



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd - *Trade Practices Act 1974* (Cth) - misuse of confidential information - elements of a cause of action for a breach of confidence - account of profits (I, B, C)

De Vries & Anor v Rapid Metal Developments (Australia) Pty Ltd - Torts - conversion - s419A *Corporations Act 2001* (Cth) (I, B, C)

Meriton Apartments Pty Ltd v Council of the City of Sydney (No 3) - *Local Government Act 1993* (NSW) - fees charged by the Council - Work Zones (B, C)

Agripay Pty Ltd v Byrne - Guarantees - primary judge had set aside guarantee - appeal dismissed (B)

Gallagher v Boylan - s17(1)(a), s365(3) *Property Agents & Motor Dealers Act 2000* (Qld) - statutory interpretation - waiver of statutory rights (B, C)

D & M (Australia) Pty Ltd v Crouch Developments Pty Ltd - *Commercial Arbitration Act 1985* (WA) - building dispute (I, B, C)



Summaries with links (5 minute read)

Wednesday 4 May 2011

RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd [2011] FCA 423

Federal Court of Australia

Ryan J (in Melbourne)

Trade Practices Act 1974 (Cth) - misuse of confidential information - elements of a cause of action for a breach of confidence - account of profits - applicant seeking relief against respondents for alleged breaches of obligations of confidence by three of its former employees, second, third & fourth respondents & alleging breaches of the *Act & Fair Trading Act 1999* (Vic) by first respondent allegedly aided & abetted by the individual respondents - formulations for two flooring adhesives developed & manufactured by applicant - not use confidential information not used in the development of one of the adhesives, but breach of confidence made out in respect of respondents' development of the other adhesive.

[RLA Polymers](#) (I, B, C)

De Vries & Anor v Rapid Metal Developments (Australia) Pty Ltd [2011] NSWCA 100

Court of Appeal of New South Wales

Hodgson & Macfarlan JJA; Sackville AJA

Torts - conversion - whether appellants, the agents of a mortgagee in possession of a company carrying on a scaffolding hire business were liable to respondent because they used or disposed of respondent's scaffolding equipment after their appointment as mortgagee's agents - whether appellants liable under s419A(2) *Corporations Act 2001* (Cth) for rent due to third party for scaffolding - whether damages should be assessed by reference to owner's list prices - appeal allowed.

[De Vries](#) (I, B, C)

[Rapid Metal Developments](#) - *Rapid Metal Developments (Australia) Pty Ltd v Anthony De Vries & Riad Tayeh as joint administrators of Rildean Pty Ltd* - decision **26 June 2009**: see 'Benchmark' Tuesday 30 June 2009 - receivers, controllers & managers - duties & liabilities - dispute about ownership of scaffolding - defendants principals of chartered accountancy practice with a speciality in insolvency - s419A *Corporations Act 2001* (Cth.) - whether actual physical interference with goods necessary to establish conversion - verdict for plaintiff;

[Rapid Metal Developments](#) - decision **16 December 2009**;



[Rapid Metal Developments](#) - decision **10 February 2010**: see 'Benchmark' Friday 12 February 2010 - assessment of quantum of damages - recoverability of interest;

[Rapid Metal Developments](#) - decision **9 March 2010**: see 'Benchmark' Thursday 11 March 2010 - costs - judgment for plaintiff against defendant in sum of \$4,873,504.

Meriton Apartments Pty Ltd v Council of the City of Sydney (No 3) [2011] NSWLEC 65

Land & Environment Court of New South Wales

Pepper J

Local Government Act 1993 (NSW) - two sets of proceedings raising same issues - restitution - judicial review - whether fees charged by Council for the service of establishing Work Zones was a valid exercise of power by the Council - construction sites at Haymarket & Zetland - whether the fees were for services provided by the Council or whether they had the character of taxes - in both proceedings, further amended application dismissed - "the cost to the council of providing the service" - extensive consideration of case law from the United Kingdom, Canada & Australia.

[Meriton Apartments](#) (B, C)

Agripay Pty Ltd v Byrne [2011] QCA 85

Court of Appeal of Queensland

McMurdo P, White JA & McMeekin J

Guarantees - respondent's spouse had borrowed funds from appellant to invest in agricultural managed investment scheme - respondent had guaranteed her husband's loan - whether primary judge had erred in setting aside the guarantee because it was unconscionable to allow the appellant to enforce it - appeal dismissed.

[Agripay](#) (B)

[Agripay](#) - [2010] QSC 189 - decision Supreme Court 8 June 2010 - plaintiff had lent money to second defendant's husband - second defendant resisting plaintiff's claim under a guarantee on the basis of the principle in *Yerkey v Jones* (1940) 63 CLR 649 & unconscionability within the meaning of *Australian Securities & Investments Commission Act 2001* (Cth.)

Gallagher v Boylan [2011] QSC 94

Supreme Court of Queensland

Mullins J

Property Agents & Motor Dealers Act 2000 (Qld) - statutory interpretation - waiver of statutory rights - put & call option deed relating to land on which dwelling, swimming pool & tennis court were constructed - defendant's land comprised two lots on one indefeasible title - whether the land was "a single parcel of land" within the meaning of s17(1)(a) - plaintiff seeking return of



deposit - defendant counterclaiming for shortfall on resale of land plus expenses of resale - plaintiff had not waived her entitlement under s365(3) to withdraw the offer to purchase the two lots - plaintiff entitled to refund of the deposit plus interest.

[Gallagher](#) (B, C)

D & M (Australia) Pty Ltd v Crouch Developments Pty Ltd [2011] WASCA 109

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Commercial Arbitration Act 1985 (WA) - building dispute - construction of apartments at Mount Hawthorn - two appeals from a judgment in which primary judge had refused appellant leave to appeal the decision of an arbitrator under s38(4)(b) & and had declined to set aside the award & remit the matter for further consideration by the arbitrator - in the first appeal (CACV 65 of 2010), it was alleged primary judge ought to have granted leave to appeal on the basis that there were manifest errors of law on the face of the award which substantially affected the rights of the appellant within the meaning of s38(5)(a) and s38(5)(b)(i) - in the second appeal (CACV 66 of 2010), alleged that primary judge erred in not setting aside the award & remitting the matter to the arbitrator for reconsideration pursuant to s42(1) & s43 - application for leave to appeal in CACV 65 of 2010 dismissed - appeal in CACV 66 of 2010 dismissed.

[D & M](#) (I, B, C)

[D & M](#) - *D & M (Australia) Pty Ltd v Crouch Developments Pty Ltd* [2010] WASC 130 - decision 11 June 2010: see 'Benchmark' Wednesday 16 June 2010 - award of arbitrator - application for leave to appeal on question of law - technical misconduct - application for leave to appeal dismissed - application to set aside award for misconduct allowed in part, but only as to costs.

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