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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)

TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia - constitutional law - international arbitration - enforceability of arbitral awards - jurisdiction of Federal Court - application for writs of prohibition and *certiorari* directed at Federal Court - application dismissed (I, B, C, G)

Majeed v Mahmud - bankruptcy - summons for leave to appeal order setting aside judgments - ineffective service of summons - delay - no identified basis on which judgment arguably wrong - summons dismissed (B)

AMC Commercial Cleaning (NSW) Pty Ltd v Coade; Rockcliffs Solicitors & IP Lawyers v Condon as liquidator of AMC Commercial Cleaning (NSW) Pty Ltd - equitable lien - fruits of litigation - deed of settlement containing term for transfer of book debts - book debts not a matter raised in litigation - lawyers entitled to enforce lien (I, B)

Ringwood Agricultural Company Pty Ltd v Grain Link (NSW) Pty Ltd - commercial arbitration - claim to set aside award of tribunal on basis of lack of oral hearing - proceedings dismissed (I, B, G)



Karamihos v Bendigo and Adelaide Bank Ltd; Bendigo and Adelaide Bank Ltd v Karamihos - loans and mortgages - unjust contract - elderly borrowers with little understanding of English - relief granted (B)

Heywood v Commercial Electrical Pty Ltd - work injury damages - negligence - employer's duty of care - electrician injured during course of employment - no breach of duty established - economic loss - action dismissed (I)

BAE Systems Australia Ltd v Rothwell - workers compensation - extent of entitlement to compensation - statutory interpretation - past gratuitous attendant care services did not amount to costs incurred (I)

Summaries with links (5 minute read)

TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia **[2013] HCA 5**

High Court of Australia

French CJ; Hayne, Crennan, Kiefel, Bell & Gageler JJ

Constitutional law - judicial power of Commonwealth - international arbitration - plaintiff applied for constitutional writs of *prohibition* and *certiorari* directed to judges of the Federal Court - plaintiff argued jurisdiction conferred on Federal Court in application under Art35 *Model Law* contained in Sch2 *International Arbitration Act 1974* (Cth) (**Act**) was incompatible with Ch III Constitution and that s16(1) of the Act which gave *the force of law in Australia* to *Model Law* was beyond power because it infringed Ch III - held: conferral of jurisdiction not incompatible with Ch III - Federal Court's task to determine enforceability of arbitral awards by reference to criteria resulting from operation of *Model Law* which did not include specific power to review award for error was not incompatible with Federal Court's institutional integrity - s16(1) of the Act did not contravene Constitution - application dismissed with costs.

[TCL Air Conditioner](#) (I, B, C, G)

**Majeed v Mahmud [2013] NSWCA 52**

Court of Appeal of New South Wales

Beazley P & Meagher JA

Bankruptcy - self-represented litigant - summons for leave to appeal order setting aside judgments which applicant obtained against respondent - service of summons did not comply with r11.2 *Uniform Civil Procedure Rules 2005* (NSW) - no order for substituted service- no evidence of reasons for delay - no identification of basis on which judgment arguably wrong - held: no sufficient prospects of success to persuade Court to stand over summons so that applicant could obtain substituted service - summons dismissed.

[Majeed](#) (B)

AMC Commercial Cleaning (NSW) Pty Ltd v Coade; Rockcliffs Solicitors & IP Lawyers v Condon as liquidator of AMC Commercial Cleaning (NSW) Pty Ltd [2013] NSWSC 192

Supreme Court of New South Wales

Rein J

Equity - equitable lien - solicitors acted for AMC NSW against AMC National - parties resolved differences by deed of settlement - AMC National agreed by deed to pay amount to solicitors in settlement of all claims between them and AMC NSW - one instalment paid before order made to wind up AMC NSW - solicitors and respondent liquidator agreed to place remaining amount in controlled money account pending outcome of dispute between them - liquidator challenged lien on basis that it was term of settlement that AMC NSW transfer book debts to AMC National - liquidator claimed that because book debts were not matters raised in litigation, solicitors could not claim *fruits of litigation* lien because amount not solely the result of work performed by them for AMC NSW - applicable principles: *Firth v Centrelink* [2002] NSWSC 564 - held: not necessary to consider precise role of book debts - solicitors entitled to enforce lien.

[AMC Commercial Cleaning](#) (I, B)

Ringwood Agricultural Company Pty Ltd v Grain Link (NSW) Pty Ltd [2013] NSWSC 191

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - proceedings pursuant to s34(2)(a)(iv) *Commercial Arbitration Act 2010* (NSW) (Act) to set aside arbitral award published by tribunal of three arbitrators - plaintiff complained that tribunal breached ss18 and 24(2) of the Act by failing to hold oral hearing for determination of quantum despite plaintiff's request - held: plaintiff was entitled to oral hearing



but did not seek it - arbitral procedure not otherwise than in accordance with agreement of parties or with the Act - plaintiff given reasonable opportunity to present its case - no prospects of success on oral hearing of plaintiff's propositions - proceedings dismissed.

[Ringwood Agricultural Company](#) (I, B, G)

Karamihos v Bendigo and Adelaide Bank Ltd; Bendigo and Adelaide Bank Ltd v Karamihos
[2013] NSWSC 172

Supreme Court of New South Wales

Pembroke J

Loans and mortgages - unjust contract - borrowers defaulted on loan from bank - borrowers contended loan and mortgage unjust within meaning of s76(1) *National Credit Code (NCC)* and s7(1) *Contracts Review Act 1980 (NSW) (CRA)* - elderly borrowers with lack of ability to read or understand English - factors to which court may have regard when determining whether contract unjust: s76(2) NCC & s9(2) CRA - public interest considerations - held: home loan contract unjust for purposes of NCC and CRA - relief granted.

[Karamihos](#) (B)

Heywood v Commercial Electrical Pty Ltd [2013] QSC 52

Supreme Court of Queensland

Martin J

Work injury damages - negligence - employer's duty of care - worker employed by defendant as apprentice electrician - worker claimed he injured his knee at work - liability and quantum in issue - no dispute as to mechanism of injury - worker submitted system of work failed to make adequate provision for inexperienced worker - defendant contended its obligation was to take reasonable care and not to protect from all perils - proof of economic loss - diminution of earning capacity - held: no breach of duty by employer - worker's task not difficult and he knew how to perform it - injury came about through worker's action - action dismissed.

[Heywood](#) (I)

BAE Systems Australia Ltd v Rothwell [2013] NTCA 3

Court of Appeal of the Northern Territory

Riley CJ; Mildren & Kelly JJ

Workers compensation - compensable injury for purposes of *Workers Rehabilitation and Compensation Act 2008 (NT) (Act)* - employer conceded liability to pay compensation - employer appealed from dismissal of appeal against conclusion of Work Health Court that past gratuitous

attendant care services amounted to *costs incurred* under s78 of the Act - worker cross-appealed submitting that primary judge erred in not awarding costs on indemnity basis - statutory construction - principles regarding award of indemnity costs - conduct of employer in considering claim - held: past gratuitous attendant care services did not amount to *costs incurred* - employer not required to compensate worker for value of those services - appeal allowed - cross-appeal dismissed.

[BAE Systems Australia](#) (I)

Apex

By Mary Cresswell

We climbed ungloved, hand over hand,
the sour-needle pines
expecting to see the glacier from here.

We heard the clock strike (several times),
and the red-coated oompah band
belted out brass on the miniature pier.

Cold, cold, it was cold. The air was clear
as the sharp, untouchable snowline
at the next country over, that sealed-off land

which last week officially abolished time
in favour of space: It's easier
to get a grip on - and, they said, to understand.

Mary Cresswell is a Wellington poet from Los Angeles; she lives on the Kapiti Coast. Her third book, *Trace Fossils*, was published by Steele Roberts in 2011.

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