

Tuesday 14 October 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Jingalong Pty Ltd v Todd (No 2) (NSWCA) - real property - risk of dissipation of assets from sale of property - urgent freezing orders granted (B)

AF Concrete Pumping Pty Ltd v Ryan (NSWCA) - work injury damages - worker injured while constructing pool - subcontractor which employed worker not liable (I C)

Visy Paper Pty Ltd v Glass Granulates Pty Ltd (NSWSC) - equity - no breach of supply agreement - declaration and specific performance refused (I B C)

Cave v Allen Jack and Cottier Pty Ltd (NSWSC) - building dispute - whole proceedings referenced out to referee (I C)

Rozenblit v Vainer (VSC) - pleadings - permission to file and serve amended statement of claim refused (I B)

Prettejohn v Prettejohn (QSC) - Wills - trusts and trustees - income generated by estate assets since death not *ready monies* (B)

Cairns and Hinterland Hospital and Health Service v JT by JT's Guardian (QSC) - health law - *parens patriae* - withdrawal of treatment in patient's best interests (I)

Summaries with links (5 minute read)

Jingalong Pty Ltd v Todd (No 2) [2014] NSWCA 347

Court of Appeal of New South Wales

Gleeson JA

Real property - Mareva injunction - primary judge found Jingalong held property on constructive trust for Todd - Todd sought freezing orders against Jingalong - application related to different property owned by Jingalong against which Todd had lodged caveat - caveat was bad in form - Todd sought freezing orders to preserve an amount from proceeds of sale of property pending determination of Jingalong's appeal - held: Court prepared to draw inference that Jingalong would most likely complete sale of property immediately or shortly after lapsing of caveat and that, unless restrained, any net proceeds of sale would be disbursed - Court satisfied it was appropriate to make freezing order for a limited period.

[Jingalong Pty Ltd](#) (B)

AF Concrete Pumping Pty Ltd v Ryan [2014] NSWCA 346

Court of Appeal of New South Wales

Meagher & Leeming JJA; Sackville AJA

Work injury damages - worker injured while constructing swimming pool in building - worker sued two subcontractors (Reliance Pools and AF Concrete) in negligence - worker employed by Reliance Pools - subcontractors cross-claimed against employer's workers compensation insurer - insurer claimed reimbursement of compensation payments from subcontractors - subcontractors sought indemnity from insurer under *Workers Compensation Act 1987* (NSW) - primary judge found AF Concrete liable and Reliance Pools not liable - primary judge found subcontractors not entitled to indemnity and insurer entitled to reimbursement of workers compensation payments - AF Concrete appealed - held: no error in finding that Reliance Pools was not negligent - Reliance Pools did not breach duty which it owed to ensure reasonable care would be taken for safety of its employees - no error in assessment of permanent impairment for purposes of s151H, or error in exercise of discretion as to costs - appeal dismissed except in relation to costs order on which AF Concrete was successful.

[AF Concrete Pumping Pty Ltd](#) (I C)

Visy Paper Pty Ltd v Glass Granulates Pty Ltd [2014] NSWSC 1387

Supreme Court of New South Wales

Sackar J

Equity - recycler supplied glass materials to glass business - recycler sought declaration that glass business had breached supply agreement - sought specific performance and damages - glass business denied breach and contended that, even if it did breach agreement, supplier would suffer no damage if Court denied order for specific performance - glass business also asserted

agreement was void for illegality and that it was entitled to refuse loads containing asbestos or fibro - proper construction of supply agreement - definition of *rubbish* - *ejusdem generis* principle - held: reasonable to infer there was some asbestos more probably than not in each of the relevant loads rejected - definition of rubbish did not include asbestos contaminated material - glass business not obliged to receive any load which contained material which was other than benign or non-hazardous - glass business not obliged to take the relevant loads - judgment for glass business.

[Visy Paper Pty Ltd](#) (I B C)

Cave v Allen Jack and Cottier Pty Ltd [2014] NSWSC 1365

Supreme Court of New South Wales

Campbell J

Building dispute - referral out - plaintiff was homeowner who sued architect who designed her home, structural engineer who certified as to critical structural aspects, and builder who constructed it - plaintiff sought reference out of whole of proceedings under r20.14 *Uniform Civil Procedure Rules 2005* (NSW) - defendants were in favour of partial referral only - relative speed with which referee could hear case - relative flexibility and informality of procedure which would better define issues and lead to hearing that was materially shorter - held: in all circumstances appropriate to grant order for reference out.

[Cave](#) (I C)

Rozenblit v Vainer [2014] VSC 510

Supreme Court of Victoria

Lansdowne AsJ

Corporations - dispute arising out of business previously conducted by plaintiff and first defendant which was intended to develop and commercialise tyre recycling - plaintiff sought leave to file and serve amended statement of claim - proposed causes of action arose out of liquidation of company of which plaintiff was not a member at time of liquidation - held: plaintiff failed to establish he would have right to prosecute grievance about liquidation on basis he held an equitable interest in shares pursuant to a constructive trust - even if allegation of constructive trust made good, Court not persuaded constructive trust would necessarily confer on plaintiff equitable interest in shares - leave to amend refused.

[Rozenblit](#) (I B)

Prettejohn v Prettejohn [2014] QSC 250

Supreme Court of New South Wales

Henry J

Wills and estates - construction of Will - trustees sought declaration as to proper construction of feature of Will relating to whether income generated by estate's assets since death ought be regarded as falling within *ready monies* as used in Will, or as falling within residual capital of

estate - held: Court empowered to intervene and provide judicial guidance in exercise of supervisory power conferred under s96(1) *Trusts Act 1973* (Qld) - income generated from estate agents was not *ready monies* within meaning term in clause of Will - income was not income available to be applied for purposes and to the benefit of income beneficiaries stipulated under clause of Will - income had contributed to residue of the estate within meaning of the Will.

[Prettejohn](#) (B)

Cairns and Hinterland Hospital and Health Service v JT by JT's Guardian [2014] QSC 251

Supreme Court of Queensland

Henry J

Health law - withdrawal of patient treatment - *parens patriae* jurisdiction - patient unconscious in hospital after suffering hypoxic injury - patient had previously expressed wish to wife and family that he did not wish to remain in such state - hospital sought orders that it was in patient's best interests that treatment and nutrition be discontinued and resuscitation not be administered, ought not occur, would be inconsistent with good medical practice, and that cessation would be lawful - held: medical practitioners of universal opinion there was no prospect of improvement - consistent with good medical practice to withdraw life-sustaining supportive treatments - Court readily inferred that, were patient able to comprehend devastating impact that his living death was having upon his loved ones, he plainly would not want situation to continue - patient could no longer be taken to be consenting to invasive care being imposed upon his body - no longer in patient's best interests for care to continue - Court did not consent on patient's behalf to continuation of such care - withdrawal of care would be lawful - its continuation would be unlawful - orders granted.

[Cairns and Hinterland Hospital and Health Service](#) (I)

[Click Here to access our Benchmark Search Engine](#)