) (I, B)

SMEC Australia Pty Ltd v Valentine Falls Estate Pty Ltd [2011] WASCA 138

Court of Appeal of Western Australia

Pullin, Newnes & Murphy JJA

Contracts - consultancy agreement - appeal against interlocutory decision of Master dismissing appellant/defendant's application for summary judgment dismissed - appeal against interlocutory decision dismissed.

[SMEC Australia](#) (I, C)

[Valentine Falls Estate](#) - decision 7 September 2010: see 'Benchmark' I, C & IBC Tuesday 9 November 2010 - negligence - application for summary judgment - consultancy agreement - plaintiff alleging it engaged defendant to provide civil engineering & project management services in relation to a proposed development on the plaintiff's land - exclusion clause - 'indirect, consequential & special losses' - application for summary judgment dismissed.

Roe v the Director General, Department of Environment and Conservation for the State of Western Australia [2011] WASCA 57

Court of Appeal of Western Australia

Martin CJ; Buss & Murphy JJA

Costs - whether circumstances justify no order as to costs - proceedings in public interest - no order as to costs.

[Roe](#) (C)

[Roe](#) - decision Court of Appeal 15 March 2011: see 'Benchmark' C & IBC Tuesday 17 March 2011 - *Environmental Protection Act 1986* (WA) & related legislation - reserves of natural gas discovered in the Browse Basin, an area situated off the coast of the Kimberley region - applicant asserting that decision of the delegate of the Chief Executive Officer of first respondent Department to grant Woodside Energy clearing permit, & of the Minister to dismiss his appeal from the grant of that permit were both unlawful & should be set aside because the clearing permit was related



to a significant proposal which had been referred to the Environmental Protection Authority, and which had not been assessed by the EPA at the time of either decision - application dismissed - detailed analysis of legislation;

[Roe](#) - decision Court of Appeal 15 March 2011: see 'Benchmark' C & IBC Tuesday 17 March 2011 - *Environmental Protection Act 1986 (WA) - Main Roads Act 1930 (WA) - Native Title Act 1993 (Cth)* - these proceedings closely related to proceedings CIV 2658 of 2010: see summary & link above - applicant seeking to set aside clearing permit granted by the first respondent through his delegate, to second respondent Commissioner of Main Roads - application dismissed.

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