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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Nettleton v Rondeau (NSWSC) - subpoena - motor vehicle accident - assessment of damages - residual earning capacity - subpoena impermissibly wide and indicative of impermissible fishing - subpoena set aside (I)

MK Builders Pty Ltd v 420 Balcombe Road Pty Ltd (VSC) - corporations - extension of time to seek leave to appeal from orders of Victorian Civil and Administrative Tribunal refused - not in interests of justice to permit appellant to rely on further evidence - appeal dismissed (B C G)

Trombone Investments Pty Ltd v TBT (Victoria) Pty Ltd (VSC) - judicial review - leases and tenancies - summons for production of documents quashed - leave to appeal granted - appeal allowed (I B G)

Meridien Airlie Beach Pty Ltd (Receivers and Managers Appointed) (in liq) v Karamist Pty Ltd (QCA) - landlord and tenant - relief against forfeiture - no failure to give adequate reasons or misdirection as to legal test - appeal dismissed (B)

Registrar of Titles v MRSA (WASCA) - real property - transfer of land - deceit - fraud - dismissal of claim for contribution and indemnity - appeal allowed (I B)

Mavaddat v HSBC Bank Australia Ltd (WASCA) - stay - loan agreement - stay of enforcement of summary judgment for amount owing under loan agreement (B)

Centoid Pty Ltd v Osborne (NTSC) - summary judgment - loan agreement - no basis to refuse

summary judgment in lenders' favour (B)

Summaries With Link (Five Minute Read)

Nettleton v Rondeau [2015] NSWSC 1490

Supreme Court of New South Wales

Bellew J

Subpoena - plaintiff sought damages for injuries suffered in motor vehicle accident - Court entered verdict for plaintiff with damages to be assessed - plaintiff sought pursuant to r33.4 *Uniform Civil Procedure Rules 2005* (NSW) to set aside subpoena issued by defendant's solicitor in relation to plaintiff's investments - residual earning capacity - held: defendant entitled to seek production of documents which were relevant to residual earning capacity but only within bounds of what was permissible and accordance with fundamental principles on which parties were agreed - subpoena traversed some such principles - subpoena was impermissibly wide and indicative of impermissible fishing - subpoena set aside

[Nettleton](#) (I)

MK Builders Pty Ltd v 420 Balcombe Road Pty Ltd [2015] VSC 547

Supreme Court of Victoria

McDonald J

Corporations - associate judge refused appellant's application for extension of time to seek leave to appeal orders made by Victorian Civil and Administrative Tribunal - appellant submitted evidence and other material before Court 'seriously deficient' - appellant submitted that further evidence in certain affidavits demonstrated good explanation for delay in that it was not due to appellant's conduct but incorrect advice and conduct of its legal representatives - s553C *Corporations Act 2001* (Cth) - O77 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - s148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - principles governing admissibility of further evidence - held: not in interests of justice to permit appellant to rely upon further evidence - appeal dismissed.

[MK Builders](#) (B C G)

Trombone Investments Pty Ltd v TBT (Victoria) Pty Ltd [2015] VSC 517

Supreme Court of Victoria

Daly AsJ

Judicial review - leases and tenancies - relief against forfeiture - plaintiff was tenant in building owned by first defendant pursuant to terms of lease - disputes arose between plaintiff and first defendant relating to issue of notice under s146 *Property Law Act 1958* alleging plaintiff breached lease- plaintiff sought leave to appeal from decision of Victorian Civil and Administrative Tribunal to quash three summonses for production of documents - approach to determination of whether documents sought by subpoena were 'relevant' - 'may be relevant to any legitimate issue in the proceeding' - whether unconscionable conduct of landlord must be

directly linked to breach of tenant - s77 *Retail Leases Act 2003* (VSC) - *Australian Consumer Law* - held: Senior Member's conclusion infected by unduly narrow approach - leave to appeal granted - appeal allowed.

[Trombone](#) (I B G)

Meridien Airlie Beach Pty Ltd (Receivers and Managers Appointed) (in liq) v Karamist Pty Ltd [2015] QCA 192

Court of Appeal of Queensland

M McMurdo P; A Lyons & North JJ

Landlord and tenant - respondent obtained relief against forfeiture pursuant to s124 *Property Law Act 1974* (Qld) in relation to subleases of two berths in a marina - appellants contended primary judge erred or misdirected himself by failing to give adequate reasons and finding against weight of evidence - appellant also contended primary judge fettered his discretion in requiring appellant to show "there were very exceptional or, at least, exceptional circumstances" for respondent's application to fail - onus - held: primary judge did not fail to give adequate reasons - primary judge did not misdirect himself in relation to legal test - no basis for conclusion that primary judge reversed onus - primary judge was balancing all factors required to be considered in exercise of discretion - appeal dismissed.

[Meridien](#) (B)

Registrar of Titles v MRSA [2015] WASCA 204

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Real property - deceit - respondent (Ms MRSA) forged father's signature on document appointing her as his attorney with power to sell land - respondent conveyed title to land to Western Australian Planning Commission and misappropriated money which Commission paid to obtain title - Mr Mrsa commenced proceedings against respondent and appellant - Mr MRSA died - respondent failed to file defence - judgment entered against her by default - Registrar claimed contribution and indemnity from respondent and from her sister who signed power of attorney as witness to father's signature - trial judge declined to assess damages due from Ms Mrsa to Mr MRSA's estate, upheld estate's claim against Registrar and ordered Registrar to pay damages to estate - trial judge dismissed Registrar's claims for contribution and indemnity - trial judge found statutory scheme for compensation created *Transfer of Land Act 1893* (WA) impliedly excluded actions in deceit and any other claim in tort - trial judge considered State's loss due to obligation to compensate Mr Mrsa's estate not caused by respondent's deceit and that Registrar was not the appropriate party to claim relief - ss195, 199, 201 & 205 - held: each of trial judge's reasons for dismissing Registrar's claim was erroneous - appeal should be allowed - claim for contribution and indemnity upheld.

[Registrar of Titles](#) (I B)

Mavaddat v HSBC Bank Australia Ltd [2015] WASCA 205

Court of Appeal of Western Australia

Murphy JA



Stay - summary judgment - loan agreement - appellant sought order under s15 *Civil Judgments Enforcement Act 2004* (WA) suspending enforcement of summary judgment against appellant in relation to money advanced under loan described as 'first loan agreement' - alleged defence to bank's claim under agreement which secured by appellant's mortgage of family home - held: grounds of appeal not strong - Court could not conclude appeal had no prospects of success - Court inclined to order stay on condition of appellant's undertaking to do everything necessary and reasonable to prosecute appeal expeditiously - parties to be heard as to precise terms of orders.

[Mavaddat](#) (B)

Centoid Pty Ltd v Osborne [2015] NTSC 64

Supreme Court of the Northern Territory

Master Luppino

Summary judgment - plaintiffs lent sum to debtor - loan agreement incorporated guarantee given by defendants - plaintiffs sought summary judgment against defendants pursuant to guarantee - summary judgment sought for only part of claim, being amount of principal sum, without interest - rr22.02 & 22.06 *Supreme Court Rules* - whether there were facts which would constitute defence and whether defendants' account had sufficient prima facie plausibility to merit further investigation - held: there was prima facie basis for order sought by plaintiffs - no serious question to be tried - defendants had no defence to relevant part of claim - no basis to refused summary judgment.

[Centoid](#) (B)

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