



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Beluga Shipping GmbH & Co v Suzlon Energy Ltd (No 5) - *Admiralty Act 1988* (Cth) - Hague Convention on the Service Abroad of Judicial & Extrajudicial Documents in Civil and Commercial Matters 1965 (B)

Defence Force Retirement & Death Benefits Authority v Mathews - s61B *Defence Force Retirement & Death Benefits Act 1973* (Cth) - old scheme and new scheme: making an election (B)

Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union v Emergency Transport Technology Pty Ltd - *Fair Work Act 2009* (Cth) - whether notice to produce should be set aside (I)

Filadelfia Projects Pty Ltd v Entirity Business Services Pty Ltd & Anor (No 2) - *Building & Construction Industry Security of Payment Act 1999* (NSW) - adjudication certificate (I, C)

Smith & Hannaford v Zhang & Zhou - *Trees (Disputes Between Neighbours) Act 2006* (NSW) - causation (I, C)

Darlinghurst Road Holdings Pty Ltd v Council of the City of Sydney - Development applications - use of rooftop as a bar area & smokers' facility (C)



Hodgson v Amcor Ltd; Amcor Ltd & Ors v Barnes & Ors - Case management - delay - non-party discovery (I, B, C)

Wheelahan & Anor v City of Casey & Ors (No 5) - Case management (I, C)

McKay Investments Pty Ltd v Kent - *Workplace Health and Safety Act 1995* (Tas) - applicant operator of sawmill at Bridgewater - prosecution - application for review of magistrate's determination (I)

Sousa v London Borough of Waltham Forest Council - United Kingdom decision - costs - conditional fee agreements - success fees - household insurance policy - subrogation (I)

Summaries with links (5 minute read)

Wednesday 9 March 2011

Beluga Shipping GmbH & Co v Suzlon Energy Ltd (No 5) [2011] FCA 176

Federal Court of Australia

Rares J (in Sydney)

Admiralty Act 1988 (Cth) - *Hague Convention on the Service Abroad of Judicial & Extrajudicial Documents in Civil and Commercial Matters 1965* - appropriate for leave to be granted to Suzlon parties to amend their pleadings to join three banks as further respondents to their cross-claim & to grant leave for the banks to be served in Switzerland under the Hague Convention.

[Beluga Shipping GmbH](#) (B)

Defence Force Retirement & Death Benefits Authority v Mathews [2011] FCA 160

Federal Court of Australia

Moore J (in Sydney)

s61B *Defence Force Retirement & Death Benefits Act 1973* (Cth) - *Military Superannuation & Benefits Act 1991* (Cth) - old scheme and new scheme: making an election - respondent's express choice (a tick) was not to become a member of new scheme - appeal allowed - decision of Administrative Appeals Tribunal set aside.

[Defence Force Retirement and Death Benefits Authority](#) (B)



Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union v Emergency Transport Technology Pty Ltd [2011] FCA 181

Federal Court of Australia

Cowdroy J (in Sydney)

Fair Work Act 2009 (Cth) - proceedings in which applicant seeking a declaration that one of its members had been dismissed from his employment with the respondent in contravention of s340 - whether notice to produce should be set aside - answer 'no' - respondent to produce documents sought.

[Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union](#) (I)

Filadelfia Projects Pty Limited v Entirity Business Services Pty Ltd & Anor (No 2) [2011] NSWSC 116

Supreme Court of New South Wales

Ball J

Building & Construction Industry Security of Payment Act 1999 (NSW) - electrical work performed by first defendant at a residential unit development in Wahroonga - plaintiff seeking injunction - first defendant to be restrained from seeking or enforcing an Adjudication Certificate under the Act in respect of adjudication determination in March 2010 - plaintiff be at liberty to withdraw sum of \$500,000 from controlled monies account held by its solicitors

[Filadelfia Projects](#) (I, C)

Smith & Hannaford v Zhang & Zhou [2011] NSWLEC 29

Land & Environment Court of New South Wales

Craig J

Trees (Disputes Between Neighbours) Act 2006 (NSW) - causation - cracking of brickwork - whether caused by tree roots from blue gum on adjoining property - onus of proof - arborists' evidence - engineers' evidence - causal connection between tree & damage not established - application dismissed - costs - an interesting decision.

[Smith & Hannaford](#) (I, C)

Darlinghurst Road Holdings Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1041

Land & Environment Court of New South Wales

Murrell C



Development applications - use of rooftop as a bar area & smokers' facility - late night trading - noise impacts - appeal upheld.

[Darlinghurst Road Holdings](#) (C)

Hodgson v Amcor Ltd; Amcor Ltd & Ors v Barnes & Ors [2011] VSC 63

Supreme Court of Victoria

Vickery J

Case management - delay - sales agreements - alleged breaches of fiduciary duties & duty of fidelity & good faith - witness statements - non-party discovery - client legal privilege - further case management directions to facilitate the just, efficient, timely & cost-effective resolution of the issues in dispute - striking out application refused - a detailed & interesting review of the United Kingdom & Australian case law.

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

Wheelahan & Anor v City of Casey & Ors (No 5) [2011] VSC 62

Supreme Court of Victoria

Osborn J

Case management - matters critical to pre-trial preparation from Court's point of view such as efficient document handling procedures including, if possible, preparation for an electronic trial.

[Wheelahan](#) (I, C)

[Wheelahan](#) - decision 3 February 2011: see 'Benchmark' I, C & IBC Tuesday 8 February 2011 - negligence - strike out application in relation to alleged duties of care - claim by owners & occupiers of adjoining land alleging loss & damage suffered as a result of emission of landfill gas from municipal tip in Cranbourne - claim brought in nuisance against first defendant & third defendant, SITA Australia Pty Ltd - claim brought against all defendants in the alternative in negligence - first defendant makes allegations by way of a statement of claim on third party notice against the fourth defendant, a provider of specialist services in respect of landfill gas extraction.

McKay Investments Pty Ltd v Kent [2011] TASSC 11

Supreme Court of Tasmania

Blow J

Workplace Health & Safety Act 1995 (Tas) - applicant operator of sawmill at Bridgewater - one of its employees lost his left hand when it was cut off by rotating saw blades of a machine called an edger - respondent, an officer of Workplace Standards Tasmania, prosecuted applicant company - magistrate had found charge proved - application for review of that determination - standard of proof - magistrate had erred in drawing inference that applicant company knew of previous incident & warnings.

[McKay Investments](#) (I)



From the United Kingdom...

Sousa v London Borough of Waltham Forest Council [2011] EWCA Civ 194

Court of Appeal of England & Wales

Ward, Moore-Bick & Etherton LJJ

Costs - conditional fee agreements - success fees - household insurance policy - where an insurer exercising rights of subrogation requires insured to instruct lawyers to seek recovery of the loss from a third party allegedly responsible for the damage - appeal dismissed.

Sosua (I)

Sousa - Leeds County Court decision 12 January 2010 Behrens J - the claimant had suffered subsidence damage to his property caused by tree roots of a tree owned by the defendant - he made a claim on a household policy with Virgin Insurance, part of the RBS Group ("the Insurer"). - the claim was settled subject to an excess of £1,000 provided for in the policy - after payment the insurer in exercise of its rights of subrogation required the claimant to pursue a claim against the defendant in respect of his loss - in so doing the insurer required the claimant to instruct a specific firm of solicitors pursuant to a Collective Conditional Fee Agreement which had been negotiated between the solicitors and the insurer - issue of the claimant's entitlement to a success fee had been heard before District Judge Fairwood who accepted defendant's arguments and held that no success fee was payable - appeal allowed;

Campbell- decision House of Lords 20 October 2005 - conditional fee agreements - the publishers MGN seek a ruling of the Appeal Committee that they should not be liable to pay any part of success fee on the ground that, in the circumstances of this case, such a liability was so disproportionate as to infringe their right to freedom of expression under article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* - award of damages £3,500 - legal costs including their own in sum of £1,086,295.47 - petition dismissed.

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