

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commissioner of Taxation v Trail Bros Steel & Plastics Pty Ltd - Part IVA *Income Tax Assessment Act* 1936 (Cth) - appeal from Administrative Appeals Tribunal - establishment of employee welfare fund for superannuation contributions (B)

Robertson v Knott Investments Pty Ltd (No 2) - Employment law - application for security for costs (I)

Williams v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union - *Workplace Relations Act* 1996 (Cth) - *Building & Construction Industry Improvement Act* 2005 (Cth) - pecuniary penalties (C)

Quinn v Overland - Employment law - application for interlocutory injunction to restrain suspension of employee (C)

Comcare v Linfox Australia Pty Ltd - *Occupational Health & Safety Act* 1991 (Cth) - breach of s16(1) (I)

Austal Ships Pty Ltd v Incat Australia Pty Ltd (No 3) - Interrogatories - objectives of interrogatories (I)

Leveraged Equities Pty Ltd v Huxley - *Commercial Arbitration Act 1984* (NSW) - proper construction of dispute resolution clause in a commercial agreement - "first try to settle" (I, B, C)

Australian Associated Motor Insurers Ltd v Motor Accidents Authority of NSW - *Motor Accidents Compensation Act 1999* - assessment of claim under Part 4.4 - procedural fairness (I)

Vero Insurance Ltd v Kassem - *Corporations Act 2001* (Cth) - voluntary administration - meeting of creditors - proxies - unliquidated equitable claim - "just estimate" (I, B)

Australian Unity Retirement v Chief Commissioner of State Revenue - ss54(3), & 281 *Duties Act 1997* (NSW) - transfer of land from retiring to new trustee of unit trust (B)

Perpetual Trustee Company Ltd v Mitchell - Contracts - penalty - loan agreement & mortgage (B)

Summer Hill Business Estate v Equititrust - Promissory estoppel - loans - rates of interest (B, C)

57 Moss Rd v T&M Buckley Pty Ltd & Anor - Building contracts - security for costs (C)

Erincole Building Services Pty Ltd v John Holland Pty Ltd - Application by defendant for a stay of proceedings before referee (C)

Elphick v Westfield Shopping Centre Management Co Pty Ltd - Personal injuries - workplace accident - duty of care - s5(1) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - plaintiff a cleaner at shopping centre complex (I)



Summaries with links (5 minute read)

Monday 2 August 2010

Commissioner of Taxation v Trail Bros Steel & Plastics Pty Ltd [2010] FCAFC 94

Federal Court of Australia

Dowset, Gordon & Edmonds JJ in Brisbane

Part IVA *Income Tax Assessment Act* 1936 (Cth) - appeal from Administrative Appeals Tribunal - establishment of employee welfare fund for superannuation contributions - whether taxpayer obtained tax benefit in connection with scheme - amount of tax benefit - issues on appeal & cross-appeal set out at paragraph 8 of judgment of Dowsett & Gordon JJ - appeal & cross-appeal dismissed - detailed consideration of Australian case law.

[Trail Bros Steel & Plastics](#) (B)

Robertson v Knott Investments Pty Ltd (No 2) [2010] FCA 796

Federal Court of Australia

Flick J (in Sydney)

Employment law - application for security for costs - appeal from Federal Magistrates Court - security in sum of \$10,000 ordered - detailed consideration of principles & Australian case law.

[Robertson](#) (I)

[Robertson](#) - decision Federal Magistrates Court 8 March 2010 - *Trade Practices Act* 1974 - employment contract - allegation of misleading or deceptive conduct - representations as to future matters - applicant a design engineer in automotive industry - respondent company designs & manufactures Winnebago Motor Homes - applicant's position made redundant - applicant's claim failed.

Williams v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2010] FCA 754

Federal Court of Australia

Jessup J (in Melbourne)

Building & Construction Industry Improvement Act 2005 (Cth) - *Workplace Relations Act* 1996 (Cth) - West Gate Bridge - picketing & protesting at construction site - pecuniary penalties.

[Williams](#) (C)

Quinn v Overland [2010] FCA 799

Federal Court of Australia

Bromberg J (in Melbourne)

Employment law - suspension of employee pending investigation of alleged misconduct - application for interlocutory injunction to restrain suspension - *Public Administration Act 2004* (Vic) - balance of convenience & discretionary considerations favoured grant of interim relief - an interesting review of United Kingdom & Australian case law.

[Quinn](#) (C)

Comcare v Linfox Australia Pty Ltd [2010] FCA 793

Federal Court of Australia

McKerracher J (in Perth)

Occupational Health & Safety Act 1991 (Cth) - breach of s16(1) - fork truck overturned - worker sustained crush injuries - pecuniary penalty of \$150,000.

[Linfox Australia](#) (I)

Austal Ships Pty Ltd v Incat Australia Pty Ltd (No 3) [2010] FCA 795

Federal Court of Australia

McKerracher J (in Perth)

Interrogatories - objectives of interrogatories - respondents contending many of interrogatories burdensome & an exercise in fishing - case law considered.

[Austal Ships](#) (I)

Leveraged Equities Pty Ltd v Huxley [2010] NSWCA 179

Court of Appeal of New South Wales

Allsop ACJ; Macfarlan JA & Handley AJA

Commercial Arbitration Act 1984 (NSW) - proper construction of dispute resolution clause in a commercial agreement - enforcement of award - "first try to settle" - appeal allowed.

[Leveraged Equities](#) (I, B, C)

Australian Associated Motor Insurers Ltd v Motor Accidents Authority of NSW [2010] NSWSC 833

Supreme Court of New South Wales

Barr AJ

Motor Accidents Compensation Act 1999 - assessment of claim under Part 4.4 - MAA Claims Assessment Guidelines - procedural fairness - assessment & certificate of the claims assessor set aside - third defendant's claim remitted to Principal Claims Assessor of first defendant for allocation to different claims assessor.

[Australian Associated Motor Insurers \(I\)](#)

Vero Insurance Ltd v Kassem [2010] NSWSC 838

Supreme Court of New South Wales

Barrett J

Corporations Act 2001 (Cth) - voluntary administration - meeting of creditors - proxies - s18E *Home Building Act 1989 (NSW)* - deed of company arrangement - unliquidated equitable claim - "just estimate."

[Vero Insurance \(I, B\)](#)

Australian Unity Retirement v Chief Commissioner of State Revenue [2010] NSWSC 752

Supreme Court of New South Wales

Gzell J

ss54(3) & s281 *Duties Act 1997 (NSW)* - transfer of land from retiring to new trustee of unit trust - both trustees within the same corporate group of companies - corporate reconstruction exemption - assessment revoked - matter remitted to Chief Commissioner.

[Australian Unity Retirement \(B\)](#)

Perpetual Trustee Company Ltd v Mitchell [2010] NSWSC 825

Supreme Court of New South Wales

Davies J

Contracts - penalty - loan agreement & mortgage - proceedings for possession settled by means of Consent Orders - property at Wahroonga - default provision not a penalty.

[Perpetual Trustee Company \(B\)](#)

Summer Hill Business Estate v Equititrust [2010] NSWSC 776

Supreme Court of New South Wales

Pembroke J

Estoppel - promissory estoppel - property development - three loans - rates of interest - case law considered.

[Summer Hill Business Estate](#) (B, C)

57 Moss Rd v T&M Buckley Pty Ltd & Anor [2010] QSC 278

Supreme Court of Queensland

Ann Lyons J

Building contracts - project at Wakerley - security for costs - applicant & first respondent entered construction contract in 2008 - work ceased in 2009 & contract was eventually terminated - second respondent conducted adjudication - *Building and Construction Industry Payments Act 2004 (Qld)* - applicant brought application to have that adjudication set aside - applicant brought a claim for liquidated damages against first respondent.

[57 Moss Rd](#) (C)

Erincole Building Services Pty Ltd v John Holland Pty Ltd [2010] ACTSC 77

Supreme Court of the Australian Capital Territory

Master Harper

Application by defendant for a stay of proceedings before referee appointed by Court in construction dispute refused.

[Erincole Building Services](#) (C)



... in the District Court of New South Wales

Elphick v Westfield Shopping Centre Management Co Pty Ltd [2010] NSWDC 152

District Court of New South Wales

Hungerford ADCJ

Personal injuries - workplace accident - duty of care - s5(1) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - plaintiff a cleaner at shopping centre complex - claim against occupier first defendant & employer second defendant - whether occupier liable for injury to employee of independent contractor - cross-claim by employer against workers compensation insurer - indemnity sought by occupier against second defendant and related company - assessment of damages.

[Elphick](#) (I)

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