

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Travelax Limited v Commissioner of Taxation - *A New Tax System (Goods & Services Tax) Act 1999* (Cth), s38-190 – conversion of Australian dollars into foreign currency for use outside Australia – whether transaction attracts GST – appeal dismissed (I,B,C)

Webb v Teeling - *Superannuation (Resolution of Complaints) Act 1993* (Cth) (B)

Kugel, in the matter of Charben Haulage Pty Ltd (in liq'n) - *Corporations Act 2001* (Cth) – application by liquidator for extension of time pursuant to s588FF(3)(b) (B,C)

Tropical Reef Shipyard Pty Ltd v QBE Insurance (Australia) Ltd - Insurance – determination of construction of policies prior to trial - business interruption – loss of turnover (I)

BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd (No 3) - Agency – shipbroking services – breach of warranty of authority (I)

Qenos Pty Ltd v Ship 'APL Sydney' - *Limitation of Liability for Maritime Claims Act 1989* (Cth) – Convention on Limitation of Liability for Maritime Claims 1976 - negligence - claim for damage caused by ship – whether claim for economic loss covered by 1976 Convention (I)

Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union - s38 *Building Construction Industry Improvement Act 2005* (Cth) - application for interlocutory injunction to restrain unlawful industrial action (C)

Applecross Pte Ltd v Lim - Service of documents in Singapore (I,B)

Oasis Fund Management v ABN Amro - Mediation – timing – factors to consider - insurance (I,B,C)

Platinum Investment Management Ltd v Chief Commissioner of State Revenue - Application by



defendant for leave to adduce further expert evidence (B)

Parmac Investments Pty Ltd v Logan City Council & Anor - Joinder – introduction of new appellants - developer appeal against Council refusal of development approval (C)

Hodgson v Dimbola Pty Ltd t/a Towers Removals & Workers Compensation Nominal Insurer (NSW) - ACT case - *Limitation of Actions Act 1974* (Qld) – personal injuries – application refused (I)

Newton v Masonic Homes - Workers compensation - appeal from Work Health Court - “ceased to be incapacitated for work” (I)

Gladanac v Wang - *Motor Accidents Compensation Act 1999* (NSW) - plaintiff pedestrian knocked down on pedestrian crossing - contributory negligence not proven – assessment of damages (I)

Summaries with links (5 minute read)

Thursday 1 October 2009

Travellex Limited v Commissioner of Taxation [2009] FCAFC 133

Full Federal Court of Australia

Mansfield, Stone J, & Edmonds J (in Sydney)

A New Tax System (Goods & Services Tax) Act 1999 (Cth), s38-190 – conversion of Australian dollars into foreign currency for use outside Australia – whether transaction attracts GST – “supply of rights”, “supply in relation to rights” – appeal dismissed.

[Travellex Limited](#)

Webb v Teeling [2009] FCA 1094

Federal Court of Australia

Jagot J (in Sydney)

Superannuation (Resolution of Complaints) Act 1993 (Cth) – distribution of death benefit in a superannuation fund - appeal from Superannuation Complaints Tribunal dismissed.

[Webb](#)

Kugel, in the matter of Charben Haulage Pty Ltd (in liq'n) [2009] FCA 1039

Federal Court of Australia

Emmett J (in Sydney)

Corporations Act 2001 (Cth) – company insolvency - application by liquidator for extension of time



pursuant to s588FF(3)(b) – voidable transactions – unfair preference – purchase of land at Killara – originating process dismissed as against one of the three categories of entity included in originating process

[Kugel](#)

Tropical Reef Shipyard Pty Ltd v QBE Insurance (Australia) Ltd [2009] FCA 1088

Federal Court of Australia

Finkelstein J (in Melbourne)

Insurance – determination of construction of policies prior to trial - business interruption – loss of turnover - exclusion clauses - damage to slipway - applicant providing engineering, repair & maintenance services for commercial vessels from shipyard facility at Portsmith in Queensland - dispute arose as to manner in which applicant had calculated its loss of turnover (assuming it has suffered any loss at all) – “loss or claim” - at para. 23 of judgment:

“It is not necessary to deal with the interesting argument concerning double insurance because this is not a case of double insurance. However, if it were such a case then, according to old authority, it is possible for the insured to recover his entire loss from several insurers: Bruce v Jones [1863] EngR 194; (1863) 1 H & C 769.”

[Tropical Reef Shipyard Pty Ltd](#)

BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd (No 3) [2009] FCA 1087

Federal Court of Australia

Finkelstein J (in Melbourne)

Agency – contracts – implied terms - shipbroking services -- breach of warranty of authority – yardstick of reasonable practice - causation - emails – voyage instructions - shipbroker purportedly acting for one party but actually acting for another – measure of damages – *Trade Practices Act 1973* (Cth) - misleading conduct – contravention of s53(bb) - “sponsorship, approval or affiliation.”

[BHPB Freight Pty Ltd](#)

Qenos Pty Ltd v Ship 'APL Sydney' [2009] FCA 1090

Federal Court of Australia

Finkelstein J (in Melbourne)

Limitation of Liability for Maritime Claims Act 1989 (Cth) – Convention on Limitation of Liability for Maritime Claims 1976 - negligence - claim for damage caused by ship – anchor struck pipeline causing supply of ethane to stop – plaintiffs use gas in their business operations – plaintiff suffered only pure economic loss – whether claim for economic loss is covered by 1976 Convention – claims in tort for pure economic loss fall within Art 2.1(c), of the Convention provided other criteria satisfied - “infringement of rights,” “rights.”

[Qenos Pty Ltd](#)

Australian Building & Construction Commissioner v Construction, Forestry, Mining & Energy Union [2009] FCA 1092

Federal Court of Australia

Gilmour J (in Perth)

s38 *Building Construction Industry Improvement Act* 2005 (Cth) - application for interlocutory injunction to restrain unlawful industrial action –whether action taken was building industrial action – whether action was based on a reasonable concern by employees about an imminent risk to health or safety – application of accessorial liability to union officers – whether prima facie case – no evidence of any imminent risk to any employee’s health or safety – injunction granted.

[Australian Building and Construction Commissioner](#)

Applecross Pty Ltd v Lim [2009] FCA 1102

Federal Court of Australia

McKerracher J (in Perth)

Service of documents – statement of claim raises two causes of action: directors’ insolvent trading claim pursuant to s588G *Corporations Act* 2001 (Cth) & secondly, a misleading & deceptive conduct claim pursuant to s10 *Fair Trading Act* 1987 (WA) – entry into lease - grant of leave to serve originating process at addresses in Singapore.

[Applecross Pty Ltd](#)

Oasis Fund Management v ABN Amro [2009] NSWSC 967

Supreme Court of New South Wales

McDougall J

Mediation – timing – factors to consider - insurance - plaintiffs seeking order pursuant to s26 *Civil Procedure Act* 2005 (NSW) that these proceedings be referred to mediation – superannuation products - first defendant opposing order for mediation at the present time - order made for mediation.

[Oasis Fund Management](#)

Platinum Investment Management Ltd v Chief Commissioner of State Revenue [2009] NSWSC 988

Supreme Court of New South Wales

Gzell J

Application by defendant for leave to adduce further expert evidence - share valuation - leave refused - experts to prepare joint statement of extent to which they agree & disagree to be presented to the Court at hearing.

[Platinum Investment Management Limited](#)

Parmac Investments Pty Ltd v Logan City Council & Anor [2009] QPEC 079

Planning & Environment Court of Queensland



Robin QC DCJ

Joinder – introduction of new appellants - developer appeal against Council refusal of development approval for a shopping centre - appellant no longer wishing to proceed but precluded by contract with owners of site from filing notice of discontinuance - its rights in the application & appeal recently assigned to owners - co-respondent applying for striking out of appeal – owners’ application for inclusion in appeal as appellants - significance of delay which might flow from joinder - duty of appellant's experts to be available for presentation of owners' case as appellant.

[Parmac Investments](#)

Hodgson v Dimbola Pty Ltd t/a Towers Removals & Workers Compensation Nominal Insurer (NSW) [2009] ACTSC 126

Supreme Court of the Australian Capital Territory

Refshauge J

Limitation of Actions Act 1974 (Qld) – personal injuries – application for extension of limitation period - plaintiff applicant had been injured when he fell off a truck that he was unloading in Queensland – claim against employer – compensation claim previously accepted - application refused – detailed consideration of Australian case law.

[Hodgson](#)

Newton v Masonic Homes [2009] NTSC 51

Supreme Court of the Northern Territory

Mildren J

Workers compensation- appeal from Work Health Court – appellant was employed by respondent in an aged care facility – validity of notice of termination of benefits – expert evidence - “ceased to be incapacitated for work” - one of the eighteen grounds of appeal was upheld [ground 18], appeal otherwise dismissed.

[Newton](#)

From the District Court of New South Wales...

Gladanac v Wang [2009] NSWDC 234

District Court of New South Wales

Bozic SC DCJ

Motor Accidents Compensation Act 1999 (NSW) - plaintiff pedestrian knocked down on pedestrian crossing - contributory negligence not proven – no evidence that plaintiff’s alcohol consumption contributed to accident - medical assessor’s statement of reasons – assessment of damages - judgment for plaintiff in sum of \$298,875.50.

[Gladanac](#)