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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)

**Dealer Support Services Pty Ltd v Motor Trades Association of Australia Ltd** (FCA) - trade mark - no injunction to restrain law firm from acting against former client (I)

**Sims v Chong** (FCA) - summary judgment - abuse of process - advocates' immunity - claim against legal practitioner struck out (I B)

**Davis v Gosford City Council** (NSWCA) - refusal of development consent - clearing of habitat for threatened species - appeal on questions of law dismissed (I C G)

**De Gelder v Rodger (No 2)** (NSWSC) - motor accidents compensation - whole person impairment - certificate of medical review panel quashed (I G)

**BB Retail Capital Pty Ltd v Alexandria Landfill Pty Ltd** (NSWSC) - contract - entitlement to preference shares on conversion of convertible notes (B C)

**Moama Bowling Club Ltd v The Thomson Group Pty Ltd** (VSCA) - negligence - fire at bowling club not caused by shattering globe - electrical contractor not liable (I C)

**Sleeman v SPI Electricity Pty Ltd** (VSCA) - statutory compensation - installation of electricity poles - owners of neighbouring land refused compensation (I C)

## Summaries with links (5 minute read)

### **Dealer Support Services Pty Ltd v Motor Trades Association of Australia Ltd [2014] FCA 1065**

Federal Court of Australia

Beach J

Injunction - legal practitioners - Dealer Support sued Motor Trades Association (MTA) in trademark proceedings - Dealer Support represented by firm of lawyers - predecessor of firm originally acted for MTA in registration of trade mark - solicitors from firm currently acting for Dealer Support had not previously acted for MTA - former individual solicitors who acted for MTA were either not currently associated with firm or had been quarantined from proceeding - MTA sought injunction restraining Dealer Support from continuing to retain firm in proceeding - held: MTA did not put its case for disqualification on basis of real risk of misuse of confidential information - no basis for asserted ground of duty of loyalty - proper administration of justice did not require solicitors should be prevented from acting - application dismissed.

[Dealer Support Services Pty Ltd \(I\)](#)

### **Sims v Chong [2014] FCA 1069**

Federal Court of Australia

Barker J

Summary judgment - abuse of process - advocates' immunity - applicant sought relief against legal practitioner who acted for him in a contract claim against a company - applicant alleged legal practitioner engaged in misleading, deceptive, and unconscionable conduct, breached contractual and fiduciary obligations, and was negligent - legal practitioner sought summary judgment pursuant to r26.01(1)(a), (c) or (d) *Federal Court Rules 2011* (Cth) on basis proceedings were abuse of process - held: applicant's claims against legal practitioner depended on claim there was an enforceable promise made by company and if lawyers had done better he would still be able to pursue action in Supreme Court - in light of Supreme Court's decision to strike out fifth statement of claim, it was not now open to applicant to relitigate the contract argument in present proceedings - proceedings were abuse of process - legal practitioner also protected by doctrine of advocates' immunity - proceedings struck out.

[Sims \(I B\)](#)

### **Davis v Gosford City Council [2014] NSWCA 343**

Court of Appeal of New South Wales

Beazley P, Ward JA & Preston CJ of LEC

Environment and planning - appellants sought development consent under *Environmental Planning and Assessment Act 1979* (NSW) for facility which involved clearing native vegetation that was habitat for threatened species of fauna - Council refused consent on basis species impact

statement (SIS) under s78A(8)(b) was required - Commissioners of Land and Environment Court dismissed appellant's appeal under s97 against Council's refusal - appellants appealed against Commissioners' decision on questions of law - Land and Environment Court dismissed appeal - construction and application of ss5A, 79C & s79B(3) - held: no error by Commissioners or Court in assessment of degree of effect on threatened species required for refusal of development application - relevant matters to consider not limited to effect on threatened species that was likely to be a significant effect - Commissioners and Court below did not err by not considering or giving effect to any concurrence of Director-General under s79B(3) - appeal dismissed.

[Davis](#) (I C G)

### **De Gelder v Rodger (No 2) [2014] NSWSC 1355**

Supreme Court of New South Wales

Hamill J

Motor accidents compensation - plaintiff injured in car accident sought judicial review of medical review panel's assessment under s63 *Motor Accidents Compensation Act 1999* (NSW) of whole person impairment (WPI) at 0% - causation - absence of contemporaneous complaint - inconsistent findings as to causation and WPI preceding panel's consideration - held: panel did not apply wrong legal test for causation - panel erred in approach to plaintiff's inability to explain absence of medical notes - panel failed to take relevant considerations into account - panel failed to provide adequate reasons - certificate quashed - matter remitted.

[De Gelder](#) (I G)

### **BB Retail Capital Pty Ltd v Alexandria Landfill Pty Ltd [2014] NSWSC 1363**

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff ("BBRC"), first defendant ("ALF") and second defendant entered deed by which BBRC became holder of \$30 million of convertible notes issued by ALF - notes matured and converted into preference shares in ALF - BBRC claimed it was entitled to be issued with number of preference shares dictated by conversion formula in clause of Terms of Issue of convertible notes - defendants accepted that \$10 million of BBRC's convertible notes were converted into preference shares at that rate but that remaining \$20 million of BBRC's notes converted on a "\$1.00 for 1 share" basis - determination of amount of "Organic Debt" in ALF group on conversion date - *Blatch v Archer* principle - held: BBRC's \$20 million convertible notes converted into preference shares at the rate specified in clause of Terms of Issue and not on a "\$1.00 for 1 share" basis - ALF had issued insufficient shares to BBRC and too many shares to second defendant - as to remaining disputes about "Organic Debt", Court concluded one of the amounts said by BBRC to comprise "Organic Debt" did so, and that the others did not - notes converted at the rate in Terms of Issue - level of "organic debt" determined.

[BB Retail Capital Pty Ltd](#) (B C)

**Moama Bowling Club Ltd v The Thomson Group Pty Ltd [2014] VSCA 245**

Court of Appeal of Victoria

Nettle, Tate & Beach JJA

Negligence - appellant's bowling club extensively damaged by fire - proprietor claimed fire caused by floodlight containing halogen lamp installed by electrical contractor and claimed damages in negligence from contractor - causation - Pt X, ss51 & 52 *Wrongs Act 1958* (Vic) - primary judge not satisfied fire initiated by globe in floodlight shattering - primary judge also held that, even if it were necessary to make finding whether contractor was negligent in selection, supply and fitting of floodlight, contractor was not negligent - primary judge dismissed proprietor's action - appellant contended primary judge erred by paying no or insufficient regard to various aspects of evidence - held: all grounds of appeal rejected - no error in decision of primary judge - appeal dismissed.

[Moama Bowling Club Ltd](#) (I C)

**Sleeman v SPI Electricity Pty Ltd [2014] VSCA 243**

Court of Appeal of Victoria

Nettle, Beach & Kyrou JJ

Statutory compensation - appellants were owners of land on which they proposed to build aerodrome - appellants sought compensation under s93(2) *Electricity Industry Act 2000* (Vic) for decrease in value of land due to electricity corporation's installation of electricity poles on neighbouring land - *any land* - held: primary judge correct to hold compensation provisions in s93(2) were confined to the owner of land upon which an electricity corporation undertook authorised activities - appellants were not entitled to compensation under s 93(2) - appeal dismissed

[Sleeman](#) (I C)

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