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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Newman as trustee for the Bankrupt Estate of Keet v Bain (FCA) – bankruptcy – extension of time to prosecute third party action refused - leave to appeal refused (I, B)

Francis v Eggleston Mitchell Lawyers Pty Ltd (FCA) – bankruptcy – application to annul bankruptcy dismissed (B)

AS v Murray (NSWSC) - intimidation - defendant extorted money from plaintiff - plaintiff entitled to damages, injunctions and exemplary damages (I)

In the matter of Accord Pacific Land Pty Limited (in liquidation) (NSWSC) – corporations - winding up - approval granted for entry into funding agreement and costs agreement (B)

In the matter of Ozrac Engineering New South Wales Pty Limited (in liquidation) (NSWSC) – corporations – winding up – leave granted to commence proceedings (I, B, C)

Aldi Foods Pty Ltd v Brimbank City Council (VSC) – valuation of land – no error in decision of Victorian Civil and Administrative Tribunal – appeal dismissed (B, C, G)



Robson v Territory Insurance Office (NTSC) – motor accidents compensation – exclusions - driver of car not de facto partner of applicant – car not unregistered - applicant entitled to benefits (I)

Summaries with links (5 minute read)

Newman as trustee for the Bankrupt Estate of Keet v Bain [2013] FCA 558

Federal Court of Australia

Gilmour J

Bankruptcy – trustee sought leave to appeal from dismissal of application for extension of time to elect to prosecute third party action in professional negligence under s60(3) *Bankruptcy Act 1966* (Cth) – held: orders made by Federal Magistrate were interlocutory, therefore leave to appeal required - extension of time granted to apply for leave to appeal – third party action had no demonstrated merit - significant prejudice to respondent if leave was granted – application for leave to appeal dismissed.

[Newman as trustee for the Bankrupt Estate of Keet](#) (I, B)

Francis v Eggleston Mitchell Lawyers Pty Ltd [2013] FCA 564

Federal Court of Australia

Marshall J

Bankruptcy – evidence – applicant applied for order annulling her bankruptcy under s153B(1) *Bankruptcy Act 1966* (Cth) on the basis that the petitioning creditor was not a creditor because the relevant partnership had been dissolved and business transferred to respondent – held: applicant's submission that respondent not her creditor rejected – consent order made in Supreme Court of Victoria was final order capable of founding bankruptcy notice – court not satisfied applicant was solvent or that sequestration order ought not to have been made – even if satisfied that Registrar would have been bound not to make sequestration order, Court would not exercise discretion to annul bankruptcy - application dismissed.

[Francis](#) (B)

**AS v Murray [2013] NSWSC 733**

Supreme Court of New South Wales

Ball J

Intimidation - damages - plaintiff sought to recover money paid to defendant as result of extortion - plaintiff sought to restrain defendant from communicating to any person in relation to plaintiff and from communicating with plaintiff except by communicating with his solicitors - plaintiff also sought exemplary damages - held: plaintiff entitled to relief - defendant had committed tort of intimidation - little doubt defendant committed offence under s249K *Crimes Act 1900* (NSW) - plaintiff entitled to recover, as damages, money plaintiff had paid under unlawful threats - plaintiff entitled to injunctions and exemplary damages.

[AS \(I\)](#)**In the matter of Accord Pacific Land Pty Limited (in liquidation)****[2013] NSWSC 728**

Supreme Court of New South Wales

Black J

Corporations - winding up - liquidator of company in voluntary liquidation applied for approval to enter into funding agreement and costs agreement under s477(2B) *Corporations Act 2001* (Cth) for legal proceedings - interests of creditors - question of duplication from other proceedings - held: Court satisfied as to basis for proceedings' prospects of success - no oppression in conduct of proceedings - utility of proceedings not undercut by overlap with other proceedings - entry into retainer and costs agreement a proper exercise of liquidator's power.

[In the matter of Accord Pacific Land Pty Limited \(in liquidation\) \(B\)](#)**In the matter of Ozrac Engineering New South Wales Pty Limited (in liquidation)****[2013] NSWSC 740**

Supreme Court of New South Wales

Black J

Corporations - winding up - a company sought leave under s471B *Corporations Act 2001* (Cth) to begin proceedings against defendant claiming damages for negligent construction work in breach of contract - leave sought on basis that defendant's potential liability appeared to be covered by professional indemnity policy - held: Court satisfied plaintiff had prima facie case and there was good reason to commence proceedings including ensuring that plaintiff company is not prejudiced by a potential limitation defence - leave to bring proceedings granted.

[In the matter of Ozrac Engineering New South Wales Pty Limited \(in liquidation\) \(I, B, C\)](#)

**Aldi Foods Pty Ltd v Brimbank City Council [2013] VSC 294**

Supreme Court of Victoria

Emerton J

Land valuation and compensation – appellant sought leave under s148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) to appeal decision of Victorian Civil and Administrative Tribunal confirming site value of appellant’s property - appellant contended VICAT failed to take into account downturn in market due to global financial crisis, misinterpreted evidence of comparable sales and failed to afford procedural fairness in analysis of a particular sale and resale – held: there was a real or significant argument to be put that error existed in VICAT’s decision, however grounds of appeal not made out - leave to appeal granted – appeal dismissed.

[Aldi Foods](#) (B, C, G)**Robson v Territory Insurance Office [2013] NTSC 27**

Supreme Court of the Northern Territory

Kelly J

Motor accidents compensation – de facto relationship – *resident* of Northern Territory - applicant injured in motor accident in car driven by partner – respondent refused to pay benefits to applicant under *Motor Accident (Compensation) Act* (NT) on basis of exclusion in s9(7) of the Act in respect of unregistered vehicles - held: evidence did not establish applicant was partner’s de facto spouse so as to make him owner of applicant’s car by operation of s33(6) *Traffic Act* (NT) - designated person therefore erred in determining motor vehicle was unregistered at time of accident and in determining s9(7) of the Act applied to exclude applicant from an entitlement to benefits.

[Robson](#) (I)

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