



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Bamford v Commissioner of Taxation - s97(1) *Income Tax Assessment Act 1936* (Cth) – "income of trust estate" - "that share of the net income of a trust estate" (B)

O'Farrell v Palicave Pty Limited - Bankruptcy – appeal from Federal Magistrate's order that appellant's estate be sequestrated dismissed - whether respondent creditor estopped from claiming a debt additional to that sued for. (B)

Hamilton v Inspector-General in Bankruptcy - ss33(1)(c) & 155D(1)(a) *Bankruptcy Act 1966* (Cth) - extension of time in relation to registration as a trustee in bankruptcy. (B)

Tidswell Financial Services Limited as Responsible Entity for the Pooled Mortgage Managed Investment Scheme v Sovereign Capital Limited - s48 *Federal Court of Australia Act 1976* (Cth) - in third party claim, defendants seeking indemnity from third party in relation to plaintiff's claim against them under insurance policy with third party - application by third party granted that proceedings be conducted in NSW. (I, B)

Keynes v Rural Directions Pty Ltd (No 2) - Forward contracts for supply of grain not derivatives or financial products. (B)

White City Tennis Club Ltd v John Alexander's Clubs Pty Ltd & Poplar Holdings Pty Ltd - Contracts - equitable remedies – joint venture agreement – memorandum of understanding - option to acquire land - fiduciary duties - unconscionability - constructive trusts – appeal allowed. (I, B, C)

Symbion Medical Centre Operations Pty Limited v Richard Spence Alexander - Application for new expedited hearing date refused. (I, B)



PM Sulcs & Associates Pty Ltd v Oliveri - Torts - detinue - order that defendant deliver up files & documents on provision by plaintiff of security for costs payable to defendant. (I, B)

Arnautovic & Anor as joint liquidators of Australian Coal Technology Pty Ltd v Nichola & Ors trading as Middletons Lawyers & Anor - Amendment to correct name of party – ss64(1)(b) & 65(2)(b) *Civil Procedure Act* 2005 (NSW) - leave granted to amend. (I, B, C)

From the District Court of Western Australia:

Richardson v State of Western Australian - Personal injuries – *Crown Suits Act* 1947 (WA) - limitation of time for giving notice – proposed action against employer for failure to provide safe system of work - leave granted to bring proposed action. (I)



Summaries with links (5 minute read)

Friday 5 June 2009

Bamford v Commissioner of Taxation [2009] FCAFC 66

Full Federal Court of Australia

Emmett, Stone & Perram JJ (in Sydney)

s97(1) *Income Tax Assessment Act 1936* (Cth) – three appeals – contributions to offshore superannuation fund - "income of trust estate" - "that share of the net income of a trust estate" - whether "share" can, in certain circumstances, refer to an amount rather than a proportion – disparity between net income & distributable income - whether capital receipts deemed income by trust deed are income for purposes of income tax assessment – whether present entitlement to income – two of the appeals dismissed – third appeal upheld, decision of AAT set aside & matter remitted – case law considered includes Cajkusic v Commissioner of Taxation [2006] FCAFC 164; (2006) 155 FCR 430.

[Bamford](#) (B)

O'Farrell v Palicave Pty Limited [2009] FCAFC 64

Full Federal Court of Australia

Jacobson, Edmonds & Barker JJ (in Sydney)

Bankruptcy – appeal from Federal Magistrate's order that appellant's estate be sequestrated - whether respondent creditor estopped from claiming a debt additional to that sued for – no inconsistency between a judgment for instalments of principal under an agreement and a judgment for the balance outstanding under the same agreement – appeal dismissed.

[O'Farrell](#) (B)

Hamilton v Inspector-General in Bankruptcy [2009] FCA 592

Federal Court of Australia

Marshall J (in Melbourne - via videolink to Hobart)

ss33(1)(c) & 155D(1)(a) *Bankruptcy Act 1966* (Cth) - applicant seeking extension of time in which to make application to respondent to extend his registration as a trustee in bankruptcy – application granted.

[Hamilton](#) (B)

Tidswell Financial Services Limited as Responsible Entity for the Pooled Mortgage Managed Investment Scheme v Sovereign Capital Limited [2009] FCA 582

Federal Court of Australia

Besanko J (in Adelaide - via videolink with Sydney & Brisbane)

s48 *Federal Court of Australia Act 1976* (Cth) - failed investment at Diamond Bay, Vaucluse in Sydney –

third party to proceedings Brit Underwriting Ltd on its own behalf & on behalf of underwriting members of three syndicates at Lloyd's of London subscribing to an insurance policy number - in third party claim, defendants seeking indemnity from third party in relation to plaintiff's claim against them under the policy with the third party - application by third party to proceedings for transfer of proceedings against it to Federal Court in NSW, or alternatively, an order that the proceedings against it be heard in Sydney - defendants seeking that proceedings be transferred to Queensland - application by third party granted, that proceedings be conducted in NSW Federal Court.

[Tidswell Financial Services](#) (I, B)

Keynes v Rural Directions Pty Ltd (No 2) [2009] FCA 567

Federal Court of Australia

Besanko J (in Adelaide)

Financial products - derivatives - forward contracts for supply of grain - summary judgment entered in favour of defendants in relation to forward contracts - forward contracts not derivatives or financial products.

[Keynes](#) (B)

White City Tennis Club Ltd v John Alexander's Clubs Pty Ltd & Poplar Holdings Pty Ltd [2009] NSWCA 114

Court of Appeal of New South Wales

Giles, Basten, Macfarlan JJA

Contracts - equitable remedies - joint venture agreement - memorandum of understanding - option to acquire land - fiduciary duties - unconscionability - constructive trusts - corporations: legal capacity & relations with outsiders - circumstances in which companies alter egos of their controller - Torrens Title - indefeasibility of title - in personam exception applicable where registered proprietor is a primary wrongdoer - for decision 21 November 2008, see 'Benchmark' I, B & IBC Tuesday 25 November 2008 & link below - appeal allowed - declaration made that second respondent holds all of its right, title & interest in the land identified in Folio Identifier 2/1114604 on a constructive trust for appellant - detailed consideration of text & case law from Australia, UK & New Zealand in judgment of Macfarlan JA .

[White City Tennis Club](#) (I, B, C)

[White City Tennis Club](#) - decision 21 November 2008 - contracts - fiduciary relationships - *Trade Practices Act 1974* (Cth) - repudiation - option - memorandum of understanding - equal bargaining power - unconscionable conduct/equitable fraud - in light of plaintiff's repudiation of contract, no fraud or unconscionable conduct found - proceedings dismissed.

Symbion Medical Centre Operations Pty Limited v Richard Spence Alexander [2009] NSWSC 470

Supreme Court of New South Wales

Rein J

Application for new expedited hearing date after request to vacate original expedited hearing date due to addition of new defendant and new cause of action - new case is not only in breach of contract but has expanded to a claim for tort of inducement of breach of contract – expedition refused – matter removed from Expedition List.

[Symbion Medical Centre Operations](#) (I, B)**PM Sulcs & Associates Pty Ltd v Oliveri [2009] NSWSC 456**

Supreme Court of New South Wales

Debelle J

Torts - detinue - files & documents in relation to earlier litigation held pending payment of costs & disbursements - whether costs agreement existed - no costs agreement existed : costs payable on quantum meruit basis as assessed under Division 6 of Part 11 *Legal Profession Act* 1987 (NSW) - order that defendant deliver up files & documents on provision by plaintiff of security for costs payable to defendant.

[PM Sulcs](#) (I, B)**Arnautovic & Anor as joint liquidators of Australian Coal Technology Pty Ltd v Nichola & Ors trading as Middletons Lawyers & Anor [2009] NSWSC 481**

Supreme Court of New South Wales

Barrett J

Amendment to correct name of party –ss64(1)(b) & 65(2)(b) *Civil Procedure Act* 2005 (NSW) - decision made by liquidators' employee on a misunderstanding - liquidators' intention was to sue correct party - director of both parties knew that wrong party had been sued – leave granted to amend – case law considered includes Austin Australia Pty Ltd v A & G Scaffolding & Rigging Service Pty Ltd [2007] NSWSC 1077 ; (2009) 25 ACLC 1363.

[Arnautovic](#) (I, B, C)**From the District Court of Western Australia...****Richardson v State of Western Australia [2009] WADC 76**

District Court of Western Australia

Sleight DCJ

Personal injuries – limitation of time for giving notice – proposed action against employer for failure to provide safe system of work - trip on manhole cover in 2003 while employed by defendant as teacher/administrator - application for leave to bring action under s6 *Crown Suits Act* 1947 (WA): s6 now repealed, but applicable to this cause of action - delay occasioned by "other reasonable cause" –



prejudice - discretion to grant leave - claim must not be mala fide - reasonable cause for delay established - leave granted to bring proposed action.

[Richardson](#) (I)

Due to the public holiday on Monday, the next edition of 'Benchmark' will be published on Tuesday 9 June, 2009

Key: (I) Insurance, (B) Banking, (C) Construction