



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

QBE Insurance (Australia) Limited v Tropical Reef Shipyard Pty Limited (No 2) - Costs (I)

Mars Australia Pty Ltd v Sweet Rewards Pty Ltd - Trade Practices Act 1974 (Cth) - alleged infringement of trade marks, passing off & misleading & deceptive conduct on part of respondent - appeal dismissed (B)

Basha v Vocational Capacity Centre Pty Ltd - Personal injuries - whether breach of duty - damages - non-economic loss - past & future economic loss - domestic assistance - ss15 & 16 Civil Liability Act 2002 (NSW) - cross-appeal dismissed - appeal allowed (I)

Dwyer v Craft Printing Pty Ltd - Trade Practices Act 1974 (Cth) - Fair Trading Act 1987 (NSW) - misleading & deceptive conduct - appellant sole director guaranteed debts of corporation - appeal dismissed (I, B, C)

Delmege v Chief Commissioner of State Revenue (No 2) - Land Tax Management Act 1956 (NSW) - production of documents - s72(1) Taxation Administration Act 1996 (NSW) (B)

State of Queensland v Springfield Land Corporation (No 2) PTY LTD & Anor - Acquisition of Land Act 1967 (Qld) - appeal dismissed (C)

SLS Property Group PTY LTD v Townsville CC & Anor; Catchlove & Ors v Townsville CC & Ors - Integrated Planning Act 1997 (Qld) - applications for leave to appeal refused (C)

Westpac Banking Corporation & Ors v The Bell Group Ltd (in liq'n) & Ors [No 2] - Case management - complex litigation - directions in relation to appeal (I, B, C)

Clambake Pty Ltd v Tipperary Projects Pty Ltd [No 7] - Guarantee & indemnity - ss80 & 87 Trade Practices Act 1974 (Cth) (I)

Summaries with links (5 minute read)

Wednesday 16 December 2009

QBE Insurance (Australia) Limited v Tropical Reef Shipyard Pty Limited (No 2) [2009] FCAFC 170

Full Court of the Federal Court of Australia

Kenny, Gordon & Jagot JJ

Costs - for decision Full Court of the Federal Court of Australia 12 November 2009, see 'Benchmark' I & IBC Wednesday 18 November 2009 & link below - each party to pay its own costs of & in connection with the application for leave to appeal.

[QBE Insurance \(Australia\) \(I\)](#)

[QBE Insurance \(Australia\)](#) - decision Full Court of the Federal Court 12 November 2009 -insurer had sought leave to appeal against part of a judgment of primary judge, being one of the answers to four questions that his Honour ordered to be determined before the trial in the proceeding - for decision 25 September 2009, see 'Benchmark' I & IBC Thursday 1 October 2009 & link below - application for leave to appeal refused;

[Tropical Reef Shipyard](#) - decision Federal Court 25 September 2009 - determination of construction of insurance policies prior to trial - business interruption - loss of turnover - exclusion clauses - damage to slipway - applicant providing engineering, repair & maintenance services for commercial vessels from shipyard facility at Portsmith in Queensland - dispute arose as to manner in which applicant had calculated its loss of turnover (assuming it has suffered any loss at all) - "loss or claim" - at para. 23 of judgment: "It is not necessary to deal with the interesting argument concerning double insurance because this is not a case of double insurance. However, if it were such a case then, according to old authority, it is possible for the insured to recover his entire loss from several insurers: [Bruce v Jones](#) [1863] EngR 194; (1863) 1 H & C 769."

Mars Australia Pty Ltd v Sweet Rewards Pty Ltd [2009] FCAFC 174

Full Court of the Federal Court of Australia

Emmett, Bennett & Edmonds JJ (in Sydney)

Trade Practices Act 1974 (Cth) - alleged infringement of trade marks, passing off & misleading & deceptive conduct on part of respondent - for decision appealed from, see 'Benchmark' I, B & IBC Friday 12 June 2009 & link below - appeal dismissed.

[Mars Australia](#) (B)

[Mars Australia](#) - decision 5 June 2009 - ss52 & 53 *Trade Practices Act* 1974 (Cth) - intellectual property - allegations of passing off, misleading conduct, false representations & infringement of trade marks - Maltesers - whether ordinary consumer could be misled by respondent's product - application dismissed.

Basha v Vocational Capacity Centre Pty Ltd [2009] NSWCA 409

Court of Appeal of New South Wales

Tobias & McColl JJA; McClellan CJ

Personal injuries - appellant sustained aggravation of shoulder injuries during vocational assessment conducted by respondents - respondents on notice of appellant's recent shoulder surgery - whether breach of duty in proceeding with assessment rather than postponing it - damages - non-economic loss - review of primary judge's assessment as to severity of non-economic loss - past & future economic loss - domestic assistance - whether statutory threshold satisfied - ss15 & 16 *Civil Liability Act* 2002 (NSW) - cross-appeal dismissed - appeal allowed - primary judge's awards in respect of non-economic & economic loss set aside.

[Basha](#) (I)**Dwyer v Craft Printing Pty Ltd [2009] NSWCA 405**

Court of Appeal of New South Wales

Campbell, Macfarlan & Young JJA

Trade Practices Act 1974 (Cth) - *Fair Trading Act* 1987 (NSW) - misleading & deceptive conduct - appellant sole director guaranteed debts of corporation - corporation ceased to be contracting party with respondent; different corporation in group of companies continued to receive services - director liable - appeal dismissed.

[Dwyer](#) (I, B, C)

[Craft Printing](#) - District Court decision 7 April, 2009 - defendant director contending not liable for any indebtedness beyond the date company placed in liquidation - defendant denying unconscionable conduct or misleading and deceptive conduct - verdict for plaintiff.

Delmege v Chief Commissioner of State Revenue (No 2) [2009] NSWSC 1390

Supreme Court of New South Wales

Gzell J

Land Tax Management Act 1956 (NSW) - Chief Commissioner seeking approval to require persons to provide him with information or to produce documents under s72(1) *Taxation Administration Act* 1996 (NSW) - appropriate for Chief Commissioner to act under 72(1).

[Delmege](#) (B)

State of Queensland v Springfield Land Corporation (No 2) Pty Ltd & Anor [2009] QCA 381

Court of Appeal of Queensland

Keane & Fraser JJA; Atkinson J

Acquisition of Land Act 1967 (Qld) - for decision appealed from, see 'Benchmark' C & IBC Tuesday 16 June 2009 & link below - primary judge had held arbitrator had erred in law & made findings favourable to respondents - appeal dismissed.

[State of Queensland](#) (C)

[State of Queensland](#) - decision 10 June 2009 - *Commercial Arbitration Act 1990* (Qld) - resumption of first respondent's land at Springfield near Ipswich - valuation of transfer land - whether any enhancement for purposes of s20(3) *Acquisition of Land Act 1967* (Qld) - parties had been unable to agree on the amount of compensation so there was an arbitration - arbitrator had made an award under which the applicant was to pay to the respondents compensation assessed at \$1,468,806 - *Point Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565, distinguished - error of law - appeal allowed - award should be varied by substituting "nil" as the assessed compensation. *State of Queensland v Springfield Land Corporation (No 2) PTY LTD & Anor* [2009] QSC 143 at [25] - [26] (citation footnoted in original).

SLS Property Group PTY LTD v Townsville CC & Anor; Catchlove & Ors v Townsville CC & Ors [2009] QCA 380

Keane & Holmes JJA; Daubney J

Catchwords

Integrated Planning Act 1997 (Qld) - applicants had appealed to Planning & Environment Court for declarations that approval invalid - applications for leave to appeal refused.

[SLS Property Group](#) (C)

[SLS Property Group](#) - decision Planning & Environment Court of Queensland 3 April 2009

Westpac Banking Corporation & Ors v The Bell Group Ltd (in liq'n) & Ors [No 2] [2009] WASCA 223

Court of Appeal of Western Australia

Wheeler JA

Case management - complex litigation - directions in relation to length & format of grounds of appeal & of cross-appeal, & of written submissions on the appeal & cross-appeals.

[Westpac Banking Corporation](#) (I, B, C)

Clambake Pty Ltd v Tipperary Projects Pty Ltd [No 7] [2009] WASC 390

Supreme Court of Western Australia

E M Heenan J

Guarantee & indemnity - ss80 & 87 *Trade Practices Act* 1974 (Cth) - in proceedings number CIV 1707 of 2003, application for special rate of interest on judgment debt dismissed - in proceedings number CIV 2093: (i) new claim by first defendant Clambake for indemnity against defendant to counter-claim Mr Anderson for Clambake's liability to first plaintiff Owston dismissed; (ii) judgment for Mr Anderson on his cross-claim against Clambake for relief under s87; (iii) order for suspension of enforcement of judgment extended but on further conditions.

Clambake (I)

Clambake - decision 9 March 2009 : see 'Benchmark' Wednesday 11 March 2009 - negligence - nuisance - bailment - risk of fire - adequacy of fire protection system - insurance recommendations - action for damages for loss of property caused by fire at end of 2002 - fire started in roof of commercial property at Claremont - six separate tenancies - *Occupiers Liability Act* 1985 (WA) - misleading & deceptive conduct: ss52 & 82 *Trade Practices Act* 1974 (Cth) - *Fair Trading Act* 1987 (WA) - silence as misleading & deceptive conduct - alleged obligation to disclose deficiencies in fire protection system in leased premises - whether tenant would have removed property from premises if informed of alleged inadequacies in fire protection system - valuation of property - large collection of valuable & historic antiques, furniture, carpets, paintings - methods of valuation of rare collection of watercolour paintings of Australian bird life - claim for unpaid rent & outgoings - cross-claim for breach of covenant to insure against risks for public liability & fire - extent of liability - GST - whether claim for interest a penalty - set-off - liability of guarantor - costs - legal costs - ability of bailee to sue in its own name for entire value of property owned by bailor - a very lengthy judgment with comprehensive review of case law from the United Kingdom, Canada, New Zealand & Australia;

Clambake - decision 20 May 2009 - calculation of interest - taxation of costs - application to strike out amended claims - estoppel - res judicata - abuse of process - privity of interest - claims for relief under ss80 & 87 *Trade Practices Act* 1974 (Cth) - application for extension of order suspending execution of judgment - case management.