



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Commissioner of Taxation v Bruton Holdings Pty Ltd (in liq) - ss449E & 504(1) *Corporations Act* 2001 (Cth) - ss21 & 23 *Federal Court of Australia Act* 1976 - indemnification for costs (B)

Anderson Formrite Pty Ltd v Baulderstone Pty Ltd (No 8) - Costs (I, C)

RCI Pty Ltd v Commissioner of Taxation - *Income Tax Assessment Act* 1936 (Cth) - capital gains tax - Part IVA schemes (B)

Acohs Pty Ltd v Ucorp Pty Ltd (No 4) - Costs - indemnity costs - offer of compromise - undertakings as to damages (I, B, C)

Chubs Constructions Pty Ltd v Chamma (No 2) - *Work Injury Management & Workers Compensation Act* 1998 (NSW) - clauses 91 & 93 *Workers Compensation Regulation* 2003 - costs (I)

Wakim v Coleman - - Time for service of originating process - Uniform Civil Procedure Rule 6.2(4) (I)

Dense Medium Separation Powders Pty Ltd trading as DMS Powders v Gondwana Chemicals Pty Ltd & Anor - Subpoenas - defendants seeking order that subpoena issued on behalf of plaintiff to defendants' insurance broker be set aside (I, B, C)



A F C Holdings Pty Ltd v Shiprock Holdings Pty Ltd - Contracts for sale of land - goods & services tax (B)

PN v Department of Education and Training (GD) - *Privacy & Personal Information Protection Act 1998* (NSW) - communications about employee to insurer & rehabilitation provider (I)

Altaranesi v NSW Self Insurance Corporation - *Freedom of Information Act 1989* (NSW) - workers compensation claim files - adequacy of search - jurisdiction (I)

Tamborine Mountain Progress Association Inc v Scenic Rim Regional Council & Anor - *Integrated Planning Act 1997* (Qld) - rezoning of land for proposed tourist facility - application for leave to appeal refused (C)

Such v Police - Traffic offences - appeals against conviction for exceeding speed limit - certificate of accuracy for laser speed gun (I)

Lyons v Labathas, Sports Centres Australia Pty Ltd t/as Canberra International Sports & Aquatic Centre (CISAC) & The Club Group Pty Ltd - Joinder - personal injuries (I)

Kalis v Waltham - Joinder - motor vehicle personal injury claim - plaintiff injured in subsequent motor vehicle collision (I)

Summaries with links (5 minute read)

Wednesday 8 September 2010

Sogo Duty Free Pty Ltd v Commissioner of Taxation [2010] FCA 976

Federal Court of Australia

Gordon J (in Melbourne)

Income tax and excise duties - taxpayer ran a business selling duty free goods to overseas travellers - taxpayer purportedly sold duty free cigarettes to crews of visiting ships - Commissioner concluded that the taxpayer had in fact sold these cigarettes in the Australian



domestic market and assessed taxpayer for increased income tax and excise duty - taxpayer argued that the Commissioner's decision was so unreasonable that no reasonable decision maker could make it, that the Commissioner had taken irrelevant considerations into account, and that the Commissioner had failed to take relevant considerations into account - held: the taxpayer had fundamentally misconceived the nature of the Commissioner's reasoning, and its arguments had no merit - the taxpayer had failed to discharge its burden of proof - appeal dismissed with costs.

[Sogo Duty Free](#) (B)

Australia and New Zealand Banking Group Ltd, in the matter of Australia and New Zealand Banking Group Ltd [2010] FCA 945

Federal Court of Australia

Edmonds J (in Sydney)

Corporations law - ANZ acquired a controlling interest in ING's Australian and New Zealand operations - ING routinely acquires ANZ shares as part of its investment business - section 259C(1) of the *Corporations Act* would render void the transfer of ANZ shares to an entity controlled by ANZ - ASIC has power to exempt companies from the operation of section 259C(1) - ANZ sought and obtained an exemption from ASIC - a condition of this exemption was that ANZ report fortnightly to the ASX the number of its shares held by entities under its control - ANZ reported fortnightly, but later found that some of its reports had been inaccurate - ANZ considered it arguable that the condition had therefore not been satisfied, and that certain of ING's investments may therefore be void - section 1322(4) of the *Corporations Act* empowers the Court to validate any action that would otherwise be invalid under the Act - ANZ applied to the Court for an order under section 1322(4) - held: the Court should make the orders sought, validating the relevant share transfers.

[Australia and New Zealand Banking Group](#) (B)

Nominal Defendant v Staggs [2010] NSWCA 224

Court of Appeal of New South Wales

Giles, Hodgson & Basten JJA

Civil procedure - a pillion passenger on a motorbike was injured, and made a claim against the rider's compulsory third party insurer - more than two years after the passenger made this claim, the insurer sought to join the nominal defendant, based on the alleged actions of an unidentified motorist - the statutory period in which to notify the nominal defendant was three months from the passenger's claim - trial judge granted an extension of time - held: there had been no satisfactory explanation of the delay - appeal allowed, and extension of time refused.

[Nominal Defendant](#) (I)

**Carey v Robson [2010] NSWCA 212**

Court of Appeal of New South Wales

Hodgson & Campbell JJA; Sackville AJA

Family provision - the testator had left unequal and allegedly disproportionate gifts to his children - trial judge held that, in the circumstances, the plaintiff had been left with adequate provision for her proper maintenance and advancement - held: the trial judge had made no error in approach, and there were no grounds for interfering with his discretionary judgment - appeal dismissed.

[Carey \(B\)](#)

Bailey & Bailey v Director-General, Department of Energy Climate Change and Water [2010] NSWSC 979

Supreme Court of New South Wales

Studdert AJ

Civil procedure - the plaintiffs sued the defendants in the tort of malicious prosecution, and other torts, regarding a failed prosecution for breach of the *Native Vegetation Conservation Act 1997* (NSW) - the defendants applied for issues of liability to be tried separately from issues of quantum of damages - the overriding purpose of the *Civil Procedure Act 2005* (NSW) is to facilitate the just, quick and cheap resolution of the real issues in the proceedings - it is generally appropriate that all issues should be determined at the one trial - held: the plaintiff's evidence would be important to both the question of liability and the question of the amount of damages to be awarded - therefore, it would be undesirable to hold separate trials on the question of liability and the question of damages - defendants' application refused.

[Bailey & Bailey \(I, C\)](#)

Gray v Ward [2010] NSWLEC 166

Land and Environment Court of New South Wales

Biscoe J

The applicants applied to a Commissioner of the Land and Environment Court, under the *Trees (Disputes Between Neighbours) Act 2006* (NSW), for an order that the respondents remove three trees that were on the respondents' property, which the applicants contended were dangerous - the Commissioner refused to make such an order, but instead ordered that the respondents to remove all dead wood overhanging the plaintiff's property - the applicants appealed to the Court on a question of law - held: the Commissioner erred in law in holding that the applicants' contentions were limited to dead branches falling, and that there was no evidence of live branches falling - matter remitted to a Commissioner for rehearing.

[Gray \(I, C\)](#)

**Norlex Holdings Pty Ltd v Wingecarribee Shire Council [2010] NSWLEC 149**

Land and Environment Court of New South Wales

Pepper J

Development consent - in 1995, Council gave a development consent to permit the collection of spring water - in 2006, the applicant applied for a construction certificate to enable the extraction of spring water from the property the subject of the consent - Council refused the construction certificate on the ground that the development consent had lapsed - held: engineering work related to the development consent had been physically commenced on the land within five years of Council granting the development consent - therefore, the development consent had not lapsed.

[Norlex Holdings](#) (C)

Kennedy v NSW Minister for Planning [2010] NSWLEC 164

Land and Environment Court of New South Wales

Biscoe J

Costs - the applicant was an aboriginal man who, on behalf of an aboriginal tent embassy, unsuccessfully challenged the validity of a major project approval - the Minister sought costs in accordance with the usual rule that costs follow the event - the applicant contended there should be no order as to costs, as the applicant had brought the proceedings in the public interest - held: it was appropriate to make no order as to costs in respect of one issue in the proceedings: that the Minister had failed to consult with the aboriginal community - the applicant should pay the Minister's costs in relation to other issues - the applicant was therefore ordered to pay 30% of the Minister's costs.

[Kennedy](#) (I, C)

Lachlan Reit Ltd v Garnaut [2010] VSC 399

Supreme Court of Victoria

Judd J

Corporations law - interlocutory application - the plaintiff was the Responsible Entity of a managed investment fund - the defendant was a financial adviser to a number of investors in the fund - the defendant had become concerned with the solvency of the plaintiff's parent company, and the performance of the fund - the defendant began a campaign to remove the plaintiff as Responsible Entity - the plaintiff commenced these proceedings, seeking to restrain the defendant from convening meetings of unitholders and proceeding with the removal of the plaintiff - the plaintiff alleged the defendant had engaged in misleading and deceptive conduct - the balance of convenience favoured the rejection of the plaintiff's application - interlocutory injunction refused.

[Lachlan Reit](#) (B)

**Cavenham Pty Ltd v Robert Bax & Associates (No 2) [2010] QSC 328**

Supreme Court of Queensland

Ann Lyons J

The plaintiff sued its former solicitor in negligence and contract - the defendant sought an order for further and better particulars in a number of respects - the Court ordered further and better particulars in some respects, but not others - the plaintiff sought to strike out several paragraphs of the defence and an order for further and better disclosure - the Court made the orders sought by the plaintiff - held: in respect of the defendant's motion, there should be no order as to costs - in respect of the plaintiff's motion, the defendant should pay the plaintiff's costs.

[Cavenham \(I\)](#)**Commissioner for Consumer Affairs v Flood [2010] SADC 118**

District Court of South Australia

Chivell J

Registered conveyancers - the respondent was a registered conveyancer - respondent acted for both the vendor and the purchaser in respect of the sale of three properties in which he had an interest - respondent did not disclose that he had a pecuniary interest in the transactions - purpose of the disciplinary scheme applicable to registered conveyancers is to protect the public, rather than to punish erring conveyancers - held: there was a proper cause for disciplinary action against the respondent under the *Conveyancers Act 1994* (SA) - respondent reprimanded and fined \$2,000.

[Commissioner for Consumer Affairs \(I, C\)](#)

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