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Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Pennsylvania Manufacturers' Association Insurance Company v Johnson Matthey, Inc (CCOP) - insurance - trigger of coverage - insurer sought declaratory judgment it was not obliged to defend or indemnify company concerning Department's lawsuit against company seeking costs of cleanup for environmental contamination - summary relief refused (I B C G)

Traljesic v Bosnia and Herzegovina (FCAFC) - extradition - evidence - appellant was eligible for surrender to Federation of Bosnia and Herzegovina in relation to offences for which he was convicted in Bosnia and Herzegovina - appeal dismissed (I B C G)

Mine Subsidence Board v Frank and Louisa Kozak (NSWSC) - possession - plaintiff entitled to possession of property occupied by defendants pursuant to bare licence (I B C G)

Citi Project Marketing (Qld) Pty Ltd and Anor v VG projects Pty Ltd and Ors (QSC) - corporations - winding up - winding up application dismissed - declaration made that Extraordinary General Meeting and resolutions were valid (I B C G)

Pallas Bride and Fashion Pty Ltd v Evans (WASCA) - contract - leases and tenancies - repudiation - rectification - appeal dismissed (I B C G)

CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd (WASCA) - interlocutory injunction - appellant granted injunction, subject to undertaking as to damages, to restrain respondent from calling on bonds (I B C G)

CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd (WASC) - interlocutory injunction - plaintiff sought to restrain defendant from demanding payment under bank guarantees - interlocutory injunction refused (I B C G)

Summaries With Link (Five Minute Read)

Pennsylvania Manufacturers' Association Insurance Company v. Johnson Matthey, Inc No 330 M.D. 2015

Commonwealth Court of Pennsylvania
Colins, Senior Judge

Insurance - environmental contamination - Pennsylvania Manufacturers' Association Insurance Company (insurer) filed petition for review against company (JMI) and Pennsylvania Department of Environmental Protection (DEP) - insurer sought declaratory judgment it was not obliged to defend or indemnify JMI concerning DEP's lawsuit against JMI in which DEP sought costs of environmental contamination cleanup - insurer sought summary relief - identification of 'appropriate trigger of coverage' - construction of insurance contract - whether facts alleged in DEP's lawsuit could trigger coverage under policies - whether insurance policy an 'occurrence' policy or 'claims made' policy - 'first manifestation of the injury' - held: environmental contamination claims fell within exception to first manifestation rule - policies were triggered 'if undetected environmental contamination occurred during the policy period' - insurer did not show contamination did not occur in policy periods or first manifested before policy periods - insurer not entitled to a declaratory judgment it had no obligation to defend or indemnify JMI - summary relief refused.

[Pennsylvania Manufacturers' Association](#) (I B C G)

Traljesic v Bosnia and Herzegovina [2017] FCAFC 70

Full Court of the Federal Court of Australia
Griffiths, Perry & Bromwich JJ

Extradition - evidence - primary judge dismissed appellant's application for review of second respondent's decision that appellant was eligible for surrender to first respondent Federation of Bosnia and Herzegovina in relation to offences for which he was convicted in Bosnia and Herzegovina - whether erroneous failure to find there were substantial grounds to believe there was extradition objection under s7(c) *Extradition Act 1988* (Cth) - whether erroneous failure to find ss59 & 135 *Evidence Act 1995* (Cth) applied to proceedings - held: no error in primary judge's construction of s7(c) or application of facts to construction - ground of appeal in relation to Evidence Act, in effect, was seeking an advisory opinion from Court and dismissed on that ground - appeal dismissed.

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

Mine Subsidence Board v Frank and Louisa Kozak [2017] NSWSC 421

Supreme Court of New South Wales

Hamill J

Possession - defendants' home damaged by mining subsidence - defendants lodged claim with plaintiffs for compensation - defendants vacated property to allow house to be demolished and replaced - plaintiff provided defendant with rent free accommodation during rebuild at property subject of proceedings - plaintiff sought possession of property - defendants objected to claim for possession - whether action by plaintiff fraudulent or corrupt - whether plaintiff received financial benefit from defendants' permission to destroy and repair house - held: defendants occupied property pursuant to bare licence, not a 'license coupled with equity' - no equitable estoppel precluding plaintiff from taking possession - plaintiff granted judgment for possession.

[Mine Subsidence Board](#) (I B C G)

Citi Project Marketing (Qld) Pty Ltd and Anor v VG projects Pty Ltd and Ors [2017] QSC 65

Supreme Court of Queensland

Martin J

Corporations - winding up - two applications - second applicant sought order winding up first applicant - second, third and fourth respondents sought declaration that Extraordinary General Meeting, which lacked quorum, and resolutions passed at it were valid - whether issues between parties which could not be resolved without liquidator's appointment - whether failure of company's substratum - whether procedural irregularity constituted by lack of quorum caused substantial injustice which could not be remedied by Court's order - held: winding up application dismissed - declaration made that Extraordinary General Meeting and resolutions were valid.

[Citi Project Marketing](#) (I B C G)

Pallas Bride and Fashion Pty Ltd v Evans [2017] WASCA 84

Court of Appeal of Western Australia

Murphy & Mitchell JJA; Beech J

Leases and tenancies - first appellant leased premises - respondents purchased premises subject to lease - respondents and second appellant, who was first appellant's sole director, signed 'letter agreement' for first appellant's continued occupation under lease - second appellant guaranteed first appellant's obligations under lease - first appellant purported to give one month's notice of termination of lease - after one month, first appellant vacated - respondents sued appellants for repudiation of lease and rectification of letter agreement if necessary - trial judge found for respondents - construction of letter agreement - whether respondents did not plead case on which they succeeded - whether trial judge erred in relation to extrinsic evidence and in finding letter agreement should be rectified if his construction erroneous - held: grounds of appeal failed - appeal dismissed.

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

CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd [2017] WASCA 85

Court of Appeal of Western Australia

Buss P & Murphy JA

Interlocutory injunction - primary judge found appellant did not make out prima facie case that respondent was not entitled, under subcontract with appellant, to call on bonds, and that balance of convenience favoured refusing injunction - whether primary judge erred in construing term of contract - held: appeal had reasonable prospects of success - there was risk bonds would be called and risk appellant would suffer 'at least reputational damage' if they were called - appellant had reasonable grounds to argue for entitlement to extensions of time - there was risk appeal would be rendered nugatory if injunction refused - injunction granted subject to filing of undertaking as to damages.

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

CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd [2017] WASC 112

Court of Appeal of Western Australia

Buss P & Murphy JA

Interlocutory injunction - defendant was head contractor responsible for delivery of the project to owner - plaintiff entered subcontract with defendant for performance of works in relation to project - defendant demanded payment of liquidated damages from plaintiff - plaintiff disputed defendant's entitlement on basis of dispute arising from defendant's assessment of plaintiff's claims for extensions of time - plaintiff sought to restrain defendant from demanding payment from bank under bank guarantees - ss7 & 7(2) *International Arbitration Act 1974* (Cth) - O59 r9(1), O59 r9(2) *Rules of the Supreme Court 1971* (WA) - held: plaintiff did not make out prima facie case that JKC was not entitled to call on bank guarantees - balance of convenience favoured the refusal of interlocutory injunction - interlocutory injunction refused.

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

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