

Friday 4 April 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Hall v Hillview Ltd t/as Outrigger Reef Fiji Resort (NSWSC) - occupiers' liability - guest injured at Fiji resort – NSW Court not clearly inappropriate forum - statement of claim not set aside (I)

The Owners - Strata Plan No. 70030 v Decon Australia Pty Ltd (NSWSC) - administrative law - dismissal of proceedings by Consumer Trader & Tenancy Tribunal - jurisdictional error - orders quashed (C G)

Lowe v Lowe (NSWSC) - succession - family provision - deceased failed to make adequate provision for adult son - lump sum order (B)

Ryan v The Grange at Wodonga Pty Ltd (VSC) - administrative law - no error in opinion of medical panel that worker able to perform pre-injury duties - application dismissed (I G)

Martin v Golding Contractors Pty Ltd (QSC) - work injury damages - truck driver injured at mine - liability admitted by employer - damages assessed (I)

Public Trustee as executor of estate of O'Connor (deceased) (SASC) - succession - charitable trust established by will could not be carried out - variation of terms approved (B)



Bordex Wineracks Pty Ltd v Bordex Manufacturing Pty Ltd (SASC) - equitable remedies - company joined as defendant - interlocutory injunction granted - freezing orders continued (B)

Summaries with links (5 minute read)

Hall v Hillview Ltd t/as Outrigger Reef Fiji Resort [2014] NSWSC 377

Supreme Court of New South Wales

Fullerton J

Negligence - contract - occupiers' liability - *forum non conveniens* - defendant was incorporated in Fiji - plaintiff resident of NSW was guest at resort in Fiji operated by company - guest slipped and fell while descending stairs in resort - guest sued defendant as occupier of resort in Supreme Court of NSW - company sought order pursuant to r11.7(1) *Uniform Civil Procedure Rules 2005* (NSW) to set aside statement of claim on basis Court was an inappropriate forum - *clearly inappropriate* test - questions of liability and quantum - interpretation of Fijian statute on which claim based - held: Court not persuaded defendant had discharged obligation of demonstrating Court was a *clearly inappropriate forum* for resolution of questions raised by pleading - application dismissed.

[Hall](#) (I)

The Owners - Strata Plan No. 70030 v Decon Australia Pty Ltd [2014] NSWSC 347

Supreme Court of New South Wales

Schmidt J

Administrative law - owners corporation challenged jurisdiction of Consumer Trader & Tenancy Tribunal (CTTT) to strike out proceedings brought in 2009 under s48K *Home Building Act 1989* (NSW) concerning allegedly defective building work on basis its claim exceeded CTTT's jurisdictional limit of \$500,000 - owners corporation sought that orders be quashed and proceedings remitted to CTTT to determine its application to transfer proceedings to Supreme Court - procedural fairness - CTTT's jurisdiction in relation to building claims - held: owners corporation's application was made in 2009 by filing of *application for an order* - no question application fell within Tribunal's jurisdiction being for *building claim* for amount of \$329,005 - CTTT had power to dismiss proceedings but it was for CTTT to determine the question whether it had that jurisdiction - procedural fairness required that power to dismiss proceedings was not to be exercised without hearing and determining competing transfer application - denial of procedural fairness established - exercise of power to dismiss proceedings without resolving dispute as to CTTT's jurisdiction or considering transfer application resulted in jurisdictional error invalidating orders - orders granted.

[The Owners - Strata Plan No. 70030](#) (C G)

**Lowe v Lowe [2014] NSWSC 371**

Supreme Court of New South Wales

Hallen J

Succession - family provision - adult son sought family provision order pursuant to *Succession Act 2006* (NSW) from father's estate - whether provision for son of sum by way of Disability Trust or Discretionary Trust constituted adequate provision – *special disability trust* – Pt 3.18A *Social Security Act 1991* (Cth) - legitimate claims of defendants on bounty - *need* - ability of son to manage own affairs - ss57, 59 & 60 - held: son was an *eligible person* - deceased did not make adequate provision for son in will - no need for any provision made to be subject of control by third party - provision should be in the form of an absolute entitlement - lump sum order made

[Lowe](#) (B)**Ryan v The Grange at Wodonga Pty Ltd [2014] VSC 135**

Supreme Court of Victoria

Kyrrou J

Administrative law - judicial review - plaintiff worker sought review under O 56 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) of opinion of medical panel concerning shoulder injury sustained in course of her employment - panel found worker was suffering from an aggravation of pre-existing degenerative changes of shoulders and mild chronic adjustment disorder - panel found worker was capable of performing her pre-injury duties - ss63, 65 & 68 - held: opinion was formed by panel within period prescribed by s68(1) - panel did not take into account irrelevant considerations or fail to take into account relevant considerations - panel did not reach conclusion that was perverse or illogical - no inadequacy or reasons - application dismissed.

[Ryan](#) (I G)**Martin v Golding Contractors Pty Ltd [2014] QSC 53**

Supreme Court of Queensland

North J

Work injury damages - assessment - plaintiff truck driver injured in course of employment at mine - employer admitted liability for accident - nature and extent of injuries - medical evidence - general damages - past and future economic loss - ss308, 308A-308E *Workers' Compensation Rehabilitation Act 2003* (Qld) - damages assessed.

[Martin](#) (I)**Public Trustee as executor of estate of O'Connor (deceased) [2014] SASC 46**

Supreme Court of South Australia

Stanley J

Succession - charitable gifts and trusts - Public Trustee was trustee of deceased's estate – residue of estate left to organisation which did not exist - Public Trustee sought pursuant to s69B *Trustee Act 1936* (SA) to vary terms of charitable trust established under will to hold residue of estate on trust for benefit of company which conducted meal and day centre under auspices of



congregation of nuns (The Daughters of Charity) at the address nominated in the will - held: trust established under deceased's will for benefit of *Charity Daughters* could not be carried out as there was no organisation of that name - trust variation scheme accorded with testamentary intention of deceased - deceased intended to apply trust property constituting charitable trust to institution now incorporated as company and for purposes which works undertaken by company served - application of trust property granted - trust variation scheme approved.

[Estate of O'Connor](#) (B)

Bordex Wineracks Pty Ltd v Bordex Manufacturing Pty Ltd [2014] SASC 48

Supreme Court of South Australia

Stanley J

Equitable remedies - interlocutory injunction - joinder - freezing orders - plaintiff sought joinder of company as defendant, continuation of ex parte freezing order and interlocutory injunction restraining company and its employees and agents from manufacturing and/or selling wine racks - s50 *Supreme Court Act 1935* (SA) - r74 *Supreme Court Rules 2006* (SA) - *prima facie case* - *good arguable case* - held: appropriate for Court to invoke power to join company as defendant to enable remedy to be enforced - prima facie case that damages would not be adequate remedy and that balance of convenience favoured grant of injunction - there was a risk that if freezing order not continued company might dissipate its assets - freezing order should continue in terms in which it was made - application granted.

[Bordex Wineracks](#) (B)

Summer in the South

by Paul Laurence Dunbar

The oriole sings in the greening grove
As if he were half-way waiting,
The rosebuds peep from their hoods of green,
Timid and hesitating.
The rain comes down in a torrent sweep
And the nights smell warm and piney,
The garden thrives, but the tender shoots
Are yellow-green and tiny.
Then a flash of sun on a waiting hill,
Streams laugh that erst were quiet,
The sky smiles down with a dazzling blue
And the woods run mad with riot.

[Paul Laurence Dunbar](#)

[Click Here to access our Benchmark Search Engine](#)