

Friday, 12 December 2014

## Insurance, Banking, Construction & Government

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

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## Executive Summary (1 minute read)

**Commissioner of State Revenue v Lend Lease Development Pty Ltd** (HCA) - stamp duty - no error in Commissioner's assessment of duty on transfers of land under development agreement - appeal allowed (I B C G)

**Australian Postal Corporation v Edwards** (FCA) - judicial review - workplace injury - employer liable to pay compensation - appeal dismissed (I G)

**Peregrine Mineral Sands Pty Ltd v Wentworth Shire Council** (NSWCA) - administrative law - agreement for land rates infringed Council's ability to make rates into the future - appeal dismissed (I B C G)

**Burge v Burge** (NSWSC) - Wills - deceased did not intend informal testamentary document to operate as Will - probate of earlier Will granted (B)

**Commonwealth Bank of Australia v Dalle Cort** (QSC) - summary judgment - business loan - no prospects of defending claim - leave to amend cross-claim (B)

**Weaver v Harburn** (WASCA) - corporations law - payment of company funds by director to purchase boat for wife - liquidators' claims upheld - appeal allowed (B)

**Adams v Yindjibarndi Aboriginal Corporations RNTBC** (WASC) - corporations - general meeting validly called - declarations (B)

## Summaries with links (5 minute read)

### **Commissioner of State Revenue v Lend Lease Development Pty Ltd [2014] HCA 51**

High Court of Australia

French CJ; Hayne, Kiefel, Bell & Keane JJ

Stamp duty - Authority and Lend Lease made development agreement - Lend Lease agreed to buy parcels of land from Authority and to design, construct and sell buildings on land - agreed that parties would build infrastructure on and around land - transfers of land to be made pursuant to land sale contracts - Lend Lease required by agreement to pay to Authority, not only amounts under contracts, but also other amounts including payments for infrastructure, remediation, and share of gross proceeds received on sale - Commissioner assessed duty under *Duties Act 2000* (Vic) according to consideration for each transfer which it determined to be total of sums payable by Lend Lease to Authority under agreement - Commissioner disallowed Lend Lease's objections - Court of Appeal of Victoria allowed appeals - Commissioner appealed - held: transaction recorded in agreement was a single, integrated and indivisible transaction - consideration for transfer of land was performance by Lend Lease of the several promises of payments - Commissioner right to include those amounts in assessments - appeal allowed.

[Commissioner of State Revenue](#) (I B C G)

### **Australian Postal Corporation v Edwards [2014] FCA 1348**

Federal Court of Australia

Collier J

Judicial review - respondent suffered workplace injury while employed by applicant - delegate affirmed employer's determination pursuant to *Safety, Rehabilitation and Compensation Act 1988* (Cth) it was not liable to pay compensation under ss16 & 19 - AAT found in favour of respondent - AAT preferred medical evidence of surgeon favouring respondent's case over evidence of two surgeons supporting applicant's case - employer appealed - held: not appropriate for Court to determine question of fact for which applicant sought answer - AAT entitled to weigh evidence as it saw fit - conclusions reasonably open on evidence - no failure to give proper consideration to evidence or to take into account that one of the doctors was respondent's treating doctor - decision of AAT not unreasonable or illogical - application dismissed.

[Australian Postal Corporation](#) (I G)

### **Peregrine Mineral Sands Pty Ltd v Wentworth Shire Council [2014] NSWCA 429**

Court of Appeal of New South Wales

McColl, Meagher & Ward JJA

Contract - administrative law - dispute concerning land rates payable by appellants to Council for mine they operated - agreement for land rates contained clause stating rate would be 'adjusted annually in accordance with the Local Government Act' - Council increased rates after valuation

received by Valuer-General - primary judge found clause referred to increases in rates of nature of adjustments arising out of percentage rate published pursuant to *Local Government Act 1993* (NSW) not amounts determined based upon valuations - primary judge also held clause impermissibly fettered Council from undertaking statutory duty of assessing rates each year in accordance with the Act - held: no error in conclusion that agreement incompatible with the Act because it fettered Council's ability to make rates into the future - the Act did not authorise antecedent agreement capping future rates in advance - no uninvited review of decision making process leading to execution of the agreement - no error in construction of clause - appeal dismissed.

[Peregrine Mineral Sands Pty Ltd](#) (I B C G)

## **Burge v Burge [2014] NSWSC 1772**

Supreme Court of New South Wales

Darke J

Wills - informal testamentary document - plaintiff was widow of deceased - plaintiff sought order that probate in solemn form be granted in respect of Will made by deceased in 1983 - Will named plaintiff sole executrix and plaintiff was sole beneficiary- defendant was son of plaintiff and deceased - defendant asserted his late father prepared an informal will in 2007 that purported to state his testamentary intentions and was intended to form his will - document purported to revoke all former testamentary dispositions and named defendant as sole beneficiary - defendant sought order that letters of administration with Will annexed be granted in respect of 2007 document in reliance on s8 *Succession Act 2006* (NSW) - held: Court not persuaded deceased intended 2007 document would form his Will and operate as his Will revoking any previous Will - probate of 1983 Will granted to plaintiff in solemn form.

[Burge](#) (B)

## **Commonwealth Bank of Australia v Dalle Cort [2014] QSC 296**

Supreme Court of Queensland

Carmody CJ

Summary judgment - bank sought to recover debt under business loan facility owed by respondents - respondents denied liability and accused bank and ASIC of conspiracy, misleading conduct, trespass and negligence - bank sought summary judgment pursuant to r 292 *Uniform Civil Procedure Rules 1999* (Qld) of its claim against respondents and joined with ASIC in seeking orders striking out respondents' counterclaim on the basis it did not disclose a reasonable cause of action - bank claimed pleadings did not disclose reasonable defence - held: no prospects of success in grounds of defence - bank granted judgment on the claim - leave to replead certain aspects of counterclaim.

[Commonwealth Bank of Australia](#) (B)

**Weaver v Harburn [2014] WASCA 227**

Court of Appeal of Western Australia

McLure P; Buss & Murphy JJA

Corporations - Master dismissed liquidators' claim for relief under ss588FF or 1317H *Corporations Act 2001* (Cth) arising out of payment of company funds by director for boat for second respondent - held: payments were of no benefits to company - second respondent benefited - reasonable person in company's circumstances would not have made the payments - director did not exercise powers or discharge duties as a director of company for a proper purpose in breach of s181(1)(b), and improperly used position to gain advantage for second respondent to obvious detriment to company in breach of s182 - director did not act in good faith in best interests of company in breach of s181(1)(a) - appeal allowed.

[Weaver](#) (B)

**Adams v Yindjibarndi Aboriginal Corporations RNTBC [2014] WASC 467**

Supreme Court of Western Australia

K Martin J

Corporations - plaintiffs were nominees standing for election as new directors of the defendant corporation at general meeting - plaintiffs sought declarations as to validity of convening of general meeting and of the materials they caused to be issued to defendant's members to give them notice of the meeting - s201-1, s201-35, s201-55, s201-90, s265-5 *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) - right to appoint proxies - held: defendant's contentions of fact suggesting absence of good faith or lack of a proper purpose by plaintiffs in calling general meeting rejected - declarations that meeting had been validly called and that motions set out in notice are able to be proposed.

[Adams](#) (B)



**A Hymn to the Moon  
(Written in an Arbour)**

By Lady Mary Wortley Montagu

Thou silver deity of secret night,  
Direct my footsteps through the woodland shade;  
Thou conscious witness of unknown delight,  
The Lover's guardian, and the Muse's aid!

By thy pale beams I solitary rove,  
To thee my tender grief confide;  
Serenely sweet you gild the silent grove,  
My friend, my goddess, and my guide.

E'en thee, fair queen, from thy amazing height,  
The charms of young Endymion drew;  
Veil'd with the mantle of concealing night;  
With all thy greatness and thy coldness too.

[Lady Mary Wortley Montagu](#)

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