



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Daevys v Official Trustee in Bankruptcy; In the Matter of Daevys - s153B *Bankruptcy Act 1966* (Cth) - appeal from dismissal of application for annulment of bankruptcy (B)

Daevys v Official Trustee in Bankruptcy; In the Matter of Daevys - *Bankruptcy Act 1966* (Cth) - application seeking a review of decisions to admit proofs of debt (B)

Stratford Sun Ltd v OM Holdings Ltd; In the Matter of OM Holdings Ltd - s793C *Corporations Act 2001* (Cth) - Rule 7.3 *ASX Listing Rules* (B)

Andrews v Australia & New Zealand Banking Group Ltd - Representative actions - application for strike-out - Exception Fees - penalty provisions (I, B, C)

Sheahan (Trustee) in the matter of Frost (Bankrupt) v Frost - *Bankruptcy Act 1966* (Cth) - whether transfer of property was void pursuant to s121 (I, B, C)

Insurance Australia Ltd t/as NRMA Insurance v Checchia - s118 *Motor Accidents Compensation Act 1999* (NSW) - "financial benefit" (I)



Lewis v McKinnon - Contracts for sale of land - whether purchasers entitled to injunct vendors from taking steps in reliance on a notice to complete (I, B, C)

oOh! Media Roadside Pty Ltd (formerly Power Panels Pty Ltd) v Diamond Wheels Pty Ltd & Anor - Contracts - repudiation of a bill-board licensing agreement (C)

Gant v the Age Company Ltd & Ors - Defamation - striking out - *Limitation of Actions Act 1958* (Vic) (I)

Summaries with links (5 minute read)

Monday 2 May 2011

Daevys v Official Trustee in Bankruptcy; In the Matter of Daevys [2011] FCA 397

Federal Court of Australia

Flick J (in Sydney)

s153B *Bankruptcy Act 1966* (Cth) - proceeding NSD1849 of 2010 - appeal from Federal Magistrates Court, where application for annulment of bankruptcy had been dismissed - *Federal Court Rules* order 52 rule 15: discretion to extend time - no reason to question the conclusion either that the petition "ought not to have been presented" or that it "ought not to have been accepted."

[Daevys](#) (B)

Daevys v Official Trustee in Bankruptcy; In the Matter of Daevys [2011] FCA 398

Federal Court of Australia

Flick J (in Sydney)

Bankruptcy Act 1966 (Cth) - proceeding NSD 134 of 2011 - application seeking a review of decisions to admit proofs of debt dismissed - detailed examination of legislation.

[Daevys](#) (B)

Stratford Sun Ltd v OM Holdings Ltd; In the Matter of OM Holdings Ltd [2011] FCA 414

Federal Court of Australia

Foster J (in Sydney)



s793C Corporations Act 2001 (Cth) - plaintiff seeking urgent interim injunctive relief restraining defendant from submitting certain of resolutions proposed in Notice of Meeting to the shareholders at AGM - enforcement of operating rules - Rule 7.3 *ASX Listing Rules* - application dismissed

[Stratford Sun](#) (B)

Andrews v Australia & New Zealand Banking Group Ltd [2011] FCA 388

Federal Court of Australia

Gordon J (in Melbourne)

Representative actions - application for strike-out - secondly, applicants seek order that Court determine identified questions separately - whether Order 11 Rule 16 *Federal Court Rules* applies to proceedings filed in Fast Track - applicants customers of ANZ - Bank had charged applicants a variety of fees for unauthorised overdrafts, overdrawn accounts, dishonour fees & over limit credit card accounts, defined collectively as Exception Fees - penalty provisions - whether ANZ obliged to repay all or part of Exception Fees charged to applicants or to pay damages - applicants seeking declarations that penalty provisions &/or Exception Fees void or unenforceable as a penalty - utility of a hearing of separate questions.

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

Sheahan (Trustee) in the matter of Frost (Bankrupt) v Frost [2011] FCA 356

Federal Court of Australia

Mansfield J (in Adelaide)

Bankruptcy Act 1966 (Cth) - whether transfer of property was void pursuant to s121 - granting of two mortgages over a matrimonial home - mortgages void.

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

Insurance Australia Ltd t/as NRMA Insurance v Checchia [2011] NSWCA 101

Court of Appeal of New South Wales

Beazley & McColl JJA; Handley AJA

s118 Motor Accidents Compensation Act 1999 (NSW) - false & misleading conduct for purpose of obtaining financial benefit - statutory construction - "purpose" - "financial benefit" - appellate court interference with trial judge's credit findings - appeal allowed - new trial ordered on all issues - costs.

[Insurance Australia](#) (I)

[Headnote](#)



[Checchia](#) - decision 29 September 2009: see 'Benchmark' I & IBC Friday 2 October 2009 - s18 *Motor Accidents Compensation Act 1999* - relief from liability - defendant insurer had declined to pay amount due pursuant to a settlement - allegation that plaintiff had knowingly engaged in false or misleading conduct for purpose of obtaining financial benefit in relation to a claim under the Act - settlement required to be observed - interest on damages - judgment for plaintiff in sum of \$1,225,000 plus interest.

Lewis v McKinnon [2011] NSWSC 338

Supreme Court of New South Wales

Ball J

Contracts for sale of land - interlocutory issues - injunction - purported rescission for misrepresentation in connection with sale - brochure provided to purchasers by vendors' agent - whether purchasers entitled to injunct vendors from taking steps in reliance on a notice to complete - whether court will grant declaration as to right of rescission - plaintiffs purchasers' application for interlocutory relief dismissed.

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

oOh! Media Roadside Pty Ltd (formerly Power Panels Pty Ltd) v Diamond Wheels Pty Ltd & Anor [2011] VSCA 116

Court of Appeal of Victoria

Nettle, Redlich & Weinberg JJA

Contracts - appeal from judgment in County Court in favour of respondents for damages for repudiation of a bill-board licensing agreement - tests for frustration - foreseeability of obstruction - appeal dismissed - extensive consideration of United Kingdom & Australian case law.

[oOh! Media Roadside](#) (C)

Gant v the Age Company Ltd & Ors [2011] VSC 169

Supreme Court of Victoria

Beach J

Defamation - striking out - summary judgment - *Limitation of Actions Act 1958* (Vic) - plaintiff an art dealer - whether material published capable of giving rise to imputations pleaded by plaintiff.

[Gant](#) (I)

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