

Thursday 11 April 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Alcock v Commonwealth of Australia (FCAFC) – constitutional law – appellant sought declaration that legislative restrictions on fishing rights were unconstitutional – proceedings dismissed (I, G)

Merton v Bank of Queensland Ltd (NSWCA) – equity – interlocutory injunction – application for order that funds held by bank from sale of property be released to appellants – not appropriate to make order on interlocutory basis – application dismissed (B)

QBE Insurance (Australia) Limited v Hotchin & Ors (NSWSC) – costs – plaintiff sought orders that lawyers who represented defendants should pay its costs – costs orders against non-parties - application dismissed (I)

In the matter of Dymocks Book Arcade Pty Limited (NSWSC) – admissions – plaintiff sought to withdraw admission – prima facie case – prejudice to defendant outweighed by desirability of court hearing case on true, rather than false, legal basis – leave granted (I, B, C)



In the matter of Dymocks Book Arcade Pty Limited (No 2) (NSWSC) – suppression orders - application for order that publication of written reasons should not be published until after substantive proceeding - application dismissed (I, B, C, G)

Summaries with links (5 minute read)

Alcock v Commonwealth of Australia [2013] FCAFC 36

Full Court of the Federal Court of Australia

Rares, Buchanan & Foster JJ

Constitutional law – fishing licence – Victorian Parliament passed legislation which curtailed appellant’s right to take abalone from coastal waters – appellant sought declaration that arrangements represented acquisition of appellant’s property contrary to s51(xxxi) of the Constitution or enactment was beyond legislative power – held: no arguable case for infringement of constitutional guarantee in s51(xxxi) – no acquisition of property - assertion of Commonwealth sovereignty in *Seas and Submerged Lands Act 1973* (Cth) did not diminish power of Parliament to pass extra-territorial legislation – no error in decision of primary judge – proceedings dismissed

[Alcock](#) (I, G)

Merton v Bank of Queensland Ltd [2013] NSWCA 68

Court of Appeal of New South Wales

Ward JA

Equity – interlocutory injunction – appellants sought order that balance of funds held by bank from sale of property be released to appellants to fund their appeal – dispute between parties as to entitlement of bank to exercise rights under guarantee given by appellant over properties which bank said were by way of security of commercial facility – held: order requiring payment out of funds to appellants would prejudice issue as to security because of unlikelihood or difficulty of repayment of money if appeal unsuccessful – not appropriate to make order on interlocutory basis – application dismissed.

[Merton](#) (B)

**QBE Insurance (Australia) Limited v Hotchin & Ors [2013] NSWSC 315**

Supreme Court of New South Wales

Bergin CJ in Eq

Costs – solicitors - conduct of litigation – plaintiff sought orders pursuant to s98(1)(b) *Civil Procedure Act 2005* (NSW) that lawyers who represented defendants in proceedings should pay its costs – legal firm in Queensland and firm of lawyers in USA – held: court not satisfied lawyers funded litigation - case did not qualify as exceptional or one in which orders should be made against a non-party, notwithstanding contingency fee arrangements in USA proceedings and the lawyer having an interest in the litigation – all parties acted reasonably in conduct of litigation - application dismissed.

[QBE Insurance \(Australia\)](#) (I, B, C)**In the matter of Dymocks Book Arcade Pty Limited [2013] NSWSC 298**

Supreme Court of New South Wales

Brereton J

Admissions - plaintiff sued defendants in relation to corrosion on roof sheeting of its building – plaintiff sought to withdraw admission that its negligence claim against second defendant was, for the purposes of Part 4 of the *Civil Liability Act 2002* (NSW), an apportionable claim – prima facie strong case to permit withdrawal of admission - admission wrongly made – balance of prejudice – held: court not satisfied prejudice to defendant from permitting withdrawal outweighed desirability of court hearing case on a true, rather than false, legal basis – leave granted.

[Dymocks Book Arcade](#) (I, B, C)**In the matter of Dymocks Book Arcade Pty Limited (No 2) [2013] NSWSC 300**

Supreme Court of New South Wales

Brereton J

Suppression orders – plaintiff granted leave to withdraw admission that its negligence claim was, for the purposes of *Civil Liability Act 2002* (NSW), an apportionable claim – application by defendant under *Courts Suppression and Non-Publication of Orders Act 2010* (NSW) that written form of reasons, not yet produced, should not be published until after hearing of substantive proceedings – held: basis for fearing prejudice as result of publication of judgment unsustainable – judgment pronounced orally in open court, so already in public domain – application refused

[Dymocks Book Arcade \(No 2\)](#) (I, B, C, G)

[Click Here to access our Benchmark Search Engine](#)