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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Richards v Macquarie Bank Ltd (No 4) (FCA) - representative proceeding - managed investment schemes - approval of settlement between representative and bank (I, B, G)

Levi v Companies Auditors and Liquidators Disciplinary Board (FCA) - administrative law - AAT refused stay of Board's decision - jurisdictional error - decision quashed (I, B, G)

Northern NSW Local Health Network v Heggie (NSWCA) - workers compensation - Deputy President erred in law in deciding to revoke Arbitrator's decision - orders set aside (I, G)



Charltons CJC Pty Ltd v Fitzgerald (No 2) (NSWSC) - employment law - restraint of trade – extent of employees’ breaches of obligations to former employer (I, B)

Jane v Bob Jane Corporation Pty Ltd (VSC) - settled accounts - plaintiff estopped from reopening loan account balance - leave refused to re-open, surcharge or falsify settled accounts (B)

Cleary v Rinaudo (ACTCA) – negligence – motor vehicle accident – no requirement to disclose medical report obtained after commencement of court proceedings (I)

Canberra Hire Pty Ltd v Koppers Wood Products Pty Ltd, Agnew and Shadbolt (ACTSC) – contract for sale of property – vendor not required to perform any further remediation work on site (I, B, C)

Summaries with links (5 minute read)

Richards v Macquarie Bank Ltd (No 4) [2013] FCA 438

Federal Court of Australia

Logan J

Representative proceeding - managed investment schemes - approval of settlement – Storm Financial advised applicant to take out margin loans from bank - to invest in managed investment schemes - application for approval of settlement between applicant and bank - s33V *Federal Court of Australia Act 1976* (Cth) - considerations relevant to determination of application - construction of deed of settlement - held: court satisfied settlement fair and reasonable in global sense and in terms of internal operation - settlement approved.

[Richards](#) (I, B, G)

Levi v Companies Auditors and Liquidators Disciplinary Board [2013] FCA 719

Federal Court of Australia

Farrell J

Administrative law – Board cancelled applicant’s registration as liquidator – application sought review by AAT – AAT refused stay of Board’s decision pending determination of substantive issue - applicant challenged refusal of stay - sought writs of certiorari and mandamus under s39B *Judiciary Act 1903* (Cth), interim injunction and non-publication order - held: refusal of stay infected by jurisdictional error - failure to take into account relevant consideration of public



interest in due administration of criminal justice - possible prejudice to criminal proceedings which were likely - decision did not sufficiently disclose weight given to applicant's *prospects of success* as compared to other factors including likelihood of subsequent criminal proceedings - orders granted - decision quashed.

[Levi](#) (I, B, G)

Northern NSW Local Health Network v Heggie [2013] NSWCA 255

Court of Appeal of New South Wales

Basten & Ward JJA; Sackville AJA

Workers compensation - security officer claimed weekly benefits and payment of medical expenses for psychological injury suffered when he was disciplined by employer - Deputy President of Workers Compensation Commission revoked Arbitrator's determination that employer's disciplinary actions were reasonable - employer appealed under s353(1) *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (WIM Act) - whether relevant errors within s352 WIM Act - elements of s11A(1) *Workers Compensation Act 1987* (NSW) - test of reasonableness - limits on Deputy President's ability to interfere with Arbitrator's decision - held: Deputy President erred in law by taking into account irrelevant material which led him to exceed authority conferred on Commission by ss352(1) & 352(5) WIM Act and by addressing a question other than one which was mandated under s352(5) - appeal allowed - orders of Deputy President set aside.

[Northern NSW Local Health Network](#) (I, G)

Charltons CJC Pty Ltd v Fitzgerald (No 2) [2013] NSWSC 958

Supreme Court of New South Wales

Pembroke J

Employment law - restraint of trade - extent of employees' breaches of obligations to former employer - concurrent breaches - *de minimis* - held: court satisfied it was appropriate to make declarations as to both breach of contract and breach of fiduciary duty even though duties identical and underlying conduct the same - not appropriate to apply *de minimis* principle in respect of *shadow* clients - each breach was part of a concerted and deliberate campaign to cultivate clients who would otherwise have belonged to employer - defendants' conduct in relation to each *shadow* client was intended to be a springboard to a profitable successful future accounting relationship - not appropriate to treat any breaches as negligible and to ignore them.

[Charltons CJC Pty Ltd](#) (I, B)

**Jane v Bob Jane Corporation Pty Ltd [2013] VSC 406**

Supreme Court of Victoria

Sifris J

Settled account - estoppel - limitation of actions - preliminary questions - plaintiff director commenced proceeding against company for an account of all sums due to him in respect of his loan account and *payment of all sums found to be due* - plaintiff alleged amount of \$540,244.86 should be included as a credit and denied it was a gift to his son - plaintiff also made claim against third defendant for loan which had not been repaid - held: sum of \$540,244.86 was gift to son - loan to third defendant had been repaid - s5(2) *Limitation of Actions Act 1958* (Vic) applied to actions in equity as well as at law, barring any matter which arose prior to 5 March 2006 - there were settled accounts for period 1 July 2007 to 30 June 2008 - plaintiff otherwise estopped from reopening loan account balance - no basis to either surcharge or falsify settled accounts, or re-open them.

[Jane](#) (I, B)**Cleary v Rinaudo [2013] ACTCA 32**

Court of Appeal of the Australian Capital Territory

Burns & Katzmann JJ; Nield AJ

Negligence – motor vehicle accident – mandatory disclosure of documents – legal professional privilege - respondent injured in motor vehicle accident - whether appellant was required to disclose to respondent report of medical practitioner who examined respondent on behalf of appellant's insurer after litigation commenced – construction of disclosure provisions in Ch 5 *Civil Law (Wrongs) Act 2002* (ACT) - *pre-court procedures* – s171 *Legislation Act 2001* (ACT) - held: common law right to client legal privilege displaced by manifest contrary intention in s72 of the Act, which expressly required disclosure of medical reports - appellant not bound by s68 of the Act to disclose medical report because duty imposed did not extend beyond commencement of court proceedings – appeal allowed.

[Cleary](#) (I)**Canberra Hire Pty Ltd v Koppers Wood Products Pty Ltd, Agnew and Shadbolt [2013] ACTSC 162**

Supreme Court of the Australian Capital Territory

Refshauge J

Contract – defendant manufactured treated wood products at property, using toxic chemical with high leachability – contract between defendant and plaintiff for sale of property – plaintiff alleged defendant did not discharge obligations under contract concerning remediation of site –



construction of contract – pre-contractual negotiations – object of contract — Register of Contaminated Sites – change of use – indemnity for costs of remediation – completion of contract – specific performance – breach of contractual terms - held: court found for appellant on a number of issues, however defendant was not required under contract to undertake any further remediation on the land – defendant was in position to rescind contract – court prepared to further consider plaintiff's application for specific performance on basis no further remediation required to be performed.

[Canberra Hire Pty Ltd](#) (I, B, C)

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