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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)

Australian Competition and Consumer Commission v Jutsen - contempt of court - determination of penalty - *Federal Court of Australia Act 1976* (Cth) (I, B)

CIC Allianz Australia Ltd v McDonald & Ors - administrative law - motor vehicle accident - Claims Assessment and Resolution Service - *Motor Accidents Compensation Act 1999* (NSW) (I, G)

Hanave Pty Ltd v Nahas Construction (NSW) Pty Ltd - adjudication determination - payment withholding request - *Building and Construction Industry Security of Payment Act 1999* (NSW) (C)

RSA v VDM CCE and VDM CCE v RSA - procedure - application for stay of proceedings - *Building and Construction Industry Payments Act 2004* (Qld) - *Building and Construction Industry Security of Payments Act 1999* (NSW) (I, B, C)

National Australia Bank Ltd v Pathway Investments Pty Ltd & Anor - group proceeding - interlocutory appeal - identity particulars and discovery - *Supreme Court Act 1986* (Vic) - *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - *Civil Procedure Act 2010* (Vic) (I, B, C, G)



Summaries with links (5 minute read)

Australian Competition and Consumer Commission v Jutsen (No 6) [2012] FCA 809

Federal Court of Australia

Jagot J

Contempt of court - respondent found guilty of contempt for withdrawing money from bank account in contravention of court orders - determination of appropriate penalty and application for indemnity costs - consideration of Federal Court's authority to punish contempts of its power pursuant to s31(1) *Federal Court of Australia Act 1976* (Cth) - consideration of case law concerning range of penalties, factors relevant to determination of penalty and standard of proof required for aggravating or mitigating factors in relation to determination - whether respondent knew of existence and content of orders restraining her from operating bank account - whether respondent intended to breach court orders - whether respondent had prior convictions for contempt of court - whether applicant's suggested fine excessive - whether applicant was put to substantial or unwarranted expense by respondent's conduct of defence against contempt charge.

[ACCC](#) (I, B)

CIC Allianz Australia Ltd v McDonald & Ors [2012] NSWSC 887

Supreme Court of New South Wales

Hidden J

Administrative law - first defendant injured in motor vehicle accident and made claim to the Claims Assessment and Resolution Service established by the *Motor Accidents Compensation Act 1999* (NSW) (Act) - liability not in issue - assessor issued certificate under s94(1)(b) of the Act awarding damages - plaintiff contended assessor erred in assessment - orders sought in the nature of *certiorari* and related administrative law remedies - scope of reasons which assessor should give set out in cl18.4 *Claims Assessment Guidelines* issued pursuant to s69 of the Act - whether assessor's reasons were adequate - duty to give reasons - *Allianz Australia Limited v Ward* [2010] NSWSC 720 - whether assessor failed to provide adequate reasons in relation to assessment of economic loss, future economic loss, medical evidence and/or future commercial care - whether matter should be remitted to another assessor.

[CIC Allianz Australia](#) (I, G)



Hanave Pty Ltd v Nahas Construction (NSW) Pty Ltd [2012] NSWSC 888

Supreme Court of New South Wales

Hammerschlag J

Security of payments legislation - payment withholding request - discrete contest between plaintiff and second defendant (**Waco**) - plaintiff and first defendant (**Nahas**) entered into contract for design and construction of commercial building - Nahas served payment claim on plaintiff pursuant to s13 *Building and Construction Industry Security of Payment Act 1999* (NSW) (**Act**) - plaintiff commenced proceedings to quash adjudication determination and obtained an injunction to restrain Nahas from taking steps to enforce it - plaintiff gave undertaking to pay into court amount owing under adjudication determination - plaintiff made unsuccessful challenge to adjudication determination in favour of Nahas - court ordered money paid into court to be paid to Nahas - Waco a creditor of Nahas - Waco obtained adjudication order under the Act against Nahas for payment of amount owed - claim unsatisfied - Waco served on plaintiff a payment withholding request pursuant to division 2A of the Act to retain the amount of money owed to it - consideration of ss26A to 26D of the Act concerning obligations of principal contractors to retain money owed to respondent - whether plaintiff jointly and severally liable with Nahas in respect of debt owed by Nahas to Waco - whether plaintiff contravened the Act by failing to notify the court of Waco's notice - whether plaintiff failed to take steps to prevent discharge of the debt - whether contravention of s26C of the Act requires a voluntary act or omission on part of discharger which is causative of the discharge.

[Hanave](#) (C)

RSA v VDM CCE and VDM CCE v RSA [2012] NSWSC 861

Supreme Court of New South Wales

McDougall J

Security of payments legislation - application for stay of judgment obtained by defendant (**VDM CCE**) against plaintiff (**RSA**) by filing adjudication certificate recovered pursuant to the *Building and Construction Industry Payments Act 2004* (Qld) in Supreme Court of Queensland - RSA originally sought stay in the Supreme Court of Queensland - parties involved in other proceedings in Supreme Court of NSW - Supreme Court of Queensland cross-vested its proceedings to NSW - RSA seeks stay on basis of risk of non-payment if successful in proceedings in NSW - VDM Group (parent company of VDM CCE) offering unconditional bank guarantee to VDM CCE in amount of judgment debt if stay not continued - circumstances justifying a stay on basis of risk of non-payment - consideration of risk to applicant other than risk that respondent will become insolvent - consideration of prejudice to respondent if stay is granted - consideration of policy of the *Building and Construction Industry Security of Payments Act 1999* (NSW).

[RSA](#) (I, B, C)



National Australia Bank Ltd v Pathway Investments Pty Ltd & Anor [2012] VSCA 168

Court of Appeal of Victoria

Bongiorno & Harper JJA; Bell AJA

Group proceeding - interlocutory appeal - respondents claimed damages against appellant for alleged non-disclosure and misleading and deceptive conduct - trial judge dismissed appellant's application for particulars identifying group's 20 largest shareholders and requiring them to give wide discovery - trial judge found insufficient forensic benefit to appellants to justify making orders sought - consideration of court's discretionary powers contained in s33ZF *Supreme Court Act* 1986 (Vic) and r32.07 *Supreme Court (General Civil Procedure) Rules* 2005 (Vic) (**Rules**) to make orders for identification of and discovery by a member of a group proceeding - consideration of scope of required discovery as set out in r29.01(3) of the Rules - requirement for court to exercise discretion in a manner giving effect to overarching purposes of civil proceedings contained in s7(1) *Civil Procedure Act* 2010 (Vic) (**Act**) for the just, efficient, timely and cost-effective resolution of dispute's real issues - whether decision was in keeping with the purpose and object of the Act.

[National Australia Bank](#) (I, B, C, G)

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