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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)

Telstra Corporation Ltd v Vocus Fibre Pty Ltd (FCAFC) - contract - ACCC had no power to determine disputes under customer relationship agreements - appeal allowed (B G)

The Nominal Defendant v Ross (NSWCA) - negligence - pedestrian injured by minibus - contributory negligence increased - appeal allowed in part (I)

UAERJ Pty Ltd v Jupiters Ltd (NSWCA) - equity - agent had no authority to assign proceeds of ticket-sales to company on behalf of true owner - appeal allowed (B)

Mainteck Services Pty Ltd v Stein Heurtey SA (No 2) (NSWCA) - costs - unreasonable failure to accept *Calderbank* offer - indemnity costs granted (I C)

McGlashan v QBE Insurance (Australia) Ltd (No 4) (NSWSC) - costs - offer of compromise referring to interim payments non-compliant - indemnity costs refused (I)

White Rock Properties Pty Ltd v Commissioner of State Revenue (VSC) - state revenue duties - transfers of land by trustees to company pursuant to partnership agreement not exempt - appeal dismissed (B)



Mainstream Construction (Aust) Pty Ltd v Carr Electrical Pty Ltd (VSC) - summary determination - failure to comply with procedural order - relevant principles not applied - appeal allowed (C)

Summaries with links (5 minute read)

Telstra Corporation Ltd v Vocus Fibre Pty Ltd [2014] FCAFC 77

Full Court of the Federal of Australia

Besanko, Middleton & Griffiths JJ

Contract - customer entered into customer relationship agreements with Telstra - Telstra notified customer of decision to vary charges payable - customer disputed variation and claimed some charges too high - similar disputes arose with other companies - Australian Competition and Consumer Commission formed view it had power to arbitrate the disputes under cl 36(3) & cl 18(1) of sch 1 to the *Telecommunications Act 1997* which conferred power to arbitrate *failing agreement* - Telstra contended agreement conferred contractual power upon it to vary existing terms and conditions and there was no failure to agree - held: parties had reached agreement including as to how disputes were to be dealt with - parties were now merely disputing interpretation of terms and conditions and application to set of facts - no *failing agreement* - Commission had no power to hear and determine matters - appeal allowed.

[Telstra Corporation Ltd](#) (B G)

The Nominal Defendant v Ross [2014] NSWCA 212

Court of Appeal of New South Wales

Beazley P; Meagher & Hoeben JJA

Negligence - pedestrian injured when unidentified minibus collided with him at airport - driver asked if pedestrian okay to which pedestrian replied he was - driver drove off - pedestrian later discovered leg and foot seriously injured - Nominal Defendant challenged finding of negligence against driver of minibus, assessment of contributory negligence and finding that pedestrian had satisfied duty of due inquiry and search pursuant s34(1) *Motor Accidents Compensation Act 1999* (NSW) - *due* - held: appeal against liability dismissed - minibus driver failed to keep proper lookout - primary judge erred in assessment of contributory negligence - contributory negligence increased from 20% to 35% - damages reduced - provisions of s34(1) satisfied - pedestrian unable to record registration number and did not know CCTV footage would be destroyed - appeal allowed in part.

[The Nominal Defendant](#) (I)

UAERJ Pty Ltd v Jupiters Ltd [2014] NSWCA 213

Court of Appeal of New South Wales

Beazley P; McColl & Macfarlan JJA



Equity - assignment - UAERJ engaged agent to secure rights to promote tour by The Jacksons - agent was also acting as promoter of Mariah Carey concert at Jupiters' venue - agent informed Jupiters his company did not have sufficient funds to comply with its obligation to supply equipment and materials - Jupiters agreed to pay subject expenses in return for agent directing venues to pay part of ticket sale proceeds of Jacksons' concerts to Jupiters - UAERJ and its director intervened and relevant parts of ticket sale proceeds remained with venues - held: agent had no right to deal with proceeds of ticket sales without authorisation by UAERJ and director - in absence of any representation to Jupiters by director and UAERJ that agent was authorised to assign proceeds in its favour, Jupiters' claim to proceeds failed - appeal allowed.

[UAERJ Pty Ltd](#) (B)

Mainteck Services Pty Ltd v Stein Heurtey SA (No 2) [2014] NSWCA 214

Court of Appeal of New South Wales

Ward, Emmett & Leeming JJA

Indemnity costs - gross sum costs order - Court dismissed appeal - respondent sought costs of appeal on indemnity basis - and gross sum costs order - held: offer represented real compromise - unreasonable of appellant not to accept offer - indemnity costs awarded - costs of appeal were a candidate for a gross sum costs order having regard to their magnitude, complexity of the proceedings, and (claimed) potential incapacity of appellant to satisfy its total costs liability - however there was undetermined application for a gross sum costs order in Equity Division for costs at first instance - no sound reason for two hearings on exercise of the same discretion to make a gross sum costs order for different costs orders between same parties arising out of same dispute - question of gross sums order remitted to Equity division.

[Mainteck Services Pty Ltd](#) (I C)

McGlashan v QBE Insurance (Australia) Ltd (No 4) [2014] NSWSC 882

Supreme Court of New South Wales

Campbell J

Indemnity costs - offer of compromise - Court gave judgment for defendant which sought indemnity costs on basis of offer of compromise rejected by plaintiff - plaintiff opposed order on grounds not all evidence had been served at time of service of offer and because offer was made *inclusive of all or any interim or other payments made to or on behalf of the plaintiff by the defendant* which were not quantified - plaintiff claimed it was denied opportunity to properly assess offer - held: reference to interim payments rendered offer non-compliant with r20.26 *Uniform Civil Procedure Rules 2005* (NSW) with consequence defendant not *entitled* to indemnity costs - offeror not required to serve all evidence and comply fully with pre-trial requirements before offer of compromise could give rise to prima facie entitlement to indemnity costs - indemnity costs refused.

[McGlashan](#) (I)



White Rock Properties Pty Ltd v Commissioner of State Revenue [2014] VSC 312

Supreme Court of Victoria

Robson J

State revenue duties - will - trusts - partnership - transferee of land appealed against three assessments under *Duties Act 2000* (Vic) (the Act) of duty payable on transfers - five discretionary testamentary trusts created under deceased's will - trustees of each trust as partners and company as *agent* entered into partnership agreement - pursuant to partnership agreement, each of the trustees transferred interest in land - transferee objected to assessments - held: transfers not exempt under s35(1)(a) as transfers to trustee or nominee without any change in beneficial ownership of the property - upon transfers company no longer bound to *hold* trust property solely as trustee under testamentary trusts - transfers not exempt under s33(3) as transfers made solely because of a change in trustees - new and separate trust created by transfers - dutiable value of each property transferred not nil or nominal - appeal dismissed.

[White Rock Properties Pty Ltd](#) (B)

Mainstream Construction (Aust) Pty Ltd v Carr Electrical Pty Ltd [2014] VSC 317

Supreme Court of Victoria

Cavanough J

Summary termination - builder sought leave to appeal from Victorian Civil and Administrative Tribunal's order requiring it to pay electrical contractor for work done at commercial building site - associate judge summarily terminated proceeding for non-compliance with procedural order - held: parties did not direct associate judge to principles relevant to application for summary termination of proceeding for want of prosecution or on ground of non-compliance with interlocutory order - principles not applied - during course of appeal company produced further evidence which threw new light on circumstances surrounding hearings - evidence included material upon which, if appeal allowed, builder wished to rely in support of application for retrospective extension of time to commence proceeding - in all circumstances appeal should be allowed - associate judge's orders set aside - proceeding reinstated.

[Mainstream Construction \(Aust\) Pty Ltd](#) (C)

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