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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Australian Winch and Haulage Company Pty Ltd v Collins (NSWCA) - work injury damages - appeal allowed on question of indemnity costs only - cross-appeal allowed in part (I)

Registrar-General of New South Wales v LawCover (NSWSC) - insurance - leave to commence proceedings against LawCover refused - summons dismissed (I B G)

Roads and Maritime Services v Devine Marine Group Pty Ltd (NSWSC) - real property - judgment for possession for registered proprietor of land and waterways (B C G)



Slaveska v Elenchevski (VSCA) - contract - dismissal of proceedings for want of prosecution - appeal dismissed - extension of time to appeal against cost orders refused (B)

Vouzas v Bleake House Pty Ltd (VSC) - contract - sale of land - no misleading and deceptive conduct by vendor or selling agent - purchaser in breach by rescinding contract - damages (B)

Acer Forester Pty Ltd v Complete Crane Hire (NT) Pty Ltd (NTSC) - costs - indemnity costs - late admission of liability - *Calderbank* offer - orders made (I C)

Blackbear (NT) Pty Ltd v Want (NTSC) - costs - indemnity costs - *Calderbank* offer - wilful disregard of known facts - orders made (I B C)

Summaries with links (5 minute read)

Australian Winch and Haulage Company Pty Ltd v Collins [2013] NSWCA 327

Court of Appeal of New South Wales

Emmett & Leeming JJA; Sackville AJA

Work injury damages - employee injured when gangway on which he was walking malfunctioned due to failure of shackle supplied and installed by independent contractor engaged by employer - contractor appealed from finding that it was negligent in supplying defective shackle and also challenged indemnity costs order - employer sought extension of time to cross-appeal from finding that any breach of its duty caused employee's injuries and from apportionment of responsibility - evidence - s5B *Civil Liability Act 2002* (NSW) - s318(2) *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - s151M(4) *Workers Compensation Act 1987* (NSW) - held: appeal allowed on question of indemnity costs but otherwise dismissed - employer granted extension of time to file cross-appeal on basis of undertaking to pay employee's costs - cross-appeal allowed in part - employer's failure to institute system of maintenance and inspection of gangway was material cause of injuries - no error in apportionment of responsibility, in granting employee leave to file amended statement of particulars claiming cost of funds management as head of damages which had not been claimed in pre-filing statement - award of interest to employee against employer not in breach of s151M(4) - primary judge erred in ordering employer to pay employee's costs and in ordering employer to pay 65 % of costs contractor was ordered to pay to employee.

[**Australian Winch and Haulage Company Pty Ltd** \(I\)](#)



Registrar-General of New South Wales v LawCover [2013] NSWSC 1471

Supreme Court of New South Wales

Harrison J

Insurance - professional indemnity insurance - claim for compensation from Torrens Assurance Fund and claim against solicitor who assisted in fraudulent transfer of property - Registrar-General sought leave to commence proceedings against LawCover under s6(4) *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - nature of *event* giving rise to claim within meaning of s6 - whether LawCover policy existed at time of *event* took place - whether proceedings were arguable having regard to primary judge's conclusions concerning solicitor's dishonesty and its relationship to plaintiff's loss - whether proposed claim against LawCover constituted abuse of process - held: event *giving rise to the claim for damages or compensation* as contemplated by s 6(1) was event that gave rise to claim against solicitor - event took place before LawCover policy existed so there could be no charge on any insurance money that became payable under policy - Registrar-General's application not fairly arguable - Registrar-General only subrogated to claimant's rights in respect of recovery of uninsured and hence *compensable loss* under s128 *Real Property Act 1900* (NSW) - subrogation not available in respect of loss to which LawCover policy might respond - Registrar-General's argument self-defeating - leave to commence proceedings refused.

[Registrar-General of New South Wales](#) (I B G)

Roads and Maritime Services v Devine Marine Group Pty Ltd [2013] NSWSC 1467

Supreme Court of New South Wales

Stevenson J

Real property - contract - consumer law - equity - unconscionability - plaintiff is registered proprietor of land and adjacent waterways - plaintiff sought possession of site at Rozelle Bay - construction of licences and lease agreements - implied terms - held: plaintiff entitled to relief sought unless defendants could show immediate right to possession superior to plaintiff's - no lease arose between either defendant and plaintiff so as to confer a superior right to possession - defendant's development application did not grant an interest in property - claims based on *Fair Trading Act 1987* (NSW) and *Australian Consumer Law* failed - defendants not misled by anything arising out of Agreement to Lease - claims arising from alleged implied terms in licences and Agreement to Lease failed - no bad faith, unconscionability or misleading or deceptive conduct by plaintiff - judgment for plaintiff for possession.

[Roads and Maritime Services](#) (B C G)

**Slaveska v Elenchevski [2013] VSCA 283**

Court of Appeal of Victoria

Warren CJ; Neave & Priest JJA

Contract - want of prosecution - claim arising out of written agreement between appellant and son (acting as agent) and respondent to sell appellant land in Macedonia - appellant sought damages from respondent for difference between value of land transferred to her and land to which she alleged she was entitled, or damages for representations made to induce her to enter agreement - appellant appealed against orders striking out proceedings for want of prosecution - appellant also sought extension of time to appeal against costs orders - held: judge could have summarily dismissed proceeding or struck out appellant's pleading under rr23.01 & 23.02 *County Court Civil Procedure Rules 2008* (Vic) and under ss62 & 63 *Civil Procedure Act 2010* (Vic) on basis claim had no real prospect of success - same principles applied to strike out proceedings for want of prosecution - appellant had not identified basis of claim that respondent acted fraudulently - appellant had failed to establish claim in Macedonian courts - appeal dismissed - costs orders appropriate - extension of time refused.

[Slaveska](#) (B)**Vouzas v Bleake House Pty Ltd [2013] VSC 534**

Supreme Court of Victoria

Macaulay J

Contract - sale of land - trade practices - plaintiff purchaser contracted to buy hotel freehold from first defendant vendor - second defendant was vendor's selling agent - vendor or agent represented that freehold was subject to a *long term lease* to a *AAA tenant* - fact that tenant had conditionally agreed to assign lease not disclosed - whether representation and associated representations amounted to misleading and deceptive conduct under s52 *Trade Practices Act 1974* (Cth) (TPA) or justified rescission of contract for sale pursuant to s32(5) *Sale of Land Act 1962* (Vic) (SLA) - vendor's disclosure obligations - s32(2)(b) SLA - held: purchaser not entitled to rescind contract - neither vendor nor selling agent contravened s52 TPA so as to entitle purchaser to damages pursuant to s82 TPA - conduct would not lead reasonable person in the position of the purchaser to believe that tenant would remain for any particular time purchaser breached contract of sale by not completing it - vendor successful on counterclaim for damages for breach - damages assessed.

[Vouzas](#) (B)

**Acer Forester Pty Ltd v Complete Crane Hire (NT) Pty Ltd [2013] NTSC 62**

Supreme Court of the Northern Territory

Kelly J

Costs - plaintiff applied for order for indemnity costs on issue of liability based on defendants' late admission of liability - plaintiff contended late admission caused it to incur unnecessary costs - plaintiff unsuccessful in part of claim - defendants applied for indemnity costs on basis of plaintiff's rejection of a *Calderbank* offer - plaintiff sought that defendants pay indemnity costs from date they disputed liability to date they admitted liability - held: unreasonable for plaintiff to reject offer - defendants' defences were unlikely to succeed - court not satisfied it should have been obvious to defendants that defences were manifestly hopeless - not appropriate to award costs on indemnity basis - defendants to pay plaintiff's costs on standard basis from date defendants disputed liability to date of offer of compromise - plaintiff to pay defendants' costs on standard basis from date of offer of compromise.

[Acer Forester Pty Ltd](#) (I C)

Blackbear (NT) Pty Ltd v Want [2013] NTSC 63

Supreme Court of the Northern Territory

Kelly J

Costs - court found defendants had not validly terminated building contract and gave judgment for plaintiff for amount owing - plaintiff claimed indemnity costs for whole proceedings or from date of receipt of jointly commissioned expert report, identification of defects and costs or from date of *Calderbank* offer - held: court not prepared to award indemnity costs for whole proceedings - not unreasonable for defendants to reject offer at time it was made - defendants conducted proceedings in wilful disregard of known facts after they came into possession of information in report - defendants to pay plaintiff's costs from date of production of report on an indemnity basis.

[Blackbear \(NT\) Pty Ltd](#) (I B C)



A Time to Talk

By Robert Frost

When a friend calls to me from the road
And slows his horse to a meaning walk,
I don't stand still and look around
On all the hills I haven't hoed,
And shout from where I am, 'What is it?'
No, not as there is a time talk.
I thrust my hoe in the mellow ground,
Blade-end up and five feet tall,
And plod: I go up to the stone wall
For a friendly visit.

[Robert Frost](#)

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