

## Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**HNA Irish Nominee Ltd v Kinghorn** - *Corporations Act* 2001 (Cth) - corporate constitution - proper construction of some provisions

**Vidler v Commissioner of Taxation** - Goods & services tax - "residential premises" - appeal dismissed

**Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 5)** - Costs

**Beck v Corrs Chambers Westgarth** - Amendment of pleadings

**Noble Engineering Pty Ltd v Tianjian Noble Boats International Pty Ltd** - Application for summary judgment

**BHP Billiton Ltd, Wallaby Grip Limited & Ors v Registrar of the Dust Diseases Tribunal of New South Wales & Ors** - Costs - constitutional law - s353 *Legal Profession Act* 2004 (NSW)

**Orica Investments v McCartney** - Contracts - restraint clause in share sale agreement - calculation of damages

**Inspector Ian Lancaster v CKR Pty Ltd & Anor** - *Occupational Health & Safety Act 2000* (NSW) - fatality - foreseeability

**Doughty v Martino Developments Pty Ltd** - *Transport Accident Act 1986* (Vic) - whether s93(1) prevents an employer recovering damages per actione per quod servitium amisit for the loss of services of an employee injured as a result of a transport accident occurring on or after commencement of s34 of the Act

**Van Gerven v Amaca Pty Ltd & Anor** - Personal injuries - limitation of actions - s5(1A) *Limitation of Actions Act 1958* (Vic) - s20(1A) *Wrongs Act 1958* (Vic)

**Blackman & Ors v Gant & Anor** - Injunctions - art works found to be forgeries - *Fair Trading Act 1999* (Vic)

**Solak v Registrar of Titles & Ors (No 3)** - Costs - "full costs" - s110(5) *Transfer of Land Act 1958* (Vic)

**Thiess Pty Ltd & John Holland Pty Ltd v Civil Works Australia Pty Ltd & Ors** - *Building & Construction Industry Payments Act 2004* (Qld) - decision by adjudicator - application dismissed

## Summaries with links (5 minute read)

### Friday 4 June 2010

#### **HNA Irish Nominee Ltd v Kinghorn [2010] FCAFC 57**

Full Court of the Federal Court of Australia

Keane CJ; Jacobson & Rares JJ (in Sydney)

*Corporations Act 2001* (Cth) - proper construction of some provisions of constitutions of thirty-five companies in a group referred to as RILA companies - preliminary questions - appeal dismissed.

[HNA Irish Nominee](#)

[HNA Irish Nominee](#) - decision 31 March 2010 - rights of holders of ordinary shares and holders of preference shares in some thirty five companies - preliminary questions: whether HNA was entitled to vote its preference shares in RILA companies on a resolution proposed by it in a notice of meeting in respect of each of the RILAs; & secondly, if

HNA was so entitled, whether the resolution would be effective to vary the rights attached to the ordinary shares without the consent of the holders of the ordinary shares - first question in the negative - in consequence, it was unnecessary to decide second question.

### **Vidler v Commissioner of Taxation [2010] FCAFC 59**

Full Court of the Federal Court of Australia

Sundberg, Bennett & Nicholas JJ (in Sydney)

Goods & services tax - "residential premises" - whether vacant land without living facilities can be residential premises - whether residential zoning & access to services sufficient - for decision appealed from, see 'Benchmark' I & IBC Tuesday 8 December 2009 & link below - appeal dismissed.

#### [Vidler](#)

[Vidler](#) - decision 3 December 2009 - *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - ss40-65 & 195-1 - GST status of vacant land - properties in Ipswich - Administrative Appeals Tribunal had rejected claim that properties were "residential premises" as defined in s195 - application dismissed;

[Vidler](#) - decision AAT 1 June 2009

### **Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 5) [2010] FCA 545**

Federal Court of Australia

Yates J (in Sydney)

Costs - three applications filed in two proceedings were heard together with mixed success for each party - whether applicants' solicitor should be ordered to pay respondents' costs on indemnity basis in respect of one issue on which the respondents were successful - held that each party should bear his or its own costs in relation to the applications.

#### [Campaign Master \(UK\)](#)

[Campaign Master \(UK\)](#) - decision 30 April 2010: see 'Benchmark' B & IBC Tuesday 4 May 2010 - *Trade Practices Act 1974* (Cth) - development and marketing of software - application to set aside subpoena to National Australia Bank - respondents claiming relief in respect of alleged infringements of copyright in documents & sound recordings, & breaches of directors' duties both under the *Corporations Act 2001* (Cth) & at general law with respect to alleged confidential information residing in the documents and sound recordings - also alleging breach of contract - power to set aside interlocutory orders - comprehensive consideration of case law;

[Forty Two International](#) - decision 30 April 2010: see 'Benchmark' B & IBC Tuesday 4 May 2010 - *Trade Practices Act 1974* (Cth) - obligations as to documents produced pursuant to compulsory processes of the Court - development & marketing of software known as "Campaign Master" - implied undertaking - disclosure - striking out - case law from United Kingdom & Australia considered.

**Beck v Corrs Chambers Westgarth [2010] FCA 552**

Federal Court of Australia

Ryan J (in Melbourne)

Application by third cross-claimant for leave to file & serve statement of claim - proceedings in relation to a receivership - proposed amended statement of claim alleging breach of retainer agreement - claim in the alternative for breach of duty - third cross-claimant's application for leave when viewed in light of case law militated against his being allowed to file proposed pleading - cross-claim to be dismissed - detailed consideration of case law as to leave to amend pleadings.

[Beck](#)

**Noble Engineering Pty Ltd v Tianjian Noble Boats International Pty Ltd [2010] FCA 544**

Federal Court of Australia

Reeves J (in Brisbane)

Application by respondent for summary judgment - applicant holder of two registered trade marks relating to design of boat hulls - respondent's application dismissed - security for costs to be provided.

[Noble Engineering](#)

**BHP Billiton Ltd, Wallaby Grip Limited & Ors v Registrar of the Dust Diseases Tribunal of New South Wales & Ors [2010] NSWSC 562**

Supreme Court of New South Wales

Price J

Costs - assessment of costs - constitutional law - legal costs incurred in New South Wales prior to transfer of proceedings to South Australia pursuant to s5 *Jurisdiction of Courts (Cross-Vesting) Act* 1987 - whether s353 *Legal Profession Act* 2004 (NSW) applied to third defendant's application - whether s353(1) *Legal Profession Act* 2004 applied to an order for costs made by District Court of South Australia - s353(1) not to be construed so as to apply to an order for costs made by a court of another State or Territory.

[BHP Billiton](#)

**Orica Investments v McCartney [2010] NSWSC 488**

Supreme Court of New South Wales

Ball J

Contracts - restraint clause in share sale agreement - calculation of damages for loss of benefit of a distributorship agreement - for decision 25 June 2007, see 'Benchmark' Tuesday 26 June 2007 - loss of a chance - whether plaintiff had failed to mitigate its loss - damages assessed at \$1,561,245, together with interest on that sum of \$743,452.04, making a total of \$2,304,697.04.

[Orica Investments](#)

[Orica Investments](#) - decision 25 June 2007 - tort of interfering with contractual relations - Australian & United Kingdom case law considered - prohibition in share sale agreement against enticing away from first plaintiff any customer, supplier or employee of "Restricted Business" - other economic torts.

**Inspector Ian Lancaster v CKR Pty Ltd & Anor [2010] NSWIRComm 71**

Industrial Court of New South Wales

Backman J

*Occupational Health & Safety Act 2000* (NSW) - fall on construction site resulting in death of worker employed by CKR - second defendant principal contractor at the site - reasonable foreseeability - *Crimes (Sentencing Procedure) Act 1999* (NSW) - fines imposed.

[Inspector Ian Lancaster](#)

**Doughty v Martino Developments Pty Ltd [2010] VSCA 121**

Court of Appeal of Victoria

Nettle & Mandie JJA & Emerton AJA

*Transport Accident Act 1986* (Vic) - whether s93(1) prevents an employer recovering damages *per actione per quod servitium amisit* for the loss of services of an employee injured as a result of a transport accident occurring on or after commencement of s34 of the Act - for decision appealed from, see 'Benchmark' I & IBC Wednesday 3 December 2008 & link below - appeal allowed - decision below set aside, and in lieu declaration that s93(1), as in force at relevant times, prevented respondent from recovering damages *per actione per quod servitium amisit* for the loss of services of its employee injured as a result of a transport accident occurring on or after the commencement of s34 of the Act.

[Doughty](#)

[Martino Developments](#) - decision 27 November 2008 - abrogation of common law rights by statute - preliminary trial of separate questions - plaintiff employer had commenced proceedings in County Court of Victoria claiming damages suffered by it as a result of a motor vehicle accident which caused injury to its employee - statutory

construction - Transport Accident Act 1986 (Vic) - cause of action pursued by plaintiff was an action *per quod servitium amisit* - whether *per quod servitium amisit* actions extinguished in relation to transport accidents - questions answered as follows: (a) is the claim pursued by the plaintiff in the proceeding extinguished? answer 'no' - (b) is the plaintiff precluded from recovering damages from the defendant? answer 'no.'

**Van Gerven v Amaca Pty Ltd & Anor [2010] VSC 236**

Supreme Court of Victoria

Williams J

Personal injuries - limitation of actions - claim for damages for dust-related condition by executrix on behalf of deceased's estate - interpretation of s5(1A) *Limitation of Actions Act* 1958 (Vic) - s20(1A) *Wrongs Act* 1958 (Vic) - whether statutory provisions require knowledge of causal nexus between the injury & an act or omission of prospective defendant, as opposed to an act or omission of some unidentified person - Her Honour not persuaded that the term 'some person' in s5(1A)(b) *Limitation of Actions Act* & s20(1A)(b) *Wrongs Act* (as they were) refers to prospective defendant.

[Van Gerven](#)

**Blackman & Ors v Gant & Anor [2010] VSC 229**

Supreme Court of Victoria

Vickery J

Injunctions - art works found to be forgeries - *Fair Trading Act* 1999 (Vic) - representations as to authenticity of art works through valuations given - representation as to authenticity of art work by sale of work - representations misleading & deceptive in trade or commerce - statutory negative injunction restraining sale of the forged art works - plaintiffs not parties to initial representation - standing to seek injunction - s80(1) *Trade Practices Act* 1974 (Cth) compared - scope & meaning of "any person" - whether sufficient nexus between conduct & injunction sought to confer jurisdiction on the Court - injunction refused as found unnecessary due to alternative relief granted - statutory mandatory injunction for delivery up & destruction of forged art works.

[Blackman](#)

**Solak v Registrar of Titles & Ors (No 3) [2010] VSC 235**

Supreme Court of Victoria

Davies J

Costs - "full costs" - Registrar's argument that s110(5) *Transfer of Land Act* 1958 (Vic) entitled him to indemnity costs rejected - joinder of third parties reasonable.



[Solak](#)

[Solak](#) - decision 21 April 2010 - summary dismissal.

**Thiess Pty Ltd & John Holland Pty Ltd v Civil Works Australia Pty Ltd & Ors [2010] QSC 187**

Supreme Court of Queensland

Daubney J

*Building & Construction Industry Payments Act 2004 (Qld)* - payment claim -contract for performance of excavation works - decision by adjudicator - application dismissed.

[Theiss](#)

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