



Friday 11 May 2012

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Hi-Tech Telecom Pty Ltd v NEC Australia Pty Ltd** - Application by respondent for security for costs (I, B, C, G)

**Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell (No 2)** - Costs (I, B, C, G)

**Powercor Australia Ltd v Thomas** - Damages - Black Saturday bushfire - farm - appeal dismissed (I, C)

**Westpac Banking Corporation v Tesoro** - ss72(1), 74, 88(1), 88(2) & 208(1) *National Credit Code* - plaintiff's application for summary judgment (B)



## Summaries with links (5 minute read)

### **Hi-Tech Telecom Pty Ltd v NEC Australia Pty Ltd [2012] FCA 466**

Federal Court of Australia

Robertson J

Application by respondent for security for costs - whether skeleton bill of costs required - evidentiary burden - applicant to provide security in sum of \$140,000 but with liberty to respondent to apply to increase that amount - UK & Australian case law considered.

[Hi-Tech Telecom](#) (I, B, C, G)

### **Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell (No 2) [2012] NSWCA 129**

Court of Appeal of New South Wales

Bathurst CJ; Allsop P & Campbell JA

Costs - costs of ASIC as intervener - s1330 *Corporations Act* 2001 (Cth) - Australian case law considered.

[Tonto Home Loans Australia](#) (I, B, C, G)

[Tonto Home Loans Australia](#) - decision Court of Appeal of NSW 21 December 2011 - three appeals principally concern the operation of *Contracts Review Act* 1980 (NSW) - mortgage originators - sub-introducers - agency - ss12CB & 12CC *Australian Securities & Investments Commission Act* 2001 (Cth)

[Permanent Trustee Company](#) - decision Supreme Court of NSW 4 September 2009: see Benchmark Tuesday 8 September 2009 - *Contracts Review Act* 1980 (NSW) - loan contracts & mortgages - Lo Doc loans - three proceedings heard together as similar issues raised - principal & agent - conflict of interest - fraud of finance broker & property developer - borrowers persuaded to sign blank or partially completed loan application forms - plaintiffs seeking orders for possession of defendants' homes - defendants seeking declaratory relief & orders that loan agreements & mortgages be set aside - ASIC intervention - public interest - lending guidelines - panel lawyer's guidelines - mortgage insurance - asset lending - orders made under *Contracts Review Act* 1980 (NSW) - case law from UK, Australia & New Zealand considered.

### **Powercor Australia Ltd v Thomas [2012] VSCA 87**

Court of Appeal of Victoria

Warren CJ, Bongiorno & Osborn JJA

Damages - respondent owner of farm near Horsham - Black Saturday 7 February 2009 bushfire - fall of the assembly at top of power pole and arcing of electricity - whether respondent should be



compensated for fire damage to farm fixtures & if so, on what basis those damages to be assessed - appeal dismissed.

[Powercor Australia](#) (I, C)

[Thomas](#) - decision Supreme Court of Victoria 5 December 2011: see Benchmark I, C & IBCG Wednesday 7 December 2011 - damages - damage to property - Black Saturday bushfire - liability issue resolved - questions relevant to damages - whether plaintiff could claim for commercial cost of reinstatement & repairs to farm infrastructure when such work was carried out by himself with some assistance from volunteers - if so, how was that labour to be valued? - betterment - onus of proof - whether claim for damages for "administration & inconvenience" still available in Victoria - questions & answers relevant to plaintiff's claim set out at par 138 of judgment.

## **Westpac Banking Corporation v Tesoro [2012] VSC 182**

Supreme Court of Victoria

Lansdowne AsJ

Ss72(1), 74, 88(1), 88(2) & 208(1) *National Credit Code* - plaintiff seeking summary judgment for debt & possession of defendant's real property s61 *Civil Procedure Act 2010* (Vic) - test to be met by plaintiff seeking summary judgment - loan agreement - mortgage - at par 31 of judgment: default notice not in substantial compliance with legislative requirements in one respect, though otherwise in substantial compliance - notwithstanding notice defective, a court can retrospectively authorise commencement of enforcement proceedings pursuant to s88(5)(c) - summary judgment for plaintiff.

[Westpac Banking Corporation](#) (B)

[Monas](#) - *Monas v Perpetual Trustees Victoria Ltd* [2011] NSWCA 417: decision Court of Appeal of NSW 21 December 2011: see Benchmark B & IBCG Friday 23 December 2011 - ss66(3) & 80 *Consumer Credit (New South Wales) Code 1996* - appeal from 2 decisions - both decisions appealed from were correct - appeal dismissed;

[Perpetual Trustees Victoria](#) - decision 5 November 2010: see Benchmark B & IBC Monday 8 November 2010 - *National Credit Code* (which came into force 1 July 2010) - claim for possession of land at Liverpool arising out of default under a loan contract - s80 *Consumer Credit (New South Wales) Code 1996* - application to amend Defence & Cross-Claim refused;

[Perpetual Trustees Victoria](#) - decision 21 February 2011



## & for Mother's Day this Sunday...

### The Courage That My Mother Had

by Edna St. Vincent Millay

(22 February 1892 - 19 October 1950)

The courage that my mother had  
Went with her, and is with her still:  
Rock from New England quarried;  
Now granite in a granite hill.

The golden brooch my mother wore  
She left behind for me to wear;  
I have no thing I treasure more:  
Yet, it is something I could spare.

Oh, if instead she'd left to me  
The thing she took into the grave!—  
That courage like a rock, which she  
Has no more need of, and I have.

[Edna St Vincent Millay: Biography](#)

*American poet & playwright, born in Rockland, Maine - her parents divorced in 1900 and her mother Cora moved to Camden, Maine, with Edna and her two sisters - Cora supported her family by nursing & and encouraged her daughters to love reading & music and to be independent - Edna's first major poem, "Renascence," was published in 1912 - in 1923, she won the Pulitzer Prize for "The Harp-Weaver & Other Poems."*

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