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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Blairgowrie Trading Ltd v Allco Finance Group Ltd (Receivers & Managers Appointed) (In Liq) (FCA) - representative proceedings - application for order approving litigation funding agreements refused - application dismissed (I B)

State of New South Wales v McMaster; State of New South Wales v Karakizos; State of New South Wales v McMaster (NSWCA) - trespass to the person - battery - shooting of Justin McMaster by police officer - State's appeals allowed (I)

Aircraft Support Industries Pty Ltd v William Hare UAE LLC (NSWCA) - international commercial arbitration - partial enforcement of arbitral award - appeal dismissed (I B)

Ezstay Systems Pty Ltd v Link 2 Pty Ltd (NSWSC) - deed - confidential information defendants set up business in competition with plaintiffs - breach of directors' duties - judgment for plaintiffs (I B)

AAI Limited v Fitzpatrick (NSWSC) - judicial review - motor accidents compensation - permanent impairment - decisions of assessor and proper officer set aside (I G)

JAG Projects Qld Pty Ltd v Total Cool Pty Ltd (QSC) - security of payments - no error in adjudication in favour of first respondent - application dismissed (B C)

Browne v Onsite Rental Group Operations Pty Ltd (WASCA) - contract - appellant liable to pay amount under guarantee - appeal dismissed (I B)

Summaries With Link (Five Minute Read)

Blairgowrie Trading Ltd v Allco Finance Group Ltd (Receivers & Managers Appointed) (In Liq) [2015] FCA 811

Federal Court of Australia

Wigney J

Representative proceedings - applicants commenced representative under Pt IVA *Federal Court of Australia Act 1976* (Cth) - applicants claimed respondents were liable to compensate them and group members for loss or damage suffered as result of alleged provisions of *Corporations Act 2001* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth) and *Fair Trading Act 1987* (NSW) - proceeding was at early stage - applicants sought order approving amounts payable to litigation funder and declaring applicants were entitled to pay those amounts out of any amounts recovered from respondents - applicants claimed proposed order appropriate to ensure justice - respondents contended order unprecedented, unconventional, beyond power and unjust - held: proposed order should not be made - proposed order neither appropriate nor necessary to ensure justice - premature and inconsistent with statutory scheme in Pt IVA to make proposed order at present stage when reasonableness of amounts could not be assessed - Court could not conclude proposed order would be beneficial to or in best interests of group members as whole - application dismissed.

[Blairgowrie](#) (I B)

State of New South Wales v McMaster; State of New South Wales v Karakizos; State of New South Wales v McMaster [2015] NSWCA 228

Court of Appeal of New South Wales

Beazley P, McColl & Meagher JJA

Trespass to the person - battery - three civil suits against NSW in relation to shooting of Justin McMaster (Justin) by police officer responding to violent home invasion occurring at premises at which Justin was living - Justin brought claims in negligence and trespass to the person - trial judge found State liable in battery - mother and sister of Justin, who were present at scene of shooting, successfully sued NSW under s4 *Law Reform (Miscellaneous Provisions) Act 1944* (NSW) for damages - NSW appealed - held: trial judge erred in factual findings - trial judge erred in finding there 'no direct threat by Justin McMaster towards either Constable Fanning or Constable Kleinman at the time he was shot by Constable Fanning' - police officer's liability precluded by statutory defence of self-defence pursuant to s52 *Civil Liability Act 2002* (NSW) or common law defence of self-defence - defence of necessity also made out - trial judge erred in awarding aggravated and exemplary damages - trial judge erred in awards of general damages - appeal allowed in each matter.

[State of New South Wales](#) (I)

Aircraft Support Industries Pty Ltd v William Hare UAE LLC [2015] NSWCA 229

Court of Appeal of New South Wales
Bathurst CJ, Beazley P & Sackville AJA

International commercial arbitration - primary judge enforced in part an arbitral award made against appellant in favour of respondent - respondent was company incorporated under laws of Abu Dhabi in the United Arab Emirates - appellant appealed - s8 *International Arbitration Act 1974* (Cth) - held: no denial of natural justice in making award as no attempt made to demonstrate practical unfairness or injustice and no failure to by arbitrators to give adequate reasons - Court had power to partially enforce award - appeal dismissed.

[Aircraft](#) (I B)

Ezystay Systems Pty Ltd v Link 2 Pty Ltd [2015] NSWSC 1105

Supreme Court of New South Wales
Bergin CJ in Eq

Deed - confidential information - directors' duties - plaintiffs were group of companies which operated student accommodation business in Ultimo - defendants started a rival student accommodation business also in Ultimo - no issue defendants entitled to compete with plaintiffs - plaintiffs claimed that while first defendant's director was director of plaintiffs he improperly used plaintiffs' documents and information to set up competing business - plaintiffs claimed defendants refused to deliver up plaintiffs' documents, confidential information and material in breach of covenant in deed terminating the parties' relationship - plaintiffs claimed defendants had copied and used plaintiffs' confidential information in defendants' business construction of deed - confidentiality of plaintiffs' documents - whether director breached statutory and fiduciary duties - held: plaintiffs succeeded in claims in respect of Business Manual, Systems Manual, Elevator Take, Software Manual and Software - plaintiffs' claim in respect of Trade Dress failed - parties given opportunity to reach agreement on the form of final orders,

[Ezystay](#) (I B)

AAI Limited v Fitzpatrick [2015] NSWSC 1108

Supreme Court of New South Wales
Schmidt J

Administrative law - judicial review - motor accidents compensation - AAI challenged validity of assessment of first respondent's whole person impairment and later review decision - whether jurisdictional error - whether failure to give reasons and/or constructive failure to exercise jurisdiction - *Motor Accidents Compensation Act 1999* (NSW) - held: assessor did not give necessary consideration to material relevant to matters he had to determine - assessor failed to meet statutory obligation to give reasons - proper officer failed to identify assessor's errors with result that proper officer failed to have regard to relevant material - proper officer fell into jurisdictional error - approach adopted by proper officer involved constructive failure to exercise jurisdiction - decisions set aside - judgment for AAI.

[AAI](#) (I G)

JAG Projects Qld Pty Ltd v Total Cool Pty Ltd [2015] QSC 229

Supreme Court of Queensland



Bond J

Security of payments - first respondent was beneficiary of adjudicator's decision under *Building and Construction Industry Payments Act 2004* (Qld) - applicant sought declaration adjudication void and orders setting aside statutory demand served on it by first respondent - held: first respondent's invoice complied with s17(2)(c) - there was only one claim, not two as contended by applicant - applicant's contentions rejected that adjudicator failed to give sufficient reasons or properly to consider applicant's submissions - argument also rejected that first respondent was prohibited from embarking on regime under the Act because it was no longer licenced at the time it made claim - application dismissed.

[JAG](#) (B C)

Browne v Onsite Rental Group Operations Pty Ltd [2015] WASCA 153

Court of Appeal of Western Australia

McLure P, Buss JA & Mitchell J

Contract - guarantee - primary judge determined appellant liable to pay respondents amount pursuant to guarantee given by appellant - appellant contended primary judge erred in finding primary debt owed to respondent, that guarantee was not revoked before primary liability incurred, and in requiring appellant to pay costs of former plaintiff - held: open to trial judge to find first respondent was contractual party to whom appellant's company was indebted under hire contracts subject of unpaid invoices - email did not constitute revocation of guarantee - no error in orders for costs - appeal dismissed.

[Browne](#) (I B)

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