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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

SK Foods LP v SK Foods Australia Pty Ltd (in Liquidation) (No 3) (FCA) - decision of United States Bankruptcy Court gave rise to *res judicata* - abuse of process if issues re-litigated - summary judgment granted (I, B)

Norrie v NSW Registrar of Births, Deaths and Marriages (NSWCA) - administrative law - statutory construction - Registrar empowered to register a person's sex as *non-specific* (I, B, G)

Yang v Firth t/a Firths The Compensation Lawyers (NSWSC) - legal practitioners - solicitor ordered to comply with client's request for itemised bill of costs (I, B, C)

Checchia v Insurance Australia Ltd t/a NRMA Insurance (NSWSC) - motor accidents compensation - false and misleading conduct for purpose of obtaining financial benefit - insurer relieved from liability for part of settlement amount (I)

Austral Brick Co Pty Ltd v Rami El Hayek t/a RCV Stoneworks (NSWSC) - administrative law - decision of Consumer, Trader & Tenancy Tribunal affected by jurisdictional error and set aside (I, B, C, G)



Beeck v Kohlen (WASCA) - contract - application for stay of judgment dismissing specific performance proceedings and removing caveat refused (B)

Langmaid v Dobsons Vegetable Machinery Pty Ltd (TASSC) - negligence - causation - breach of statutory duty - contract - court not satisfied fire caused by defendant's employees - plaintiff's claim failed (I, C)

Summaries with links (5 minute read)

SK Foods LP v SK Foods Australia Pty Ltd (in Liquidation) (No 3) [2013] FCA 526

Federal Court of Australia

Flick J

Summary judgment - bankruptcy - dispute concerning ownership of shares and entitlement to intercompany loan - application by plaintiffs for summary judgment - plaintiffs argued *res judicata* applied to proceedings due to decision of United States Bankruptcy Court - held: United States decision had resolved all questions as to both legal and beneficial ownership of shares and loan - decision gave rise to *res judicata* such that rights of parties to proceedings became merged in judgment - permission for defendants to re-litigate issues would constitute abuse of process - judgment for plaintiffs.

[SK Foods LP](#) (I, B)

Norrie v NSW Registrar of Births, Deaths and Marriages [2013] NSWCA 145

Court of Appeal of New South Wales

Beazley ACJ, Sackville AJA & Preston CJ of LEC

Administrative law - statutory interpretation - evidence - use of extrinsic material - meaning of *question of law* - appeal from decision of Appeal Panel of Administrative Decisions Tribunal that Registrar's power under Pt5A, s32DC *Births, Deaths and Marriages Registration Act 1995* (NSW) was confined to registration of a person's sex as either *male* or *female* - held: proper construction of s32DC having regard to meaning of *sex* was a question of law - panel erred in law in construction of s32DC - *sex* did not bear binary meaning of *male* or *female* - open to Registrar to register a person's sex as *non-specific* - appeal allowed - decision of Tribunal set aside - matter remitted to Tribunal for determination according to law.

[Norrie](#) (I, B, G)



Yang v Firth t/a Firths The Compensation Lawyers [2013] NSWSC 676

Supreme Court of New South Wales

Hall J

Legal practitioners - solicitor's costs - defendant was sole practitioner and proprietor of law firm - plaintiff retained defendant in work injury damages claim - plaintiff sought order pursuant to s728(1)(a) *Legal Profession Act 2004* (NSW) that defendant provide an itemised bill of costs - statutory construction of Pt3.2 & s728 of the Act - accord and satisfaction - abuse of process - held: power available under s728 to order legal practitioner to comply with request by client for itemised bill of costs under s332A of the Act - power should be exercised in plaintiff's favour - defendant to pay plaintiff's costs of proceedings on ordinary basis.

[Yang](#) (I, B, C)

Checchia v Insurance Australia Ltd t/a NRMA Insurance [2013] NSWSC 674

Supreme Court of New South Wales

Hall J

Motor accident compensation - plaintiff settled case for a substantial sum but insurer refused to pay settlement amount in reliance on s118 *Motor Accidents Compensation Act 1998* (NSW) - insurer claimed plaintiff failed to give true and correct medical history prior to accident and misrepresented pre-injury earnings for purpose of settlement negotiations - construction of s118 of the Act in respect of claims involving false and misleading conduct for purpose of obtaining financial benefit - held: insurer entitled to relief from liability for amount of difference between financial benefit obtained by plaintiff and benefit he was entitled to obtain on premise that no misleading and deceptive statement was made - insurer entitled to partial relief from liability.

[Checchia](#) (I)

Austral Brick Co Pty Ltd v Rami El Hayek t/a RCV Stoneworks [2013] NSWSC 571

Supreme Court of New South Wales

Harrison AsJ

Administrative law - judicial review - defendant sought compensation for defective bricks supplied by plaintiff - plaintiff sought order under s69 *Supreme Court Act 1970* (NSW) that decision of Consumer, Trader and Tenancy Tribunal be quashed and that proceedings be reheard in Tribunal - plaintiff claimed it was denied natural justice because it did not receive notices of hearing and was not present at hearing or rehearing - held: Tribunal failed to properly address requirement in cl30(b)(ii) *Consumer, Trader and Tenancy Tribunal Regulation 2009* (NSW) as to



whether justice required that matter be dealt with in plaintiff's absence - decision vitiated by jurisdictional error - decision quashed - matter remitted to Tribunal.

[Austral Brick Co](#) (I, B, C, G)

Beeck v Kohlen [2013] WASCA 134

Court of Appeal of Western Australia

Murphy JA

Stay - contract - appellant agreed to buy unit from respondent - respondent terminated agreement due to appellant's failure to fulfil finance condition - appellant denied termination was valid, lodged caveat and commenced specific performance proceedings - appellant sought suspension of judgment dismissing proceedings under s15 *Civil Judgments Enforcement Act 2004* (WA) and stay of order removing caveat pursuant to Pt5 r44 *Supreme Court (Court of Appeal) Rules 2005* (WA) pending appeal - held: no evidence to indicate that damages would not be adequate compensation if appeal successful - court not satisfied that if property sold before determination of appeal, damages in lieu of specific performance would not be available - appellant facing considerable obstacles to success on appeal - application refused.

[Beeck](#) (B)

Langmaid v Dobsons Vegetable Machinery Pty Ltd [2013] TASSC 23

Supreme Court of Tasmania

Tennent J

Negligence - duty of care - causation - breach of statutory duty - contract - buildings and equipment on plaintiffs' business - premises destroyed by fire - plaintiffs claimed fire was caused by activities of defendant's employees and sought to recover loss from defendant - held: court not satisfied that hot work caused the fire - even if fire caused by hot work court could not be satisfied that it was the hot work of defendant's employees that caused it - all three claims brought by plaintiffs failed for lack of causal connection - judgment for defendant.

[Langmaid](#) (I, C)

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