



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

STX Pan Ocean Co Ltd v Bowen Basin Coal Group Pty Ltd - civil procedure - affidavit sworn in South Korea in accordance with South Korean law permitted to be read (I, B)

Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority - civil procedure - appeal against striking out of statement of claim - question to be answered in a strike out application - appeal allowed in a limited way (I)

Construction, Forestry, Mining and Energy Union v Radisich - application for leave for interlocutory appeal - unlawful industrial action under the *Building and Construction Industry Improvement Act 2005* (Cth) - trial judge struck out a paragraph of the Union's defence - trial judge's decision not attended by sufficient doubt (I, C)

DJZ Constructions Pty Ltd v Paul Pritchard t/a Pritchard Law Group - professional negligence - solicitors - advocates' immunity - duty of a solicitor to advise of weaknesses in contractual arrangements - sections 5O, 5I of the *Civil Liability Act* - contributory negligence (I, C)

Kuzmanovic v State of New South Wales - civil procedure - statement of claim did not adequately disclose the case the plaintiff intended to advance - certain paragraphs of the statement of claim should be struck out, but others should not - the plaintiff should have an opportunity to re-plead (I)



Wu v Statewide Developments Pty Ltd - Contract - conveyancing -before completion, vendor created a restrictive covenant - purchasers purported to rescind - restriction detrimentally affected the property to a substantial effect - the purchasers had been entitled to rescind (B, C)

400 George Street (Qld) Pty Ltd v BG International Ltd - deeds - agreement for lease - a deed, as opposed to a simple contract, is binding once it has been signed, sealed, and delivered, whether or not it has been executed by the other parties - deed was never delivered, as there was no intention to be immediately legally bound (I, B)

Silkzoom Pty Ltd v Property Shop Port Douglas - contract -purchase of rent roll management - certain landlords did not continue on the roll - the plaintiff sued the vendor, as well as its own solicitor - claim against the solicitor failed - vendor had engaged in misleading and deceptive conduct (I, B, C)

Kent v Crandith Pty Ltd - Costs - applicant unsuccessfully prosecuted the respondent and the abattoir for failing to maintain a safe system of work - magistrate had held that the applicant should pay the respondent's costs - magistrate had erred in law - Supreme Court determined the issue for itself, rather than remitting back to a magistrate - applicant should pay the respondent's costs (I)

Summaries with links (5 minute read)

Tuesday 14 September 2010

STX Pan Ocean Co Ltd v Bowen Basin Coal Group Pty Ltd [2010] FCA 1002

Federal Court of Australia

Rares J (in Sydney)

Civil procedure - the plaintiff sued the defendants, alleging that they had induced it to enter into certain charterparties by various misrepresentations - the plaintiff sought to read an affidavit sworn before a notary public in South Korea, in accordance with South Korean law - held: the attestation was in a sufficiently similar form to that required by the schedule referred to in s21(4) of the *Evidence Act 1995* (Cth) - the affidavit was permitted to be read.

[STX Pan Ocean](#) (I, B)



Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority [2010] FCA 994

Federal Court of Australia

Gilmour J (in Perth)

Civil procedure - the applicants alleged breach of statutory duty and misfeasance in public office against officers acting under the *Civil Aviation Act 1988* (Cth) - the trial judge struck out the applicants' amended statement of claim, and granted leave to file a further amended statement of claim reflecting the reasons the trial judge gave at that time - the applicants sought an extension of time in which to apply for leave to appeal from this interlocutory judgment - whether in all the circumstances the judgment was attended with sufficient doubt as to warrant it being reconsidered by a Full Court, and whether, supposing the decision to be wrong, substantial injustice would result if leave were refused - held: the question in a strike out application is not whether the pleaded facts give rise to a cause of action, but whether it would be open on the pleadings to prove facts that would give rise to a cause of action - leave granted, and appeal allowed, limited to the question of misfeasance in public office and breach of a duty of good faith.

[Repacholi Aviation](#) (I)

Construction, Forestry, Mining and Energy Union v Radisich [2010] FCA 1004

Federal Court of Australia

McKerracher J (in Perth)

Civil procedure - industrial action - the applicant had taken action against the Union for unlawful industrial action under section 38 of the *Building and Construction Industry Improvement Act 2005* (Cth) - the trial judge struck out a paragraph of the Union's defence - the Union sought leave to appeal from this interlocutory judgment - held: ordinarily, a party is not to be denied the opportunity to place his or her case before the Court in the ordinary way - the power to order summary or final judgment is one that should be exercised with great care and should never be exercised unless it is clear that there is no real question to be tried - in this case, however, the trial judge's decision was not attended by sufficient doubt to justify leave to appeal being granted - leave to appeal refused.

[Construction, Forestry, Mining and Energy Union](#) (I, C)



DJZ Constructions Pty Ltd v Paul Pritchard t/a Pritchard Law Group [2010] NSWSC 1024

Supreme Court of New South Wales

Schmidt J

Professional negligence - solicitors - the defendants advised the plaintiff regarding a deed under which the plaintiff acquired an interest in a real estate business, and in the conduct and settlement of litigation in that regard - the work done by the solicitor in drafting deeds settling the litigation was not such as would attract advocates' immunity - held: the standard of care applying to professionals under s5O of the *Civil Liability Act 2002* (NSW) is a defence, rather than a definition of the content of the duty of care - therefore, there is no onus on the plaintiff to call evidence addressing that section - the plaintiff's losses were reasonably foreseeable and causally related to the solicitor's negligence regarding the settlement of the litigation - there was no inherent risk within the meaning of section 5I - there was contributory negligence justifying a reduction in damages of 30%.

[DJZ Constructions](#) (I, C)

Kuzmanovic v State of New South Wales as represented by the NSW Attorney Generals Department [2010] NSWSC 1029

Supreme Court of New South Wales

Schmidt J

Civil procedure - the plaintiff had been arrested and prosecuted for murder, and acquitted - he sued the State of New South Wales, claiming that the charges had been brought maliciously and without reasonable cause, and that he had thereby suffered physical and psychological injuries - the plaintiff sought leave to amend his statement of claim, and the defendants sought to have the statement of claim struck out - held: the statement of claim did not adequately disclose the case he intended to advance, so as to allow the defendants to properly pursue their defence - the rules regarding pleading apply to all litigants before the Court, even those who are unrepresented - certain paragraphs of the statement of claim should be struck out, but others should not - the plaintiff should have an opportunity to re-plead - the question whether the claims were out of time had to wait until those claims had been properly pleaded - impecuniosity is not a reason for departing from the usual rule as to costs.

[Kuzmanovic](#) (I)



Wu v Statewide Developments Pty Ltd [2010] NSWSC 1016

Supreme Court of New South Wales

Palmer J

Contract - conveyancing - after exchange of contracts, but before completion, the defendant vendor created a restrictive covenant binding the land, in order to give effect to an Environmental Management Plan concerning soil contamination management - the plaintiff purchasers purported to rescind the contract - each party sought an order that they or it had validly rescinded the contract, and consequential orders - held: the restriction detrimentally affected the property to a substantial effect, thus enlivening clause 23.3 of the contract, which gave the purchasers a right to rescind - communications from the purchasers did not waive this right, or elect not to enforce it - the purchasers had been entitled to rescind.

[Wu](#) (B, C)

400 George Street (Qld) Pty Ltd v BG International Ltd [2010] QCA 245

Court of Appeal of Queensland

Muir & Fraser JJA; Mullins J

Deeds - the appellants were the owners of land in the Brisbane CBD and the builders of a building on that land - the respondent executed an agreement for lease and a lease over several floors in that building - one of the appellants delayed in executing the documents - the respondent claimed that there was no binding agreement, and purported to withdraw from the arrangements - the appellants maintained that the respondent was legally bound, and sued - the trial judge had held that there was no binding agreement - held: a deed, as opposed to a simple contract, is binding once it has been signed, sealed, and delivered, whether or not it has been executed by the other parties - the agreement for lease was, on its proper construction, a deed - however, the deed was never delivered, as there was no intention to be immediately legally bound - the agreement to lease was not binding - appeal dismissed.

[400 George Street \(Qld\)](#) (I, B)

Silkzoom Pty Ltd v Property Shop Port Douglas [2010] QSC 343

Supreme Court of Queensland

Jones J

Contract - the plaintiff was a licensed real estate agent who agreed to purchase the first defendant's business of rent roll management - there was a delay in obtaining the required authorities from the relevant landlords to allow the plaintiff to act on their behalf - certain



landlords did not continue on the roll - the plaintiff sued the first respondent vendor, as well as its own solicitor who had acted for it on the transaction - held: the solicitor had fulfilled his duty of advising about the inadequacy of the contract to prevent landlords leaving the roll - there was no duty on the solicitor to advise, in bald terms, whether or not to sign the contract - the claim against the solicitor failed - the first defendant had engaged in misleading and deceptive conduct by not disclosing that certain landlords would not provide the plaintiff with authority to act for them - judgment for plaintiff against the first defendant.

[Silkzoom](#) (I, B, C)

Kent v Crandith Pty Ltd [2010] TASSC 40

Supreme Court of Tasmania

Blow J

Costs - the respondent was a cleaning company engaged by an abattoir - an employee of the respondent was injured - the applicant unsuccessfully prosecuted the respondent and the abattoir for failing to maintain a safe system of work contrary to the *Workplace Health and Safety Act 1995* (Tas) - the magistrate had held that the case against this respondent had been patently weak, and that the applicant should pay the respondent's costs - held: it was open to the magistrate to find that the case against the respondent was weak - the magistrate erred in law in considering charges that were withdrawn when considering the strength of the charge that was pressed, and so the appeal must succeed on that ground - rather than remitting the question of costs back to a magistrate, the Court determined the matter for itself, and held that the applicant should be ordered to pay the respondent's costs.

[Kent](#) (I)

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