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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Deputy Commissioner of Taxation v Eskdale South Cattle Company Pty Ltd (FCA) - corporations - provisional liquidators appointed to two companies (B, G)

Council of The City of Botany Bay v Michos (NSWCA) - costs - offer of compromise - indemnity costs awarded to plaintiffs - leave to appeal and cross-appeal refused (I)

Solarus Projects v Vero Insurance [No 4] (NSWSC) - costs - application for extension of time dismissed by consent - costs of motion payable forthwith (I, B, C)



In the estate of GA; Re AC (NSWSC) - equity - trusts and trustees - judicial advice concerning administration of estates by NSW Trustee and Guardian (B)

Williams v Walker (NSWSC) - contract - failure of consideration in contract for sale of motor vehicle - purchaser's appeal dismissed (B)

Northbound Property Group Pty Ltd v Carosi (No 2) (QSC) - indemnity costs - offer of settlement in proceedings commenced by originating application was not an offer under *Uniform Civil Procedure Rules 1999* (Qld) (I, B)

Pine v Holcim (Australia) Pty Ltd (QSC) - limitation of actions - work injury damages - action commenced against labour hire company - employer included as second defendant (I)

Summaries with links (5 minute read)

Deputy Commissioner of Taxation v Eskdale South Cattle Company Pty Ltd

[2013] FCA 740

Federal Court of Australia

Collier J

Corporations - bankruptcy - interlocutory applications for appointment of provisional liquidator to two companies pursuant to s472(2) *Corporations Act 2001* (Cth) - claimed tax liabilities of company trustee - change of trustee - transfer of assets - principles concerning right of indemnity of trustee, effect of transfer to new trustee and creditor's right of subrogation - unexplained transactions involving dissipation of trust funds - affairs of trust conducted in manner disregarding creditors' interests - existence of substantial debt in favour of Deputy Commissioner - original trustee without management and insolvent - inadequacy of current orders to freeze trust assets to permit further investigations into trust affairs - held: appropriate for provisional liquidator to be appointed to both companies.

[Deputy Commissioner of Taxation](#) (B, G)

Council of The City of Botany Bay v Michos [2013] NSWCA 244

Court of Appeal of New South Wales

Barrett & Gleeson JJA; Sackville AJA

Costs - applications for leave to appeal and cross-appeal from decision to award plaintiffs indemnity costs on basis of non-acceptance of offer of compromise - held: primary judge's reasons



contained incorrect reasoning on construction of r20.26 *Uniform Civil Procedure Rules 2005* (NSW), but decision was arguably supportable on another basis - proper construction of rule not in doubt following *Whitney v Dream Developments* - no issue of principle or question of general importance - amount in issue considerably below threshold beyond which appeal as of right was available - decision not to order indemnity costs for whole proceedings not affected by error, plainly unreasonable or unjust - no sufficient basis for admission of further evidence on appeal - expense of factual reassessment not warranted - applications dismissed.

[Council of The City of Botany Bay](#) (I)

Solarus Projects v Vero Insurance [No 4] [2013] NSWSC 1012

Supreme Court of New South Wales

Campbell J

Costs - second plaintiff withdrew application for extension of time to provide security for costs - application dismissed by consent - dispute between as to whether court, in accordance with r42.7(2) *Uniform Civil Procedure Rules 2005* (NSW), should order costs the subject of agreement to be payable forthwith - held: second plaintiff's conduct not relevantly unreasonable - subject matter of application discrete and self-contained making it a suitable vehicle for separate costs order - considerable distance to go before finalisation of proceedings - real chance that costs payable to defendant would be lost or second plaintiff's circumstances might materially change - order made for costs of motion to be paid forthwith.

[Solarus Projects](#) (I, B, C)

In the estate of GA; Re AC [2013] NSWSC 986

Supreme Court of New South Wales

White J

Equity - trusts and trustees - NSW Trustee and Guardian applied for judicial advice in relation to deceased estate of which it was administrator and estate of which it was financial manager - doubts concerning validity of will - held: applicant justified in providing to Minister administering *Probate and Administration Act 1898* (NSW) materials relevant to validity of deceased's will as set out in statement of facts together with counsel's opinion on will's validity and court's reasons - applicant justified in not undertaking further enquiries into will's validity and in continuing to administer both estates on assumption that will valid and that proceedings unlikely to be commenced for revocation of grant of probate of will unless and until it received notice to contrary - orders made.

[In the estate of GA](#) (B)

**Williams v Walker [2013] NSWSC 1013**

Supreme Court of New South Wales

Campbell J

Contract - appeal pursuant to s39(1) *Local Court Act 2007* (NSW) from decision to enter judgment for defendant based on plaintiff's total failure of consideration proffered on contract for sale of motor vehicle - plaintiff contended Magistrate erred by permitting defendant to advance case not open on pleadings, by failing to arrive at only conclusion open as to characterisation of contract on accepted evidence and by failing to consider argument advanced on behalf of plaintiff at trial which, if accepted, would have put different character on post-contractual conduct - held: plaintiff did not make out grounds of appeal - appeal and summons dismissed.

[Williams](#) (B)**Northbound Property Group Pty Ltd v Carosi(No 2) [2013] QSC 189**

Supreme Court of Queensland

McMeekin J

Indemnity costs - offer of settlement - *Calderbank* offer – court declared applicant validly terminated contract for purchase of land and was entitled to repayment of deposit - applicant sought indemnity costs on basis of offer of settlement made in compliance with r360 *Uniform Civil Procedure Rules 1999* (Qld) - definition of *judgment* in Sch 4 of the Rules - held: proper characterisation of offer was that it was not made under Ch 9, Pt 5 of the Rules because rules relating to formal offers did not apply to proceedings commenced by originating application - offer contained element of compromise - respondents' reasons for not accepting offer not persuasive but on balance court not persuaded respondents acted unreasonably or imprudently in pursuing defence - respondents to pay applicant's costs on standard basis.

[Northbound Property Group Pty Ltd](#) (I, B)**Pine v Holcim (Australia) Pty Ltd [2013] QSC 184**

Supreme Court of Queensland

Fryberg J

Limitation of actions - work injury damages - plaintiff commenced proceedings against host employer - limitation period under s11 *Limitation Act 1974* (Qld) expired - plaintiff subsequently actual employer (labour hire company) as second defendant - whether plaintiff entitled to join actual employer as defendant in existing action or was obliged to commence fresh action and then apply for consolidation of actions - construction of r69(2) *Uniform Civil Procedure Rules 1999* (Qld) concerning bar on inclusion or substitution of parties after expiry of a limitation period - held:



s302 *Workers Compensation and Rehabilitation Act 2003 (Qld)* had effect of extending limitation period under *Limitation Act - r69(2)* should not be construed as applying without regard to extension - order made for joinder of actual employer as second defendant.

[Pine \(I\)](#)

Trees in the Garden

by D. H. Lawrence

Ah in the thunder air
how still the trees are!

And the lime-tree, lovely and tall, every leaf silent
hardly loses even a last breath of perfume.

And the ghostly, creamy coloured little tree of leaves
white, ivory white among the rambling greens
how evanescent, variegated elder, she hesitates on the green grass
as if, in another moment, she would disappear
with all her grace of foam!

And the larch that is only a column, it goes up too tall to see:
and the balsam-pines that are blue with the grey-blue blueness of
things from the sea,
and the young copper beech, its leaves red-rosy at the ends
how still they are together, they stand so still
in the thunder air, all strangers to one another
as the green grass glows upwards, strangers in the silent garden.

[D H Lawrence](#)

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