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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)

P & M Quality Smallgoods Pty Ltd v Leap Seng (NSWCA) - negligence - workplace injury - appeal allowed from findings of negligence - District Court proceedings dismissed (I)

Segal v Barel (No 2) (NSWCA) - costs of parties to be paid out of proceeds of sale of co-owned land (B)

Ghoughassian v Sutherland (NSWCA) - mortgagees refused permission to amend basis of claim for interest - appeal dismissed (B)

In the matter of HIH Casualty & General Insurance Ltd (in liq) (NSWSC) - corporations - winding up - payment to plaintiffs of money paid by reinsurers to defendant refused (I, B)

GIO General Ltd v Passau (NSWSC) - judicial review - stay of implementation of decision of Motor Accidents Authority refused (I, G)

Secure Funding Pty Ltd v West (NSWSC) - application for stay on writ of possession of land - default on compromise agreement - stay of 7 days granted (B)



National Hearing Centres Pty Ltd v Vic O Tech Pty Ltd (VSC) - preliminary discovery - alleged non-compliance - permission refused to serve interrogatories and cross-examine defendant (I, B, C)

Summaries with links (5 minute read)

P & M Quality Smallgoods Pty Ltd v Leap Seng [2013] NSWCA 167

Court of Appeal of New South Wales

Barrett & Hoeben JJA; Tobias AJA

Negligence - work injury damages - plaintiff injured at workplace when struck by trolley being moved by co-worker employed by a different employer - appellants challenged findings of negligence - held: first appellant not employer of worker and not vicariously liable for her negligence - appellants owed duty of care to plaintiff corresponding with or very similar to employer's duty - appellants breached duty of care - labour hire company was worker's employer - labour hire company liable for 10% of plaintiff's loss and damage so that her damages were reduced by s151Z(2) *Workers Compensation Act 1987* (NSW) - award of damages for non-economic loss precluded by s16 *Civil Liability Act 2002* (NSW) - relevant causation of economic loss not proved by plaintiff - appeal allowed - District Court proceedings dismissed.

[P & M Quality Smallgoods](#) (I)

Segal v Barel (No 2) [2013] NSWCA 148

Court of Appeal of New South Wales

McColl & Barrett JJA; Preston CJ of LEC

Costs - proceedings for sale or partition of co-owned land under s66G *Conveyancing Act 1919* (NSW) - costs at first instance - primary judge had ordered appellant to pay 40% of respondent's costs - relevance of appellant's conduct - analogy with suit for dissolution of partnership - held: appeal allowed - Court of Appeal's decision was in favour of sale as sought by appellant, rather than partition as sought by respondent - respondent should not be awarded any part of his costs at first instance - analogy with partnership suit should be maintained so that costs of both parties at first instance should be paid out of proceeds of sale of co-owned land.

[Segal](#) (B)

**Ghougassian v Sutherland [2013] NSWCA 168**

Court of Appeal of New South Wales

Bathurst CJ; Meagher & Leeming JJA

Mortgages - appeal from order for taking of an account between mortgagor and its mortgagees - issue was whether primary judge erred in declining to permit appellant mortgagees to amend basis on which they claimed amounts of interest after hearing and determination of main issues - claim for compound interest not included in statements of account delivered under r46.5 *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in formulation of question as being one of amendment or in exercise of discretion to reject claim - appeal dismissed.

[Ghougassian](#) (B)

In the matter of HIH Casualty & General Insurance Ltd (in liq and subject to schemes of arrangement)

[2013] NSWSC 741

Supreme Court of New South Wales

Nicholas J

Corporations - winding up - application of proceeds received by HIH from its reinsurers - plaintiff insured sought orders under s562A(4) *Corporations Act 2001* (Cth) that ss562A(2) & 562A(3) of the Act did not apply to money received from reinsurers in respect of specified claims and that the money should be applied to specific liabilities to it rather than insolvent insurer's liabilities as a whole - held: Court not persuaded plaintiff had demonstrated it was just and equitable that order be made under s562A(4) that subsections did not apply to amounts received under reinsurance contract - no direct relationship between plaintiff and reinsurer such that reinsurer should be treated as primary insurer - application dismissed.

[In the matter of HIH Casualty & General Insurance](#) (I, B)

GIO General Ltd v Passau [2013] NSWSC 682

Supreme Court of New South Wales

Harrison J

Administrative law - judicial review - plaintiff sought stay of decision of Motor Accidents Authority pursuant to s63 *Motor Accidents Compensation Act 1999* (NSW) to refuse application to refer medical assessment to review panel pending determination of Supreme Court proceedings and consequent stay of final assessment before CARS - interests of justice - held: proper officer's decision not infected with error - no denial of procedural fairness - further delays and uncertainties likely to be inimical to first defendant's health - principles of futility not relevant - no



need to maintain existing state of affairs to preserve subject matter of proceedings - summons dismissed.

[GIO General](#) (I, G)

Secure Funding Pty Ltd v West [2013] NSWSC 746

Supreme Court of New South Wales

Slattery J

Possession of land - application for stay of approximately 7 weeks of writ of possession - lender's previous application for possession compromised to provide opportunity for applicants to sell property to daughter who required a loan - applicants defaulted on compromise agreement - exercise of discretion - applicants had made at least one payment under compromise - evidence indicated relevant parties all in paid employment - applicant offered to rectify compliance with compromise to bring payments up to date - stay of 7 days only granted.

[Secure Funding](#) (B)

National Hearing Centres Pty Ltd v Vic O Tech Pty Ltd [2013] VSC 292

Supreme Court of Victoria

Vickery J

Preliminary discovery - allegation of transfer of copyright or confidential information - plaintiff contended defendant had not complied with order for inspection and testing of computers - plaintiff alleged it was denied proper opportunity under r37.02 *Supreme Court Rules* (Vic) to obtain discovery to enable it to decide whether to commence proceedings - plaintiff sought to serve interrogatories and to cross-examine personal defendant - held: no evidence as to why plaintiffs' information was deficient such that it was unable to decide whether to commence proceedings or why interrogatories and cross-examination would assist decision - Court had no power to order delivery of interrogatories or order cross-examination in aid of power in rr32.05 or 37.02 to assist a party to determine whether or not to issue proceedings - application dismissed.

[National Hearing Centres](#) (I, B, C)

"Hope" is the thing with feathers

By Emily Dickinson

"Hope" is the thing with feathers -
That perches in the soul -
And sings the tune without the words -
And never stops - at all -

And sweetest - in the Gale - is heard -
And sore must be the storm -
That could abash the little Bird
That kept so many warm -

I've heard it in the chilliest land -
And on the strangest Sea -
Yet - never - in Extremity,
It asked a crumb - of me.

[Emily Dickinson](#)

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