

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Thursday 6 March 2008

Singh v Panjabi Sangeet Centre [2008] NSWCA 19

Court of Appeal of New South Wales

Beazley, Hodgson & Tobias JJA

Negligence - appellant had fallen & sustained injury while attending cultural festival conducted by respondent - whether primary judge's preference for the defendant's witnesses was justified - whether adequate reasons given - whether judge should have made clear findings as to what happened to the plaintiff – appeal dismissed. [Singh](#) (I)

Guerinoni v Dennis Castino t/as Castino & Co Chartered Accountants [2008] NSWSC 175

Supreme Court of New South Wales

Barrett J

Interpleader* - defendant chartered accountant sought to interplead – legislation & case law considered – interpleader relief refused. [Guerinoni](#) (I,B,C)

* Interpleader – procedure by which a person, faced with competing claims in respect of personal property, which person does not claim as their own, can protect themselves from the uncertainty & expense of separate legal proceedings with each claimant by applying to Court to compel claimants to settle, between themselves, their entitlements to the property. [Ritchie's Supreme Court Procedure par 56.0.0.]

Haroun v Rail Corporation NSW [2008] NSWSC 160

Supreme Court of New South Wales

Harrison AsJ

Workers Compensation – judicial review - plaintiff worker sought that decision of second defendant Medical Appeal Panel of Workers

Compensation Commission & determination made & certificate of determination issued by third defendant Registrar of Workers Compensation of New South Wales be set aside - secondly, plaintiff sought order that matter be remitted to third defendant for referral to appeal panel differently constituted under Workplace Injury Management & Workers Compensation Act 1998 for redetermination according to law - application dismissed. [Haroun](#) (I)

Reed v Commissioner of Corrective Services [2008] NSWSC 161

Supreme Court of New South Wales

Fullerton J

Visits to correctional centres - Crimes (Administration of Sentences) Regulation - Commissioner prohibited solicitor from visiting correctional centres - whether conduct would prejudice good security of NSW correctional centres - whether sufficient material for finding of deceitful conduct - held that decisions of the Commissioner's delegates were not a valid exercise of Commissioner's powers under the Regulations. [Reed](#) (I)

Bankstown Community Child Care Incorporated [2008] NSWSC 173

Supreme Court of New South Wales

Barrett J

Incorporated associations - winding up by the Court - surplus after payment of debts - no special resolution specifying destination of surplus - statutory power of court to determine manner of distribution - proposed distribution to like community organisations - whether association competent applicant - whether liquidator competent applicant. [Bankstown Community Child Care](#) (B)

Hypec Electronic v Registrar-General (No 3) [2008] NSWSC 167

Supreme Court of New South Wales

Gzell J

Mortgages & charges - rights & liabilities of mortgagor & mortgagee - mortgages to bank secured debt to bank of A and B - mortgages transferred by bank to B as trustee for others - whether debt of B discharged - whether by analogy with equitable setoff debt and mortgage had to be in the same interest to be discharged. [Hypec Electronics](#) (B)

David Hurst Constructions Pty Ltd v Shorten [2008] NSWSC 164

Supreme Court of New South Wales

Nicholas J

Contract – whether Building & Construction Industry Security of Payment Act 1999 applied – residential units at Wagga Wagga - plaintiff sought summary judgment under Uniform Civil Procedure Rules 2005 for amount claimed, \$272,649.77, & interest, as consequence of defendants’ failure to reply to its payment claim - whether construction contract within s7(2)(b) – statutory construction – whether claimant entitled to payment claim – plaintiff’s application granted. [David Hurst](#) (C)

Fortson Pty Ltd v Commonwealth Bank of Australia & Anor [2008] SASC 49

Supreme Court of South Australia

Doyle CJ, DeBelle & Bleby JJ

Mortgage – expert evidence – market value - valuation – default – mortgagee bank had exercised its powers as mortgagee & sold mortgaged hotel - bank had acted in breach of s420A Corporations Law – content of duty in s420A(1)(a) to take all reasonable care to sell property for not less than market value – whether the judge had erred in assessing market value of hotel – whether Full Court able to determine market value – market value determined – expert evidence - appeal dismissed & cross-appeal allowed. [Fortson](#) (I,B,C)

Northcape Properties Pty Ltd v District Council of Yorke Peninsula [2008] SASC 57

Supreme Court of South Australia

DeBelle J

Environmental planning - application for development consent – division of large parcel of coastal land into allotments, roads & reserves – expert evidence as to future shoreline erosion – Commissioner’s decision to refuse consent had been upheld on appeal to Environment Court – appeal from Environment Court – appeal dismissed. [Northcape Properties](#) (C)

& Three from the UK...

Fulham Leisure Holdings Ltd v Nicholson Graham & Jones (A Firm) [2008] EWCA Civ 84

Court of Appeal of England & Wales

Chadwick, Tuckey & Kay LJ

Negligence - solicitor drafting documents – Shareholders Agreement - Fulham Football Club – before primary judge, issue as to whether firm of solicitors

(defendants/respondents) was liable for breach of duty in failing to give effect to parties' intentions (&, in particular, to intentions of claimant/appellant 'Holdings' & Mr Al Fayed) as to extent to which Holdings or Mr Al Fayed would be entitled to subscribe for shares in joint venture company – on that issue, Holdings had been successful - issue as to amount of damages which Holdings had suffered as result of that breach of duty - on that issue Holdings had been unsuccessful, in that on a claim for damages in excess of £7.75 million, it obtained judgment for no more than £6,750 - Holdings appealed from judge's decision as to quantum – solicitors cross-appealed from judge's decision on liability – onus of proof as to liability - cross-appeal by solicitors allowed – not necessary to address issue of quantum – an interesting judgment by Lord Justice Chadwick. [Fulham Leisure Holdings](#) (I,B,C)

Watkins & Anor v Jones Maidment Wilson (a firm) [2008] EWCA Civ 134

Court of Appeal of England & Wales

Arden, Longmore & Thomas LJ

Professional negligence – solicitors – limitation period – economic loss - appeal from decision of primary judge answering some preliminary issues - appellants alleged respondent solicitors gave them negligent advice leading to execution of building agreement & negligent advice leading to loss of rights under a clause in that agreement - question of whether proceedings statute-barred - case law considered as to date on which a cause of action in respect of negligent advice about entering into a transaction accrues - appeal dismissed.

[Watkins](#) (I,C)

Olafsson v Gissurason [2008] EWCA Civ 1

Court of Appeal of England & Wales

Sir Anthony Clarke MR, Dyson & Jacob LJ

Service of process – libel action – website of person domiciled in Iceland – publication in England - appeal from order that service of claim form be dispensed with – respondent/claimant an Icelandic businessman - appellant/defendant a professor of political science at University of Iceland & domiciled in Iceland - basis of claimant's claim: alleged publication on defendant's website in England of defamatory material relating to claimant - solicitors for claimant wrote to defendant setting out claimant's complaints after which defendant disconnected home page on his website - claimant's solicitors sent an email to defendant warning him that proceedings would be issued - claimant's solicitors issued claim & took immediate steps to have claim form served on defendant in Iceland – International Matters Unit of Foreign & Commonwealth Office - Deputy Head of Mission at British Embassy in Iceland & HM Consul went to address in Reykjavik to serve

process on defendant, a well-known figure in Iceland - he identified defendant & gave him claim form - defendant, who reads & understands English, opened envelope & read the contents - was not asked to sign any receipt – none of this in dispute - common ground that documents were not served on defendant in accordance with Icelandic law – in UK, default judgment given & damages awarded - defendant applied to set aside judgment - application dismissed - defendant appealed - judge allowed the appeal: no service under rules in Iceland – claimant sought order dispensing with service – judge held Court had jurisdiction to make order dispensing with service of the claim form in exceptional case, & this was exceptional case – held that judge entitled to exercise his discretion to dispense with service of the claim form. [Olafsson](#) (I,B)

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