

Friday 7 November 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Suzlon Energy Ltd v Bangad (No 2) (FCA) - damages - assessment of appropriate rate of pre-judgment interest to apply where principal amounts in US dollars and euros (I B)

Ku-Ring-Gai Council v Ichor Constructions Pty Ltd (NSWSC) - security of payments - second adjudication application in proceedings an abuse of process (C)

Thew v Woelms (NSWSC) - equity - breach of settlement deed by sale of property - constructive trust - equitable debt - damages (B)

Matouk v Matouk (NSWSC) - equity - continuation of proceedings in absence of a representative of deceased person's estate (B)

Enviro Systems Renewable Resources Ltd (Receivers & Managers appointed) v Westpac Banking Corporation (SASC) - corporations - statutory demand - Master erred in finding property sold by public auction - matter to be reheard (B)

Bellaluz Pty Ltd v Westpac Banking Corp (QSC) - mortgage - challenge to valuation evidence underpinning sale of property - bank granted security for costs (I B)

Soil & Contracting Pty Ltd v Boban Pty Ltd (WASC) - corporations - slip rule - extension of time within which winding up application had to be determined (B C)

Summaries with links (5 minute read)

Suzlon Energy Ltd v Bangad (No 2) [2014] FCA 1173

Federal Court of Australia

Rares J

Damages - pre-judgment interest - Court found Suzlon parties entitled to judgment in very substantial sums in United States dollar and euro amounts - Court directed Suzlon parties to file evidence as to interest rates in those currencies for purpose of establishing an appropriate basis on which an award of pre-judgment interest could be made under s51A *Federal Court of Australia Act 1976* (Cth) - large interest rate differential between cash rates in Australia and those of other currencies - compensatory purpose of award of pre-judgment interest - held: Court of opinion that methodology used by Suzlon parties to calculate interest on United States dollar and euro amounts for the various periods during which the respective Suzlon party was deprived of the use of those moneys was reasonable and appropriate - rates that Suzlon parties' evidence established and manner of calculation ought be applied to award of pre-judgment interest pursuant to s 51A - amounts to form part of sums for which Court would enter judgments.

[Suzlon Energy Ltd](#) (I B)

Ku-Ring-Gai Council v Ichor Constructions Pty Ltd [2014] NSWSC 1534

Supreme Court of New South Wales

Stevenson J

Security of payments - Council contracted with defendant to construct pool - dispute arose under *Building and Construction Industry Security of Payment Act 1999* (NSW) - Council sought declaration that second adjudication application in proceedings was an abuse of process and void - Council contended that matter which company now sought to have determined was subject of earlier adjudication application made by company and earlier adjudication determination - Council contended that claim which company now sought to agitate was subject of an issue estoppel or, alternatively, constituted an abuse of process - held: Court did not accept that there was an issue estoppel - there was no issue *already authoritatively decided* - however company had used first adjudicator's observations as an advice on evidence and was now making a second attempt to prove the same case and requiring the Council, for the second time, to meet it - second adjudication application was abuse of process - defendants restrained from proceeding with application.

[Ku-Ring-Gai Council](#) (C)

Thew v Woelms [2014] NSWSC 1554

Supreme Court of New South Wales

Rein J

Equity - plaintiff made claim under *Property (Relationships) Act 1984* (NSW) against defendant following termination of their relationship - plaintiff claimed defendant sold property in breach of deed of settlement - plaintiff sought determination of amount due from defendant to plaintiff - defendant did not file defence - held: Court satisfied defendant had not only been served in accordance with the orders for substituted service but had notice of proceedings and hearing - defendant had sold property to third party for amount received by conveyancer retained by defendant - defendant had acted in significant breach of orders - plaintiff had not received money from sale - plaintiff entitled to order that defendant pay him his half share of net proceeds - all funds had been disbursed by defendant - plaintiff entitled to order for payment of equitable debt as result of breach of constructive trust imposed on the defendant by virtue of deed and court orders, or damages for breach of contract constituted by the deed.

[Thew](#) (B)**Matouk v Matouk [2014] NSWSC 1552**

Supreme Court of New South Wales

Rein J

Equity - plaintiff claimed son and daughter connived to deprive her of her ownership of property and that son obtained access to credit card and used it to withdraw money for his own benefit and purposes - proceedings commenced as an application in relation to a caveat lodged by plaintiff - caveat extended - son died - no probate or letters of administration granted or sought - no representative of estate appointed - no person willing to represent the estate - plaintiff sought order pursuant to r7.10 *Uniform Civil Procedure Rules 2005* (NSW) that Court appoint representative of the estate and order that proceedings continue with representative representing the interests of son - alternatively, order was sought that proceedings continue against son without a representative of the estate - held: Court satisfied it was appropriate to order that the proceedings continue in the absence of a representative of deceased person's estate.

[Matouk](#) (B)**Enviro Systems Renewable Resources Ltd (Receivers & Managers appointed) v Westpac Banking Corporation [2014] SASC 165**

Supreme Court of South Australia

Gray J

Corporations - winding up - statutory demand - Master refused to set aside statutory demand - appellant was formerly in business of producing and selling firewood at a property and owned a hardware store - respondent appointed receivers over appellant's assets - store and timber sold by receivers - appellant submitted there was no debt due to respondent due to manner in which the sale of property was conducted - Master proceeded on basis property was sold at public auction -

sale in fact proceeded by way of expressions of interest and private negotiation - respondent conceded Master proceeded under an erroneous understanding of the facts and that Court needed to reconsider the matter - held: Master erred in finding property was sold at public auction - matter to be reheard by different Master.

[Enviro Systems Renewable Resources Ltd](#) (B)

Bellaluz Pty Ltd v Westpac Banking Corp [2014] QSC 273

Supreme Court of Queensland

A Wilson J

Security for costs - first defendant bank entered business finance agreements with first plaintiff company and second plaintiff sole director - company and director provided security for the financial accommodation under agreements in the form of a mortgage over property and guarantee and indemnity - company defaulted in repayments - second and third defendants were appointed receivers and managers of property mortgaged to defendant - plaintiffs initially commenced proceedings against bank - plaintiffs disputed valuation evidence underpinning sale of property - defendants sought an order company provide security for the defendants' costs - held: it could not be said plaintiffs had strong case - impecuniosity not readily capable of being traced to defendants' conduct - concern to avoid the risk that plaintiffs were driven off by order for security for costs had to be balanced against doing justice to defendants notwithstanding bank's status as a very large wealthy financial institution - security for costs granted.

[Bellaluz Pty Ltd](#) (I B)

Soil & Contracting Pty Ltd v Boban Pty Ltd [2014] WASC 402

Supreme Court of Western Australia

Acting Master Gething

Corporations - winding up - slip rule - plaintiff sought to wind up defendant in insolvency due to defendant's failure to comply with a statutory demand - winding up application listed for trial commencing 27 October 2014 - no application made to extend the six-month time limit within which winding up application must be determined set out in s459 *Corporations Act 2001* (Cth) - winding up application taken to have been dismissed on 12 August 2014 - for other reasons, trial set to commence was adjourned - plaintiff sought an order pursuant to slip rule to correct orders made to include an order extending the time within which the winding up application must be determined until 30 October 2014 - held: there was a relevant order to correct - the slip rule was available to correct the order and could be used in appropriate circumstances to make an order pursuant to s459R(2) - Court satisfied surrounding circumstances were such that proper attendance to the matter (had the omission not occurred) could only have resulted in the discretion being exercised in one way, being the grant of the extension - order inserted that time within which winding up application had to be determined be extended to 30 October 2014.

[Soil & Contracting Pty Ltd](#) (B C)

A Palinode

By Edmund Bolton

As withereth the primrose by the river,
As fadeth summer's sun from gliding fountains,
As vanisheth the light-blown bubble ever,
As melteth snow upon the mossy mountains:
So melts, so vanishes, so fades, so withers
The rose, the shine, the bubble and the snow
Of praise, pomp, glory, joy - which short life gathers -
Fair praise, vain pomp, sweet glory, brittle joy.
The withered primrose by the mourning river,
The faded summer's sun from weeping fountains,
The light-blown bubble, vanishéd for ever,
The molten snow upon the naked mountains,
Are emblems that the treasures we up-lay
Soon wither, vanish, fade and melt away.

For as the snow, whose lawn did overspread
The ambitious hills, which giant-like did threat
To pierce the heaven with their aspiring head,
Naked and bare doth leave their craggy seat;
Whenas the bubble, which did empty fly
The dalliance of the undiscernéd wind,
On whose calm rolling waves it did rely,
Hath shipwreck made, where it did dalliance find;
And when the sunshine, which dissolved the snow,
Coloured the bubble with a pleasant vary,
And made the rathe and timely primrose grow,
Swarth clouds withdrawn (which longer time do tarry) -
Oh, what is praise, pomp, glory, joy, but so
As shine by fountains, bubbles, flowers or snow?

[Edmund Bolton](#)

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