

Friday 6 September 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

QBE Insurance (Australia) Ltd v Suncorp Metway Insurance Ltd (NSWCA) - contract - sharing agreement between insurers did not apply after litigation commenced - appeal allowed (I)

Mahendran v Chase Enterprises Pty Ltd (NSWCA) - loans and mortgages - components of judgment sum not calculated in accordance with terms of loans - appeal allowed in part (B)

BigTinCan Pty Ltd v Ramsay (NSWSC) - corporations - equity - breach of fiduciary duties by directors of company - equitable compensation (B)



In the matter of Gap Constructions Pty Ltd (NSWSC) - stay - civil proceedings stayed pending resolution of criminal proceedings - return of money provided for security for costs refused (I B C)

Alsco Pty Ltd v Mircevic (VSCA) - accident compensation - plaintiff's employment was a cause of serious injury - appeal dismissed (I)

TAC v Zepic (VSCA) - accident compensation - motor vehicle accident - test for serious injury not satisfied - leave to bring action for damages refused (I)

Attorney-General for the State of South Australia v Bell - statutory interpretation – extrinsic material - provision under which police applied for forfeiture of motor vehicle was constitutionally valid - appeal allowed (I B C G)

Summaries with links (5 minute read)

QBE Insurance (Australia) Ltd v Suncorp Metway Insurance Ltd [2013] NSWCA 290

Court of Appeal of New South Wales

Basten, Barrett & Emmett JJA

Contract - insurance - agreement between third party motor vehicle insurers for sharing of losses and co-operative handling of claims - parties to agreement included NSW insurer (QBE) and Queensland insurer (Suncorp) - QBE sued Suncorp on premise Suncorp not entitled to rely on agreement in after litigation commenced - primary judge dismissed QBE's claim - - held: process of construction which looked beyond internal linguistic considerations and sought out parties' objectives supported construction for which QBE contended – agreement intended to avoid cross claims between insureds - appeal allowed.

[QBE Insurance \(Australia\) Ltd](#) (I)

Mahendran v Chase Enterprises Pty Ltd [2013] NSWCA 280

Court of Appeal of New South Wales

Barrett, Emmett & Gleeson JJA

Loans and mortgages - respondent lender sued appellant borrower to recover moneys due under two loan agreements - each loan was secured by a mortgage of land - all loan terms were set out in mortgages - appeal from judgment in lender's favour - borrower contended several components of judgment sum were not calculated in accordance with loan terms - borrower also argued he should have been awarded compensation for money lost as a result of a caveat that stopped



selling a property - s74 *Real Property Act 1900* (NSW) - held: appeal allowed in part - judgment exceeded debt that was owing by borrower at the time - judgment set aside and awarded in reduced sum - borrower did not demonstrate sufficient causal link between lodging of caveat and failure to sell property.

[Mahendran](#) (B)

BigTinCan Pty Ltd v Ramsay [2013] NSWSC 1248

Supreme Court of New South Wales

Ball J

Corporations - equity - directors' duties – plaintiff company claimed one of its directors, in breach of his fiduciary duties and duties owed under ss181-3 *Corporations Act 2001* (Cth), formulated plan to set up new company to acquire plaintiff's business or compete with it - plaintiff claimed director sought to raise capital for new company, that third defendant consultant was a party to plan and that he also breached fiduciary duties to plaintiff - alternatively, plaintiff alleged consultant was knowingly concerned in director's breaches of duty - plaintiff sought equitable compensation from second and third defendants and compensation from second defendant under s1317H - held: director breached s181 of the Act and fiduciary duties - consultant knowingly assisted director in dishonest and fraudulent breach of duty - director's conduct caused plaintiff to lose opportunity to raise capital - both defendants liable to pay equitable compensation.

[BigTinCan Pty Ltd](#) (B)

In the matter of Gap Constructions Pty Ltd [2013] NSWSC 1262

Supreme Court of New South Wales

Kunc J

Stay - defendant was charged with criminal offences - subject matter of civil proceedings and of criminal charges was identical - defendant sought orders staying proceedings until criminal proceedings finalised - if proceedings stayed, plaintiff sought orders that money which it paid by way of security and interest accrued should be returned to it - held: not inappropriate to order stay - stay granted - stay not related to decision to order security for costs in defendant's favour - no reason to deprive defendant of benefit of security order - no evidence that costs associated with providing security were a source of any particular hardship or difficulty for plaintiff - plaintiff's application refused.

[Gap Constructions Pty Ltd](#) (I B C)

**Alsco Pty Ltd v Mircevic [2013] VSCA 229**

Court of Appeal of Victoria

Warren CJ; Osborn JA & Robson AJA

Accident compensation - appeal from decision that condition suffered by respondent was a serious injury arising from respondent's employment within s134AB(2) *Accident Compensation Act 1985* (Vic) - whether primary judge erred in reasons she gave for concluding that employment was a cause of plaintiff's condition - medical evidence - division of expert opinion as to probable mechanism of condition's causation - held: trial judge gave adequate reasons for finding she was persuaded by one medical expert's evidence (and those supporting his view) as against another medical expert's evidence (and those supporting his view) that, on balance of probabilities, plaintiff's employment was a cause of her condition - appeal dismissed.

[Alsco Pty Ltd](#) (I)**TAC v Zepic [2013] VSCA 232**

Court of Appeal of Victoria

Maxwell P, Tate JA & Garde AJA

Accident compensation - respondent injured in motor vehicle accident applied for leave to bring action to recover damages under s93(4)(d) *Transport Accident Act 1986* (Vic) - appellant sought leave to appeal from decision granting leave - whether pain and suffering consequences of impairment of spinal function satisfied test for serious injury - *serious long-term impairment of a body function* - s93(17)(a) of the Act - medical evidence - credit - held: primary judge erred in treating respondent's evidence as reliable, failed to carry out requisite analysis of effect of aggravation of lumbar spine injury and impermissibly took into account pain and suffering consequences for respondent which were psychologically rather than physically driven - primary judge's conclusion was plainly wrong or wholly erroneous - leave to appeal granted - appeal allowed.

[TAC](#) (I)**Attorney-General for the State of South Australia v Bell [2013] SASFC 88**

Full Court of the Supreme Court of South Australia

Kelly, Nicholson & Blue JJ

Statutory interpretation - constitutional law - appeal from decision allowing defendant's appeal against order for forfeiture of defendant's motor vehicle pursuant to *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* (SA) - primary judge held that s12(1)(a)(iii) of the Act, under which police had applied for forfeiture, was invalid - construction of the Act - principles applicable to whether State legislation addressed to State courts was rendered invalid



by reference to Ch 3 of the Constitution - held: erroneous to look at extrinsic material before exhausting ordinary rules of statutory construction - on proper construction s12 of the Act was constitutionally valid - on proper construction of the Act, defendant's conviction in 2002 was properly regarded as a prescribed offence - appeal allowed.

[Attorney-General for the State of South Australia](#) (I B C G)

A Red, Red Rose

By Robert Burns

O my Luve is like a red, red rose
That's newly sprung in June;
O my Luve is like the melody
That's sweetly played in tune.

So fair art thou, my bonnie lass,
So deep in luve am I;
And I will luve thee still, my dear,
Till a' the seas gang dry.

Till a' the seas gang dry, my dear,
And the rocks melt wi' the sun;
I will love thee still, my dear,
While the sands o' life shall run.

And fare thee weel, my only luve!
And fare thee weel awhile!
And I will come again, my luve,
Though it were ten thousand mile.

[Robert Burns](#)

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