

Friday, 3 March 2017

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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Bondelmonte v Bondelmonte (HCA) - family law - orders made for return of two eldest children to Australia from New York - interim orders made for children's living arrangements on their return - appeal dismissed (I B C G)

Weston (Trustee) v Australian Securities and Investments Commission, in the matter of Empire Property and Investment Group Pty Ltd (Deregistered) (FCA) - corporations - bankruptcy - reinstatement of de-registered company granted (B)

Walker Group Constructions Pty Ltd v Tzaneros Investments Pty Ltd (NSWCA) - building contract - negligence - respondent entitled to damages from appellant for costs in relation to replacement of pavement under building warranties - appeal dismissed (I B C G)

Spata v Tumino; Estate of Gina Spata (NSWSC) - succession - family provision - plaintiff was adult child of deceased's deceased husband by a previous marriage - plaintiff not an eligible person - proceedings dismissed (B)

Jodell v Woods (NSWSC) - succession - family provision - adult daughter of deceased granted order for lump sum from deceased's estate (B)

Versa-Tile Pty Ltd v 101 Construction Pty Ltd (VSC) - domestic building contract - set off of damages orders in two proceedings - identity of contracting parties - undisclosed principal

doctrine - denial of procedural fairness - error of law established (I B C G)

Chan & Ors v Macarthur Minerals Ltd & Ors (QSC) - pleadings - trade practices - corporations - misleading and deceptive conduct - paragraphs of statement of claims struck out with leave to replead (I B C G)

Summaries With Link (Five Minute Read)

Bondelmonte v Bondelmonte [2017] HCA 8

High Court of Australia

Kiefel, Bell, Keane, Nettle & Gordon JJ

Family law - appellant and first respondent were father and mother of three children - appeal concerned orders made for two eldest children's return to Australia from New York where they had remained in breach of parenting order made by Family Court of Australia after holiday with father ended - appeal also concerned interim orders made for children's living arrangements on return - father contended primary judge wrong to discount children's views about remaining in New York, and was required to put in train a process by which children's views concerning living arrangements could be ascertained - it was also contended parenting orders 'could not be made in favour of strangers to the proceedings' - 'judicial discretion' - 'best interests of the child' - 'any other person' - ss60CA, 60CC, 60CD, 60CE, 64C, 65C, 65D, 68L & 68LA *Family Law Act 1975* (Cth) - held: appeal dismissed.

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

Weston (Trustee) v Australian Securities and Investments Commission, in the matter of Empire Property and Investment Group Pty Ltd (Deregistered) [2017] FCA 176

Federal Court of Australia

Farrell J

Corporations - bankruptcy - sole director and shareholder of company was undischarged bankrupt - applicant was trustee of bankrupt estate - upon sequestration order shares of undischarged bankrupt vested in applicant under s116 *Bankruptcy Act 1966* (Cth) - company de-registered - applicant sought reinstatement of deregistered company on basis he was person 'aggrieved by the deregistration' and that it was just that company be reinstated - ss601AH, 461(1)(a), 461(1)(k) & 462 *Corporations Act 2001* (Cth) - held: Court satisfied that applicant was a person aggrieved by the deregistration and that it was just to reinstate company - there was utility in reinstating company and making declaration sought.

[Weston](#) (B)

Walker Group Constructions Pty Ltd v Tzaneros Investments Pty Ltd [2017] NSWCA 27

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Gleeson JA

Building contract - negligence - respondent sued appellants for defective concrete paving at

container terminal - primary judge found first respondent entitled to damages from appellant for costs in relation to replacement of pavement under building warranties - whether assignee of building warranties had right to sue under warranties - extent of loss - construction of deed of assignment - whether first respondent acquired terminal with knowledge of defects - whether first respondent entitled to damages for costs of full replacement - whether there should have been reduction in sum of damages for betterment - cause of loss - costs - *Competition and Consumer Act 2010* (Cth) - *Uniform Civil Procedure Rules 2005* (NSW) - *Home Building Act 1989* (NSW) - *Trade Practices Act 1974* (Cth) - held: appeal dismissed.

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

Spata v Tumino; Estate of Gina Spata [2017] NSWSC 111

Supreme Court of New South Wales

Brereton J

Succession - family provision - deceased left whole estate to nephew and niece - deceased predeceased by husband - deceased had no children - plaintiff was one of husband's three children of previous marriage - plaintiff sought provision from deceased's estate - ss57(1)(e) & 59(1)(b) *Succession Act 2006* (NSW) - held: Court not satisfied plaintiff was an eligible person - proceedings dismissed.

[Spata](#) (B)

Jodell v Woods [2017] NSWSC 143

Supreme Court of New South Wales

Hallen J

Succession - family provision - plaintiff was adult daughter of deceased who sought provision from deceased's estate and notional estate pursuant to *Succession Act 2006* (NSW) - plaintiff's relationship with deceased - estrangement - plaintiff's financial and material circumstances - size of estate - whether competing financial claim - held: provision for plaintiff in deceased's Will was inadequate for her proper maintenance and advancement in life - Court satisfied that it should make order for lump sum in plaintiff's favour.

[Jodell](#) (B)

Versa-Tile Pty Ltd v 101 Construction Pty Ltd [2017] VSC 73

Supreme Court of Victoria

Ginnane J

Domestic building contract - two proceedings arising from water damage to converted warehouse - in first proceeding, Owner sued Builder seeking cost of repairing and completing works - in second proceeding, Builder sued director of Owner for outstanding amount under contract and liquidated damages for delay - Victoria Civil and Administrative Tribunal found Owner repudiated contract but Owner's claims against Builder for defective work pre-dating repudiation survived - Senior Member set off sum awarded to Builder for loss and damage on repudiation against sum awarded to Owner for the costs of rectification - Builder ordered to pay amount to Owner - identity of contracting parties - undisclosed principal doctrine - procedural

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fairness - whether practical injustice established - held: Tribunal Member failed to afford applicant procedural fairness - error of law established - other grounds of appeal failed.

[Versa-Tile](#) (I B C G)

Chan & Ors v Macarthur Minerals Ltd & Ors [2017] QSC 13

Supreme Court of Queensland

Bond J

Pleadings - trade practices - corporations - plaintiffs sought damages for misleading and deceptive conduct in contravention of s52 *Trade Practices Act 1974* (Cth) - defendants sought to strike out statement of wholly or partially and contended proceeding should be dismissed - defendants contended allegations of misleading and deceptive conduct not properly pleaded and some claims for damages could not be supported - 'causal link between impugned conduct and loss' - s588M(2) *Corporations Act 2001* (Cth) - s82 *Trade Practices Act* - held: paragraphs of statement of claim struck out with leave to replead.

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

CRIMINAL

Executive Summary

CT v R (NSWCCA) - criminal law - applicant found guilty of seven child sexual offences against step-daughter - appeal against sentence dismissed

R v HBO (QCA) - criminal law - applicant found guilty of seven child sexual offences against step-daughter - consequences of complainant's delay in reporting incidents - failure to instruct jury sufficiently - appeal allowed - convictions quashed - retrial

Summaries With Link

CT v R [2017] NSWCCA 15

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Johnson & Latham JJ

Criminal law - applicant found guilty of seven child sexual offences against step-daughter - applicant sentenced to seven years in prison - applicant sought leave to appeal against sentence on grounds of manifest excess, failure 'to take into account and apply appropriate established sentencing practice and patterns', error as to emphasis on 'general deterrence, general denunciation' and community protection, error as to applicant's prior good character, error in finding offences not mitigated by cessation of offending, error in assessment of age and under care as relevant considerations, and failure to 'mention or take into account an objective



fact' - held: grounds of appeal failed - appeal dismissed.

[CT](#)

R v HBO [2017] QCA 18

Court of Appeal of Queensland

Fraser & Philip McMurdo JJA; Mullins J

Criminal law - appellant convicted of seven counts of sexual offending against stepdaughter - appellant contended in first ground that trial judge did not give an adequate warning of consequences of complainant's delay in reporting incidents - appellant contended in second ground that trial judge did not warn jury about case's specific features affecting complainant's reliability - *Longman* direction - held: trial judge insufficiently instructed jury of 'required scrutiny of the complainant's testimony' - miscarriage of justice established - appeal allowed on first ground - convictions quashed - retrial.

[R v HBO](#)



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What mystery pervades a well!

By [Emily Dickinson](#)

What mystery pervades a well!

That water lives so far—
A neighbor from another world
Residing in a jar

Whose limit none has ever seen,
But just his lid of glass—
Like looking every time you please
In an abyss's face!

The grass does not appear afraid,
I often wonder he
Can stand so close and look so bold
At what is awe to me.

Related somehow they may be,
The sedge stands near the sea—
Where he is floorless
And does no timidity betray

But nature is a stranger yet:
The ones that cite her most
Have never passed her haunted house,
Nor simplified her ghost.

To pity those that know her not
Is helped by the regret
That those who know her, know her less
The nearer her they get.

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