

Tuesday, 15 March 2016

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

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Executive Summary (1 minute read)

McKeith v Royal Bank of Scotland Group PLC; Royal Bank of Scotland Group PLC v James (NSWCA) - contract - employment contract - Royal Bank breached contract by failure to apply redundancy policy to them - damages limited to severance payment (I B)

Onik New Energy Australia Pty Ltd v Henderson (NSWSC) - contract - installation of solar systems - claim for payment under contracts dismissed for want of prosecution - appeal dismissed (I B C)

Paradisis v Kekatos as executor of the estate of the Late John Paradisis (NSWSC) - succession - family provision - long standing spouse of deceased granted legacy and "Crisp" order (B)

Dual Homes Pty Ltd v Moores Legal Pty Ltd (VSC) - negligence - solicitors' duties - statutory demands - winding up - negligence and misleading and deceptive conduct - damages (I B C)

Jeffrey v Giles (No 3) (VSC) - costs - special circumstances - unreasonable rejection of offer of compromise - indemnity costs awarded in plaintiffs' favour (I)

Owerhall v Bolton & Swan Pty Ltd (VSC) - equity - settlement agreement - application for declaration settlement agreement invalid on basis plaintiff intoxicated by medication - no ground established to set aside agreement - proceeding dismissed (I B)

Phillips v McCabe (SASC) - Wills and estates - succession - substitution of beneficiaries clause - residuary estate clause - clause in relation to maintenance of family graves -

construction of Will - executor's questions answered (B)

Summaries With Link (Five Minute Read)

McKeith v Royal Bank of Scotland Group PLC; Royal Bank of Scotland Group PLC v James [2016] NSWCA 36

Court of Appeal of New South Wales

Macfarlan JA; Tobias & Emmett AJJA

Contract - employment contract - appellant (McKeith) and respondent (James) were employees of ABN AMRO Group (ABN) who were retrenched in context of third parties' competing takeover offers for ABN - one offeror was Consortium including first respondent Royal Bank - ABN made public statements that if Royal Bank's offer successful, ABN would ensure continuation of its redundancy policy - employees sued ABN and Royal Bank for non-payment of severance and ex gratia payments under policy - James succeeded - McKeith failed - unsuccessful parties appealed - held: ABN did not make contractual promises in relation to continuation of redundancy policy - Royal Bank breached contractual promise to McKeith and James that ABN would continue to apply policy to them - damages limited to severance payment - no breach by Royal Bank by failure to pay ex gratia payment to either McKeith or James.

[McKeith](#) (I B)

Onik New Energy Australia Pty Limited v Henderson [2016] NSWSC 186

Supreme Court of New South Wales

Harrison AsJ

Want of prosecution - contract - dispute arising from contracts for installation of solar systems - statement of claim alleged defendants failed to make payment or allow access for removal of systems - Magistrate dismissed claim for want of prosecution - plaintiff appealed - procedural fairness - readiness of expert evidence - held: plaintiff was afforded procedural fairness - evidence supported dismissal of proceedings - appeal dismissed.

[Onik](#) (I B C)

Paradisis v Kekatos as executor of the estate of the Late John Paradisis [2016] NSWSC 220

Supreme Court of New South Wales

McDougall J

Succession - plaintiff spouse of long standing of deceased sought further provision from deceased's Will - held: deceased had made inadequate provision for plaintiff - deceased had left plaintiff only life estate in matrimonial home and had given remainder of estate to three children from former marriages - Court dissatisfied as to plaintiff's disclosure of assets - plaintiff should receive a legacy - recognition should be given to testator's wishes - "Crisp" order made to provide for plaintiff's needs whilst preserving testamentary scheme desire by testator.

[Paradisis \(B\)](#)

Dual Homes Pty Ltd v Moores Legal Pty Ltd [2016] VSC 86

Supreme Court of Victoria

J Dixon J

Negligence - solicitors' duties - proportionate liability - first plaintiff builder and developer was trustee of The Roiniotis Family Trust - second and third plaintiffs were family members and creditors/shareholders of first plaintiff - defendants were solicitor and two firms of which solicitor had been principal or employee - plaintiffs sued defendants for breach of retainer, and misleading or deceptive conduct in breach of s18 *Australian Consumer Law* in relation to conduct concerning creditor's statutory demands served on first plaintiff and winding up application against first plaintiff - first plaintiff had been wound up in insolvency as a result of application, which was undefended - first plaintiff alleged it was solvent at all times - Court terminated winding up - first plaintiff claimed it suffered loss in relation to winding up - held: liability imposed for wrongful conduct in respect of second statutory demand - advice in relation to winding up application negligent and involved misleading and deceptive conduct - advocate's immunity had some application but defendants not protected from award of damages - damages assessed - liability apportioned - judgment for plaintiffs.

[Dual Homes \(I B C\)](#)

Jeffrey v Giles (No 3) [2016] VSC 78

Supreme Court of Victoria

McDonald J

Costs - indemnity costs - Court dismissed defendant's application - Court granted orders sought by plaintiffs - plaintiffs sought payment of costs on indemnity basis - special circumstances - deliberate improper conduct - s 29 *Civil Procedure Act 2010 (Vic)* - r46.04(1). *Supreme Court (General Civil Procedure) Rules 2015 (VSC)* - held: there were special circumstances justifying an indemnity costs order - defendants' unreasonable failure to accept offer of compromise warranted indemnity costs order - indemnity costs order made in plaintiffs' favour.

[Jeffrey \(I\)](#)

Owerhall v Bolton & Swan Pty Ltd [2016] VSC 91

Supreme Court of Victoria

Derham AsJ

Equity - settlement agreement - plaintiff sought declaration 'Terms of Settlement' entered into with defendant was invalid and that it be set aside on basis plaintiff was intoxicated from medication on day of signing - whether existence of ground which would render contract void or voidable - held: plaintiff was possibly under special disadvantage when he entered settlement agreement - defendant did not have prior knowledge of disadvantage - defendant's conduct was not unconscionable - plaintiff not under presumed undue influence of solicitor - plaintiff did not establish any ground to find settlement agreement invalid or to set it aside - proceeding



dismissed.

[Owerhall](#) (I B)

Phillips v McCabe [2016] SASC 27

Supreme Court of South Australia

Gray J

Wills and estates - succession - determination of executor's questions concerning administration of deceased's estate - construction of Will - r206 *Supreme Court Civil Rules 2006* (SA) - substitution of beneficiaries clause in relation to residuary estate clause - clause in relation to maintenance of family graves - held: residuary estate clause created a class gift - clause in relation to family graves was void for creating a perpetual non-charitable trust - executor's questions answered.

[Phillips](#) (B)

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