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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)

Low v Barnet (Trustee); In the Matter of Mathai (FCA) - bankruptcy - creditor's application for payment from bankrupt estate - bankrupt granted intervention order (B)

Nettleton v Rondeau (NSWSC) - negligence - driver negligent - cyclist's contributory negligence 25% - alternatively blameless motor accident (I)

Tagget v HP Industrial Pty Ltd (NSWSC) - contract - purchaser breached contract for sale of vacant land for development purposes - damages (B C)

Bastick v Allianz Australia Insurance Ltd (NSWSC) - motor accidents compensation - letter to CARS constituted acceptance of amount of damages in assessment - declaration (I G)

Brunswick Family Dental Pty Ltd v Dr Enegd (VSC) - restraint of trade - interlocutory injunction restraining rival dentist from practicing within area of dental practice refused (I B)

A & S Boesley Pty Ltd v Stoney (VSC) - caveat - contract for sale of land validly terminated by vendor - purchaser's caveats removed (B)



Quadrio v Mackay Sugar Ltd (QSC) - contract - document signed by sugar cane grower was not a contract - declaration made (B)

Summaries with links (5 minute read)

Low v Barnet (Trustee); In the Matter of Mathai [2014] FCA 728

Federal Court of Australia

Foster J

Bankruptcy - creditor of former bankrupt sought order under s109(10) *Bankruptcy Act 1966* (Cth) that trustee distribute to applicant whole amount of property and expenses recovered by bankrupt and son sought leave to be heard - held: Court not persuaded son of bankrupt had any real interest in outcome of application - probable surplus in bankrupt's estate - bankrupt had financial interest in seeing proceeding properly defended - bankrupt had contingent legal interest directly affected by applicant's claims as there was prospect that bankruptcy would be annulled under s153A with result that surplus assets in trustee's hands would come back to him pursuant to s154(1)(c) - order for intervention in bankrupt's favour made on terms.

[Low](#) (B)

Nettleton v Rondeau [2014] NSWSC 903

Supreme Court of New South Wales

Hoeben CJ at CL

Negligence - motor vehicle accident - cyclist struck by vehicle which emerged from driveway behind parked cars - cyclist alleged driver failed to maximise view of road and minimise protrusion of vehicle into lane - alternatively collision was a *blameless motor accident* pursuant to s7C *Motor Accidents Compensation Act 1999* (NSW) (MACA) - ss5B & 5C *Civil Liability Act 2002* (NSW) - ss3, 7A, 7B & 7C MACA - held: reasonable driver in defendant's position would have looked for safer way of driving onto street - driver negligent - cyclist 25% contributorily negligent - if accident had not been caused by driver it was a blameless motor accident - judgment for cyclist - damages to be assessed.

[Nettleton](#) (I)

Tagget v HP Industrial Pty Ltd [2014] NSWSC 901

Supreme Court of New South Wales

Davies J

Contract for sale of land - damages - parties contracted for sale of vacant land for development - purchaser paid deposit - completion date passed - failure to complete led to appointment of liquidator by vendor's mortgagee - receivers issued notice to complete then terminated contract sale for greatly reduced sum - vendor claimed damages for breach of the contract from purchaser and guarantor - purchaser did not file defence - judgment for vendor - assessment of damages - purchase price dependent on extent to which land could be developed - purchase price consisted



of deposit, completion payment and deferred payments calculated with respect to *developable land* - method of calculation - held: damages flowing from purchaser's breach consisted of completion payment and deferred payments less amount received on re-sale of land - damages assessed.

[Tagget](#) (B C)

Bastick v Allianz Australia Insurance Ltd [2014] NSWSC 887

Supreme Court of New South Wales

RS Hulme AJ

Motor accidents compensation - insurer of motor vehicle admitted liability - plaintiff sought declaration it had accepted parties bound by assessment of damages by CARS assessor and order for payment of damages- plaintiff's solicitors had told CARS plaintiff accepted assessor's reasons and certificate but by oversight no letter sent to insurer or its solicitors - insurer wrote to plaintiff's solicitors noting no acceptance of award as required by s95 *Motor Accidents Compensation Act 1999* (NSW) within required time - held: claimant's decision to accept result of assessment must be communicated to someone - no disadvantage to insurer in acceptance being by communication to Authority - plaintiff had accepted assessment by solicitor's letter to CARS assessor by letter of 3/9/13 - declaration made.

[Bastick](#) (I G)

Brunswick Family Dental Pty Ltd v Dr Enegd [2014] VSC 325

Supreme Court of Victoria

Macaulay J

Restraint of trade - interlocutory injunction - dentist's practice was incorporated in 2013 - in 2008 dentist engaged defendant as subcontractor - in 2014 subcontractor set up own practice about 3 km from company's address - company sought interlocutory injunction to restrain former subcontractor from practising as dentist within 5 km of its address relying on restraint of trade clause in contract made with subcontractor in 2013 - held: company established prima facie case contract with defendant contained restraint clause - however court not satisfied company's claim had sufficient probability of success to restrain defendant from conducting practice at address pending trial - interlocutory injunction refused.

[Brunswick Family Dental Pty Ltd](#) (I B)

A & S Boesley Pty Ltd v Stoney 2014] VSC 323

Supreme Court of Victoria

Macaulay J

Caveat - vendor sought declarations that contract of sale of land in 2010 was terminated, removal of caveats lodged by purchaser in 2010 and 2014 - vendor sought summary judgment on claim and counterclaim - held: Court satisfied contract of sale validly terminated by vendor 14 days after service of first default notice - contract not brought back to life by operation of waiver - no other



arguable ground supporting maintenance of caveat or which had such prospects of success that Court should decline to grant summary judgment - relief granted.

[A & S Boesley Pty Ltd](#) (B)

Quadrio v Mackay Sugar Ltd [2014] QSC 148

Supreme Court of Queensland

Henry J

Contract - cane grower sought declaration he had not committed to binding supply contract being *Tableland Collective Cane Supply and Processing Agreement - Sugar Industry Act 1999* (Qld) - whether signing an execution page which contained no contractual terms and was not annexed to any document contained terms fulfilling requirement in ss31(5) & 33(2) that grower sign a supply contract - held: Act required grower to sign a supply contract - document signed by grower did not have any content sufficient for it to meet the description of a contract - declaration made.

[Quadrio](#) (B)

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