

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Monday 12 May 2008

In the Matter of HIH Insurance Limited (In Liquidation) ACN 008 636 575; McGrath and Honey as the joint liquidators of HIH Insurance Limited (In Liquidation) ACN 008 636 575 v Perpetual Trustee Company Limited ACN 000 001 007 [2008] FCA 623

Federal Court of Australia

Graham J (in Sydney)

'Redemption' & 'conversion' - meaning to be given to these words as used in an 'HIH NZ Converting Notes 1998 Trust Deed' which provided for creation & issue of 'Notes' by directors of second defendant/first cross-defendant, HIH Holdings (NZ) Limited (In Liquidation) ARBN 084 759 866 – Deed Poll – prospectus - frustration – termination of notes contracts. [HIH Insurance](#) (I, B)

J F Keir Pty Limited v Sparks [2008] FCA 611

Federal Court of Australia

Graham J (in Sydney)

Application for summary dismissal - Corporations Act 2001 (Cth) - Trade Practices Act 1974 (Cth) - franchising of right to market & sell personal time & information systems – res judicata – issue estoppel - abuse of process - detailed consideration of case law from U.K. & Australia - application dismissed. [J F Keir](#) (I, B)

Blaxter v Commonwealth of Australia [2008] NSWCA 87

Court of Appeal of New South Wales

Mason P, McColl & Basten JJA

Damages – Melbourne/Voyager collision – psychiatric injury – alcohol abuse – whether economic loss a result of collision or voluntary conduct by appellant – intervening act – conduct of officer of defendant on morning after accident – whether part of tortious conduct – appeal allowed. [Blaxter](#) (I)

In the matter of Lift Capital Partners Pty Ltd (Admins Apptd) [2008]

NSWSC 446

Supreme Court of New South Wales

Austin J

Corporations - voluntary administration - Beconwood Securities Pty Ltd v ANZ Banking Group Ltd [2008] FCA 594 cited - orders made extending convening period to 9 July 2008 and permitting administrators to hold meeting of creditors at any time within the extended convening period & the 5 business days thereafter. [Lift Capital Partners](#) (I, B, C)

Sam Chamma v Solima & Sons & Anor [2008] NSWSC 382

Supreme Court of New South Wales

Patten AJ

Costs – whether to order indemnity costs following failure of offeree to accept Calderbank offer where offeror obtains better result at hearing - whether failure to accept unreasonable – see link below for substantive judgment 5 March 2008. [Sam Chamma](#) and [Sam Chamma \(Judgment 05.03.2008 – personal injury – fall on building site\)](#) (I, C)

Mongar Pty Ltd v Levko Pty Ltd [2008] NSWSC 445

Supreme Court of New South Wales

Young CJ in Eq

Wills – trusts & trustees - life interest or absolute interest - orders proposed under s81 Trustee Act 1925 - proposal to channel distributions through intermediary corporation – whether proposal was for management & administration of the trust - whether proposal expedient. [Mongar](#) (B)

Allianz Australia Insurance Ltd v Douralis & Ors [2008] VSCA 72

Court of Appeal of Victoria

Nettle & Dodds-Streeton JJA, Coghlan AJA

Insurance – Building Act 1993 (Vic) – Insurance Contracts Act 1984 (Cth) [‘ICA’] - whether property owners who are party to a major domestic building contract with a builder are indemnified under a contract of insurance to which the builder’s company, rather than the builder personally, was a party - whether (if the property owners are indemnified under the contract of insurance), the insurer may nevertheless refuse payment because the property owners relied on a false affidavit in a proceeding in which, inter alia, they sought indemnity under the policy – as to second appeal: appeal allowed against primary judge’s conclusion that under s56(1) ICA, Allianz could

refuse payment of claim for indemnity under policy – as to first appeal, at para. 113 of judgment of Dodds-Streeton JJA:

“In my opinion, by the combined effect of the policy & the certificate of currency, Allianz, on 17 December 2001 agreed to extend cover to a building contract entered by Mr Simpson as a principal, which agreement Allianz confirmed by its subsequent provision of the replacement certificate in the terms it stated. Mr & Mrs Douralis, as Building Owners party to the building contract with Mr Simpson, are entitled to indemnity under the policy.”
[Allianz Australia Insurance](#) (I, C)

Qantas Airways Ltd v Nisselle & Ors [2008] VSC 150

Supreme Court of Victoria

Cummins J

Accident Compensation Act 1985 – opinion of Medical Panel - claim for psychiatric injury – opinion by Medical Panel that employment by plaintiff significant contributing factor to her psychiatric injury - adequacy of reasons of Medical Panel – specialist tribunal – considerations relevant thereto – psychiatric methodology - prerogative relief sought refused.

[Qantas Airways](#) (I)

Lamb v Brisbane City Council & Anor [2008] QCA 109

Court of Appeal of Queensland

Keane & Holmes JJA, Wilson J

Application for indemnity certificate - on appeal, the Court had overturned decision of Planning & Environment Court that Council's Heritage Register Planning Scheme Policy for City of Brisbane invalid – applicant, ordered to pay costs, applying for indemnity certificate under Appeal Costs Fund Act 1973 (Qld – application refused. [Lamb](#) (C)

Rosebridge Nominees Pty Ltd -v- Commonwealth Bank of Australia [2008]

WASCA 107

Court of Appeal of Western Australia

Steytler P & Buss JA

Property law – lease - meaning of 'option to renew' within s20 Town Planning and Development Act 1928 (WA) [Rosebridge](#) (C)

Key: (I) Insurance; (B) Banking; (C) Construction