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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)

Holt v TCN Channel Nine Pty Ltd (NSWCA) - defamation - current affairs broadcast critical of husband's conduct toward ill wife - award of damages not manifestly inadequate - appeal dismissed (I)

LRSM Enterprise Pty Ltd v Zurich Australian Insurance Ltd (NSWCA) security for costs - miscarriage of discretion in order for provision of security for costs in claim against insurer - appeal allowed (I B C)

Firth v Yang (NSWCA) - solicitors' costs - right to itemisation of a lump sum bill - question sought to be raised was hypothetical - leave to appeal refused (I)

Todd v Jingalong Pty Ltd (NSWSC) - real property - acquisition of land - exceptions to indefeasibility - fraud - registered proprietor held land on trust for plaintiff (B)

Matthews v SPI Electricity Pty Ltd (No 12) (VSC) - subpoenas - legitimate forensic purpose - fishing expedition - subpoenas set aside (I B C G)



Verney v The Mac Services Group Pty Ltd (QSC) - work injury damages - duty of care - worker injured in fall while pushing wheelbarrow that failed - employer liable (I)

Agricultural Land Management Ltd -v- Jackson [No 2] (WASC) - directors' duties and fiduciary duty - company purchased property from related party - breaches of duty by directors - purchase price and licence fee not at undervalue - no compensation (B C)

Summaries with links (5 minute read)

Holt v TCN Channel Nine Pty Ltd [2014] NSWCA 90

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Sackville AJA

Defamation - damages - costs - current affairs program broadcast segment featuring interviews with appellant and terminally ill wife - broadcast highly critical of appellant's conduct toward wife during her illness - appellant sued respondents in defamation - jury found broadcast carried four defamatory imputations, none of which respondents had established to be true - jury found respondents established truth of two of four contextual imputations pleaded under *s26 Defamation Act 2005* (NSW) but that this did not result in appellant suffering not being injured by the imputations he had pleaded - primary judge found appellant had suffered relatively slight harm on basis of mitigatory evidence led by defendant - primary judge awarded appellant \$4,500 in damages plus \$400 interest - ss26, 34 & 40 - held: assessment of appellant's credibility not contrary to incontrovertible facts or uncontested testimony, glaringly improbable or contrary to compelling inferences - primary judge entitled to take mitigatory evidence in account in assessing damages - award of damages not manifestly inadequate - no error in refusal to award costs on indemnity basis - appeal dismissed.

[Holt \(I\)](#)

LRSM Enterprise Pty Ltd v Zurich Australian Insurance Ltd [2014] NSWCA 88

Court of Appeal of New South Wales

McColl, Macfarlan & Barrett JJA

Security for costs - insurer insured appellant under business insurance policy - appellant sued insurer for breach of contract - whether insurer required to indemnify appellant for loss caused by fire at its gymnasium - parties accepted appellant had suffered loss through fire and that fire was deliberately lit - insurer maintained appellant was responsible for fire and that insurance was not responsive to claim - appellant challenged order that it provide security for costs - *bona fide* - stultification - held: suspicion alone that appellant's principal was involved in arson was not enough to warrant finding that case was not brought *bona fide* - no objective reason for expectation that trade creditors should provide financial support to appellant to fund litigation - primary judge did not have proper regard to relevance of unwillingness to assist financially -



discretion with respect to provision of security for costs miscarried - primary judge should have dismissed the application - appeal allowed.

[LRSM Enterprise](#) (I B C)

Firth v Yang [2014] NSWCA 92

Court of Appeal of New South Wales

Macfarlan & Ward JJA

Solicitors' costs - right to itemisation of a lump sum bill - solicitor sought leave to appeal from primary judge's decision under s728 *Legal Profession Act 2004* (NSW) requiring him to give client bill of costs in itemised form for work injury damages claim - primary judge found solicitor had been obliged to comply with request made by client notwithstanding it was made more than 12 months after solicitor gave a lump sum bill to client - relationship between ss332(A) & 350 - held: question whether time limitations in s350 restricted right given by s332A was hypothetical as solicitor had complied with order to give itemised bill of costs - leave to appeal refused.

[Firth](#) (I)

Todd v Jingalong Pty Ltd [2014] NSWSC 362

Supreme Court of New South Wales

Kunc J

Real property - exceptions to indefeasibility of title - fraud - plaintiff owned land but did not have resources to complete subdivision - plaintiff verbally agreed to sell some of land to second defendant for amount payable by instalments - plaintiff later sold his land to couple on condition that after subdivision one of the lots would be sold back to him or his nominee for \$1, being the land he had agreed to sell second defendant - couple entered joint venture agreement with first defendant (Jingalong) which expressly carved out lot in acknowledgment of obligation to transfer it to plaintiff - Jingalong bought out couple and became registered proprietor of land including lot - Jingalong's director persuaded plaintiff to remove caveat to enable land to be transferred to Jingalong - Jingalong asserted that indefeasibility provisions of *Real Property Act 1900* (NSW) meant that plaintiff had no further entitlement to lot - plaintiff did not perform obligations under settlement reached at mediation - held: plaintiff entitled to lot because Jingalong's acquisition of land was either tainted by fraud under s42 or gave rise to personal equity in plaintiff - settlement did not affect any rights unless and until it was performed - no dispute plaintiff would honour his verbal agreement by directing that lot be transferred by Jingalong to second defendant on payment of final instalment of purchase price - Jingalong held land on constructive trust for plaintiff.

[Todd](#) (B)

**Matthews v SPI Electricity Pty Ltd (No 12) [2014] VSC 131**

Supreme Court of Victoria

Derham AsJ

Subpoena - SPI sought to set aside two subpoenas seeking correspondence between its solicitors and an expert because they had no legitimate forensic purpose - expert no longer to be called - SPI also contended that documents could not materially assist plaintiff, that subpoenas were a fishing expedition and that documents were the subject of client legal privilege - plaintiff sought to raise *Jones v Dunkel* inference from failure to call expert - two-part test for whether subpoena should be set aside - held: party could only use subpoena process if it would serve a legitimate forensic purpose and if it was *on the cards* that documents would materially assist party's case - not established that it was *on the cards* that documents of the kind sought to be inspected were contained in subpoenaed documents - plaintiff was seeking to go fishing for documents - unlikely inferences would be drawn against expert who had signed code of conduct - subpoenas set aside.

[Matthews](#) (I B C G)

Verney v The Mac Services Group Pty Ltd [2014] QSC 57

Supreme Court of Queensland

North J

Work injury damages - negligence - duty of care - plaintiff employed by defendant as boilermaker - plaintiff claimed he was injured when he fell while pushing loaded wheelbarrow which snapped - credit - content of duty of care involving equipment or tools - held: wheelbarrow failed at a site where it had been repaired by welding - employer breached duty of care by supplying that wheelbarrow - breach of duty caused employee's injury and damage - damages assessed - judgment for plaintiff

[Verney](#) (I)

Agricultural Land Management Ltd -v- Jackson [No 2] [2014] WASC 102

Supreme Court of Western Australia

Edelman J

Contract - equity - corporations - fiduciary duties - directors' duties - equitable compensation - plaintiff was responsible entity and trustee of managed investment scheme - first and second defendants were directors of company - third defendant was related party to company - related party sold property to company under contract including fee for non-exclusive licence to use related party's knowledge to develop property as hotel - directors signed contract on behalf of related party as vendor and on behalf of company as purchaser - development failed - company entered 'turnkey' contract for development of property at a cost which exceeded amount that hotel was sold for - company pleaded numerous breaches many of which concerned value it had received in exchange for purchase price and licence fee - delay - limitation of actions - held: directors breached duties under ss180, 601FD(1)(f)(i) & 601FD(1)(f)(iv) *Corporations Act 2001* (Cth) by failing to take all steps to ensure company complied with related party provisions and



scheme's compliance plans - directors breached fiduciary duties to company to avoid placing themselves in position in which duties to company conflicted with duties to related party - related party knowingly concerned within s79(c) in directors' contraventions - company's claim for compensation, either in equity or under the Act failed - company failed to prove that purchase price or licence fee under contract were at an undervalue or that defendants profited from transaction - no entitlement to compensation but submissions to be made about remedy.

[Agricultural Land Management](#) (B C)

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