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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)

In the matter of St Gregory's Armenian School (in liq) - application for removal and replacement of liquidator or for inquiry into liquidator's conduct and for leave to sue liquidator (B)

Owners Corporation Strata Plan 61288 v Brookfield Multiplex - strata titles - whether building contractor owed common law duty of care (I, B, C, G)

Minter Ellison Services Pty Ltd v Kotzman - accident compensation - review of decision of medical panel (I, B, C, G)

Taylor v Company Solutions (Aust) Pty Ltd - whether interest payable on compromise sum (I, B, C, G)

McJannett v Gibbs - defamation - application for summary judgment and to strike out pleadings - whether serious question to be tried - whether embarrassing pleadings (I, B, C, G)



Summaries with links (5 minute read)

In the matter of St Gregory's Armenian School (in liq) [2012] NSWSC 1215

Supreme Court of New South Wales

Brereton J

Corporations - external administration - application under s473 *Corporations Act* 2001 (Cth) (Act) for removal and replacement of liquidator or, alternatively, under s536 of the Act for inquiry into liquidator's conduct and for leave to commence proceedings against liquidator - court may remove liquidator *on cause shown*: s473(1) of the Act - burden on applicant to show cause: *SingTel Optus Pty Limited v Weston* [2012] NSWSC 674 - order for removal will be made only if *for the better conduct of the [liquidation] or to the general advantage of persons interested in the winding up or in the best interests of the liquidation* - mere loss of confidence does not justify removal: *Multi-Core Aerators Limited v Dye and Rennie* [1999] VSC 205 - mere existence of hostilities does not justify removal - requirement of fairness to liquidator that particularised allegations be provided - *whether*: liquidator improperly failed to defend proceedings; liquidator obstructed attempts to avert mortgagee sale; reasonable apprehension that liquidator would not approach decisions objectively and impartially; majority of creditors supported liquidator's removal; information evidence and knowledge gained by liquidator would require duplication by new liquidator; liquidator's removal contrary to interests of due administration; liquidator required to be *model litigant*; sufficient matters *prima facie* calling for further investigation to justify inquiry into liquidator's conduct: *Burns Philp Investment Pty Ltd v Dickens (No.2)* (1993) 11 ACLC 525 - principles applicable to application for leave to sue liquidator: *Armitage v Gainsborough Properties Pty Ltd* [2011] VSC 419, *Sydlow Pty Ltd (in liq) v T G Kotselas Pty Ltd* [1996] FCA 1384 - whether claim has sufficient merit: *Mamone v Pantzer* [2001] NSWSC 26.

[St Gregory's Armenian School \(B\)](#)

Owners Corporation Strata Plan 61288 v Brookfield Multiplex [2012] NSWSC 1219

Supreme Court of New South Wales

McDougall J

Strata titles - separate question - duty of care - first defendant carried out construction work on strata title development pursuant to contract with developer - plaintiff owners corporation claimed first defendant's work defective and sued first defendant for rectification costs - plaintiffs sought separate determination of question whether first defendant owed common law duty of



care - *whether*: overlap between evidence in relation to existence of duty of care and question of breach; evidence on question of existence of duty of care entirely documentary; no question of credibility in relation to duty of care question and *a fortiori* no risk of inconsistent views as to credibility; preparation of first defendant's case on defects would require retention of experts to consider numerous reports relied on by plaintiffs; first defendant owed duty of care; appropriate for judge to identify and impose a novel duty of care: *Bryan v Maloney* (1995) 182 CLR 609; decision to impose a common law duty would involve conscious decision to extend a benefit that the *Home Building Act* 1989 (NSW) appeared to have withheld as deliberate policy choice.

[Owners Corporation Strata Plan 61288](#) (I, B, C, G)

Minter Ellison Services Pty Ltd v Kotzman [2012] VSC 375

Supreme Court of Victoria

Judd J

Administrative law - accident compensation - plaintiff sought order under O56 *Supreme Court (General Civil Procedure) Rules* 2005 (Vic) quashing decision of medical panel convened under s68(6) *Accident Compensation Act* 1985 (Vic) (**Act**) - *whether*: panel erred in law in reaching opinion that worker had *no current work capacity* and that this situation was likely to continue indefinitely; misinterpretation of *no current work capacity* contained in s5 of the Act; panel impermissibly took into account effect of worker's supervening symptoms, signs and effects; failure to consider submissions of agent in forming opinion; inconsistent answers to questions; to refer all question for reconsideration by new panel - principles relevant to application: *Bregu v Brydon* [2010] VSC 417 - proper approach of reviewing court when analysing reasons of tribunal: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* [1996] HCA 6.

[Minter Ellison Services](#) (I, B, C, G)

Taylor v Company Solutions (Aust) Pty Ltd [2012] QSC 309

Supreme Court of Queensland

Douglas J

Interest on judgments - compromised action for personal injury - plaintiff was *person under a legal disability* within the meaning of s59(1A) *Public Trustee Act* 1978 (Qld) - court ordered defendant to pay compromise sum within 21 days of date of hearing, or of defendants' receipt of last statutory clearances or charges in relation to damages, whichever later - delays in notification of statutory charges - *whether*: defendants obliged to pay interest pursuant to s48 *Supreme Court Act* 1995 (Qld) (**Act**); money owed under compromise sum not *unpaid* until receipt of last of statutory clearances



or charges; Act applied in absence of agreement between parties in relation to interest: *Yun Hee Choi v City of Sydney Council* [2007] NSWSC 65; statutory language of the Act mandated the payment of interest on so much of the money as was from time to time unpaid; any reason to deprive plaintiff of interest that s48 the Act provided should be paid to plaintiff - history of s48: *Flinn v The Maryborough Sugar Factory Limited (omitting footnotes)* [2003] QDC 446.

[Taylor](#) (I, B, C, G)

McJannett v Gibbs [2012] WASC 369

Supreme Court of Western Australia

Le Miere J

Defamation - application by defendants to strike out plaintiff's amended statement of claim pursuant to O20 r19(1) *Rules of the Supreme Court* 1971 (WA) (**Rules**) and for summary judgment pursuant to O16 r1 of the Rules - in combined application court not confined to plaintiff's formulation on pleadings and may consider undisputed and disputed facts: *Bride and Bride v Peat Marwick Mitchell* [1989] WAR 383 - *whether*: serious question to be tried on cause of action in defamation raised by plaintiff; proof of defamatory material; defence of truth; defence of qualified privilege; amended statement of claim ought to be struck out; embarrassing, irrelevant and/or scandalous pleadings; false innuendo; improper identification of publication; failure to particularise damage and causation; prayer for relief claimed exemplary damages which cannot be claimed: s37 *Defamation Act* 2005 (WA); plaintiff should be given leave to re-plead.

[McJannett](#) (I, B, C, G)

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