



## Insurance Banking & Construction

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

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#### Executive Summary (1 minute read)

**Skiwing Pty Ltd v Trust Company of Australia Ltd** - s51A, s52, s82 *Trade Practices Act 1974* (Cth) - allegation of misleading or deceptive conduct - application dismissed (I, B)

**McLaughlin v Dungowan Manly Pty Ltd (No 2)** - Application to set aside judgment - power to allow decision to be re-opened (I, B, C)

**PAO v Grealy; BJH v Grealy; SBM v Grealy; IDF v Grealy; PMA v Grealy** - Personal injuries - second defendant's strike out applications dismissed (I)

**George Nassour v Anthony Mark Malouf t/as Malouf Solicitors** - Costs - waiver - abandonment - estoppel - *Legal Profession Act 1987* (NSW) (I, B, C)

**Tyneside Property Management Pty Ltd & Ors v Hammersmith Management Pty Ltd & Ors** - Opinion evidence - pre-litigation expert opinion admitted into evidence (I, C)

**Fantid Pty Ltd v Jinyi Xing** - Application for order for preliminary discovery refused (I, B, C)

**Caswell v Sony/ATV Music Publishing (Australia) Pty Ltd** - Contracts - copyright - whether statement of claim disclosed any arguable fiduciary duty (B)



**Vale & Anor v Shanklyn Investments Pty Ltd (formerly A G & sBuilding Systems Pty Ltd) - Negligence - breach of duty - causation - instruction manual accompanying shed in kit form - appeal allowed (I, C)**

**Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors (Ruling No 1) - Application by plaintiff to regularise proceeding issued without authority - Black Saturday fires (I)**

**Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors (Ruling No 2) - Negligence - Black Saturday fires - application for summary judgment (I)**

**Primebroker Securities Ltd (recs & mgrs appt'd) (in liq) v Fortis Clearing Sydney Pty Ltd (No 3) - Securities lending agreement - valuation of securities (B)**

**Metcalf Crane Services Pty Ltd v Rathner & Anor - Corporations Act 2001 (Cth) - unfair preference - defence under s588FG(2) not made out - no error of law - appeal dismissed (B, C)**

## Summaries with links (5 minute read)

**Thursday 12 May 2011**

### **Skiwing Pty Ltd v Trust Company of Australia Ltd [2011] FCA 43**

Federal Court of Australia

Buchanan J (in Sydney)

s51A, s52, s82 *Trade Practices Act 1974* (Cth) - allegation of misleading or deceptive conduct - operation of café/licensed restaurant in Imperial Arcade in Sydney - applicant became owner & operator in November 1993 - respondent was, at the relevant time, registered proprietor of the arcade, which it held on trust for Stockland Trust - Stockland Property Management Ltd was manager of the arcade & acted as agent of registered proprietor - claims that manager of arcade, by its conduct in making a number of representations upon which applicant relied to its detriment, engaged in misleading or deceptive conduct - application dismissed.

[Skiwing](#) (I, B)



[Skiwing](#) - decision 15 April 2009: see 'Benchmark' I, B & IBC Monday 20 April 2009 - *Trade Practices Act 1974* (Cth) - misleading or deceptive conduct - joinder - limitation of actions - lease relating to premises in Imperial Arcade in Sydney - representations as to future matters - renovations - respondent alleging proceedings statute-barred - onus of proof in establishing 'reasonable grounds' for making representation - "date on which the cause of action accrued" - application to dismiss proceedings refused - application for joinder refused - detailed consideration of case law in an interesting decision.

## **McLaughlin v Dungowan Manly Pty Ltd (No 2) [2011] NSWSC 384**

Supreme Court of New South Wales

Pembroke J

Application to set aside judgment - power to re-open - appropriate to allow decision to be re-opened, but only so that the parties can put submissions as to what possible further declarations should be made, given conclusions of fact & law already reached.

[McLaughlin](#) (I, B, C)

[McLaughlin](#) - decision 25 March 2011: see 'Benchmark' Friday 6 May 2011 - contracts - principles of construction - share surrender agreements - series of individual agreements in identical form between first defendant & all but two of its shareholders - Australian text & case law considered;

[McLaughlin](#) - *McLaughlin v Dungowan Manly Pty Ltd* [2010] NSWSC 187 - written reasons 16 March 2010 of Ward J for orders made on 26 February 2010, referred to at para. 2 of Pembroke J's judgment 25 March 2011 above - contracts - repair & redevelopment of home unit building in Manly - whether leave should be granted to commence derivative suit - oppression - leave granted to commence derivative suit for breach of statutory duties - assessment of damages.

## **PAO v Grealy; BJH v Grealy; SBM v Grealy; IDF v Grealy; PMA v Grealy [2011] NSWSC 355**

Supreme Court of New South Wales

Harrison AsJ

Personal injuries - applications by second defendant in all five proceedings for orders striking out proceedings - second defendant's application in each proceeding dismissed.

[Grealy](#) (I)

## **George Nassour v Anthony Mark Malouf t/as Malouf Solicitors [2011] NSWSC 356**

Supreme Court of New South Wales

Harrison AsJ

Costs - waiver - whether Costs Review Panel provided adequate reasons on issues of abandonment & estoppel - *Legal Profession Act 1987* (NSW) - *Legal Profession Regulation 2002* - denial of procedural fairness - decision of Review Panel set aside - detailed consideration of United Kingdom & Australian case law in an interesting decision.

[Nassour](#) (I, B, C)



**Tyneside Property Management Pty Ltd & Ors v Hammersmith Management Pty Ltd & Ors**  
**[2011] NSWSC 395**

Supreme Court of New South Wales

Brereton J

Opinion evidence - plaintiffs objecting to tender by defendants of report of consulting engineers - document a business record admissible under (NSW) Evidence Act s69 - pre-litigation expert opinion admitted into evidence.

[Tyneside Property Management](#) (I, C)

**Fantid Pty Ltd v Jinyi Xing** [2011] NSWSC 401

Supreme Court of New South Wales

Brereton J

Employment law - plaintiff's application for order for preliminary discovery against defendant, a former employee - application refused.

[Fantid](#) (I, B, C)

[Contour Building and Construction](#) - decision 29 August 2008: see 'Benchmark' Tuesday 2 September 2008 - preliminary discovery - whether plaintiff has been "unable to obtain sufficient information to decide whether or not to commence proceedings against prospective defendant" - threshold condition not satisfied - preliminary discovery refused.

**Caswell v Sony/ATV Music Publishing (Australia) Pty Ltd** [2011] NSWSC 387

Supreme Court of New South Wales

Windeyer AJ

Contracts - copyright - musical compositions - first defendant's application to strike out those parts of statement of claim claiming breaches of fiduciary duty - whether statement of claim disclosed any arguable fiduciary duty or breach of duty - second defendant's application to set aside service of statement of claim outside of Australia granted.

[Caswell](#) (B)

**Vale & Anor v Shanklyn Investments Pty Ltd (formerly A G & sBuilding Systems Pty Ltd)**  
**[2011] VSC 171**

Supreme Court of Victoria

J Forrest J



Negligence - breach of duty - causation - appellants had purchased shed in kit form manufactured by the respondent - instruction manual accompanied the kit - after about three weeks work, when a portion of the frame had been erected, the shed collapsed in a heap - appellants sued respondent Magistrates' Court asserting that the manual was inadequate - Magistrate had accepted manual was deficient but was not satisfied that there was any reliance upon the manual so the claim failed - appeal allowed - matter remitted to Magistrate.

[Vale](#) (I, C)

**Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors (Ruling No 1) [2011] VSC 167**

Supreme Court of Victoria

J Forrest J

Application by plaintiff to regularise proceeding issued by solicitors without authority - Black Saturday fires - proceedings for damages against two power companies - group proceedings

[Matthews](#) (I)

**Matthews v SPI Electricity Pty Ltd; SPI Electricity Pty Ltd v Utility Services Corporation Ltd & Ors (Ruling No 2) [2011] VSC 168**

Supreme Court of Victoria

J Forrest J

Negligence - Black Saturday fires - application for summary judgment - whether arguable common law duty owed by members of Victoria Police to persons threatened by Black Saturday fires - striking out of statutory duty claim - negligence claim tenable.

[Matthews](#) (I)

**Primebroker Securities Ltd (recs & mgrs appt'd) (in liq) v Fortis Clearing Sydney Pty Ltd (No 3) [2011] VSC 182**

Supreme Court of Victoria

Judd J

Securities lending agreement - valuation of securities - requirement to agree upon a market value - parties agreed that Court decide market value.

[Primebroker Securities](#) (B)

[Primebroker Securities](#) - decision 19 August 2010: see 'Benchmark' B & IBC Friday 20 August 2010 - Australian Master Securities Lending Agreement (AMSLA) - borrowed securities - default powers - construction of documents -



application of netting provisions - calculation of value of borrowed securities for purpose of netting.- value for securities in Blue Energy Ltd, Luminas Ltd & Octavia Ltd;

[Primebrokers Securities](#) - decision 28 August 2009: see 'Benchmark' B & IBC Tuesday 1 September 2009 - contracts - plaintiff carried on business as share trader, then went into voluntary administration - defendant company a specialist broker & third party clearer with membership of Australian Stock Exchange & Sydney Futures Exchange - Standard Client Agreement - borrowed securities - rights of borrower - default powers - construction of documents - dealing loan facility - applicability of netting provisions - estoppel by convention - United Kingdom, Australian & New Zealand case law considered.

## **Metcalf Crane Services Pty Ltd v Rathner & Anor [2011] VSC 195**

Supreme Court of Victoria

Robson J

*Corporations Act 2001 (Cth)* - whilst insolvent, a construction company had discharged a debt to appellant incurred for supply of crane services - unfair preference - in Magistrate's Court, appellant had raised defence under s588FG(2): transaction not voidable where person had no reasonable grounds for suspecting that company was insolvent - Magistrate had concluded defence not made out - no error of law - appeal dismissed.

[Metcalf Crane Services](#) (B, C)

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