

Friday 6 June 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bauen Constructions Pty Limited v New South Wales Land and Housing Corporation (NSWSC) - discovery - building contracts - disclosure in advance of production of evidence refused (B C)

Taluja v Orford t/as John Orford & Associates (NSWSC) - pleadings - professional negligence - leave to amend statement of claim refused - pleading struck out (I)

Sandri v O'Driscoll (No 2) (VSCA) - costs - offer of compromise - offer involved almost no compromise - indemnity costs refused (I B)

Invion Ltd v SGB Jones Pty Ltd (QSC) - corporations - payments by company to departing directors under purported contracts unlawful - breaches of directors' duties - company entitled to compensation (B)

Lemon v Lemon (QSC) - wills and estates - photocopy of will admitted to probate limited until original will or more authenticated evidence of it brought to Registry (B)



Wine ACC Supplies Pty Ltd v Bordex Wineracks Pty Ltd (SASCFC) - contract - restraint of trade - interlocutory injunction and freezing order - appeal allowed (B)

The Coast Protection Board v Carramatta Holdings Pty Ltd (SASCFC) - planning and development - permission to appeal decision that Environment, Resources and Development Court had power to vary consent order (C G)

Summaries with links (5 minute read)

Bauen Constructions Pty Limited v New South Wales Land and Housing Corporation [2014] NSWSC 684

Supreme Court of New South Wales

Ball J

Discovery - plaintiff entered building contracts with Housing Corporation for design and construction of units - plaintiff claimed Housing Corporation engaged in acts of prevention with result that time under each contract was set at large - plaintiff claimed it was entitled to recover as liquidated damages amounts wrongfully retained by Housing Corporation - plaintiff sought disclosure by Housing Corporation of documents in advance of parties serving evidence - held: no *exceptional circumstances* in sense required by Practice Note SC Eq 11 to justify discovery - if there was genuine dispute concerning whether Housing Corporation interfered with company's exercise of its functions as Superintendent then plaintiff would be entitled to disclosure of correspondence - however plaintiff had little objective evidence supporting that claim - claim appeared to be speculative - company was willing to produce documents sought - reasonable to expect plaintiff to bear costs of its speculation in first instance - notice of motion dismissed.

[Bauen Constructions Pty Limited](#) (B C)

Taluja v Orford t/as John Orford & Associates [2014] NSWSC 714

Supreme Court of New South Wales

Slattery J

Pleadings - professional negligence - plaintiff brought proceedings in 2012 against two solicitors who acted for her in 2003 to effect commercial transactions - plaintiff sought to amend Statement of Claim and leave to serve amended pleading as second cross-claim in certain other proceedings commenced against her - rr13.4 & 14.28 *Uniform Civil Procedure Rules 2005* (NSW) - held: pleading failed to disclose a reasonable cause of action against either defendant - original pleading failed to disclose causes of action which were not statute-barred under s14 *Limitation Act 1969* (NSW) - proposed pleading was abuse of process with respect to first defendant's retainer - application to amend statement of claim dismissed - statement of claim struck out.

[Taluja](#) (I)

Sandri v O'Driscoll (No 2) [2014] VSCA 109

Court of Appeal of Victoria

Maxwell ACJ, Neave JA & McMillan AJA

Costs - offer of compromise - appeal in proceedings dismissed - respondents sought order for costs on indemnity basis because appellant had unreasonably refused a *Calderbank* offer - held: Court not persuaded appellant unreasonably rejected offer - offer involved almost no compromise at all - appellant was simply invited to discontinue - respondents had offered to bear own costs to that point but costs incurred to that point would have been very modest - nothing in letter of offer which should have convinced appellant to reconsider position - indemnity costs refused.

[Sandri](#) (I B)

Invion Ltd v SGB Jones Pty Ltd [2014] QSC 97

Supreme Court of Queensland

P de Jersey CJ

Corporations - directors' duties - defendants were directors of plaintiff company - directors were concerned about their security should major pharmaceutical company become involved with plaintiff company - board extended notice period for termination by company of directors' contracts to 12 months - directors arranged for new contracts giving them right to resign and be paid 12 months' remuneration - arrangement greatly enhanced directors' position as they could resign at once and take payment - whether absence of board approval negated purported entitlements - whether directors dishonest - ss180(1), 181(1), 182(1), 199B(1), 1317H, 1317S & 1318 *Corporations Act 2001* (Cth) - held: those who purportedly bound company to new contracts had no authority to do so and were in breach of duty as directors and fiduciary duty - company not bound by payment made because full Board not aware of what directors had done - directors acted dishonestly and in dereliction of duties as directors in knowing matter should have gone to board - directors breached duties to company to avoid conflict of duty and interest and not to take advantage of position to secure personal benefit - company entitled under s1317H to compensation for breaches of statutory duty and equitable compensation for breach of fiduciary duty.

[Invion Ltd](#) (B)

Lemon v Lemon [2014] QSC 123

Supreme Court of Queensland

A Wilson J

Wills and estates - probate - applicant daughter of deceased mother sought probate of photocopy of deceased's will - held: evidence established to requisite standard that deceased executed original will in a way which satisfied provisions of *Succession Act 1981* (Qld) - on its face will contained provision revoking all prior wills - probable explanation for disappearance of original will was its inadvertent destruction by husband - Court satisfied circumstances rebutted presumption



of revocation - copy admitted to probate limited until original will or more authenticated evidence of it should be brought to Registry.

[Lemon](#) (B)

Wine ACC Supplies Pty Ltd v Bordex Wineracks Pty Ltd [2014] SASCFC 49

Full Court of the Supreme Court of South Australia

Gray, Sulan & Blue JJ

Interlocutory injunction - freezing order - respondent sued company and its two directors for breach of restraint of trade clauses in agreement and associated directors' deed under which respondent purchased company's business - respondent claimed company and directors repudiated agreement and directors' deed by conduct and respondent accepted repudiation - respondent claimed return of purchase price of business or damages for breach of agreement and deed - respondent sought permission to join appellant as an additional defendant - appellant appealed from judge's decision to grant interlocutory injunction and freezing order restraining it from manufacturing or selling wine racks or disposing of its assets except in limited circumstances - held: judge erred in exercise of discretion in granting injunction and freezing order - judge did not address appellant's contention concerning termination of agreement and deed or give adequate weight to unexplained delay by respondent in seeking interlocutory relief - by its statement of claim respondent unequivocally terminated agreement and deed and could not now obtain relief against appellant on basis agreement and deed still on foot - appeal allowed - action against appellant dismissed.

[Wine ACC Supplies Pty Ltd](#) (B)

The Coast Protection Board v Carramatta Holdings Pty Ltd [2014] SASCFC 47

Full Court of Supreme Court of South Australia

Gray, Peek & Nicholson JJ

Planning and development - Coast Protection Board commenced proceedings against company and director arising out of destruction of coastal dunes in course of development undertaken without Board's approval - Commissioner made a consent order under s85(6) *Development Act 1993* (SA) requiring respondents to implement rehabilitation plan - respondents applied to vary consent order in light of expert's report expressing opinion that new rehabilitation plan was required due to changes in circumstances in affected area - Judge of Environment, Resources and Development Court refused application on basis Court had no power to vary consent order in absence of circumstances that would vitiate underlying agreement - applicant sought leave to appeal from Supreme Court's decision that Environment, Resources and Development Court did have power to vary or revoke consent orders where it considered it appropriate to do so under s85(17) - held: permission to appeal granted - appeal raised questions of general principle, namely the construction of statutory powers to re-open judgment and extent to which exercise of those powers should be informed by common law rules - principles had significant implications and warranted consideration by Full Court.

[The Coast Protection Board](#) (C G)

The Juggler

By Todd Turner

Beneath the perpetual orbit
of spinning worlds, haphazardly
balanced upon the east-west

axis of a rocking plank,
a man juggles a quintet
of earth's most principal form.

Five glittering orbs go up,
willing the onlookers awake
as the spun trajectory arcs

and cascades in a formula fit
for the confines of geometry,
or the mute notation of plotted

notes graphed in the minds
of those who map them out
across the horizontal lines of a stave.

Todd Turner's first collection of poetry *Woodsmoke* was recently published by Black Pepper Publishing.

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