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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Sudha Natrajan v The Bank of East Asia Ltd (SGCA) - deed - avoidance - evidence did not support finding that appellant signed deed - appeal allowed (I B)

Minichit Bunhom v Jazali Bin Kastari & Anor (SGHC) - negligence - foreign worker injured in road accident in course of employment - no error in disallowance of medical expenses as head of special damages - appeal dismissed (I B)

AAHG, LLC v Albert Hong Hin Kay (SGHC) - conversion - wrongful conversion of shares in company - defendant to pay plaintiff value of shares - judgment for plaintiff (I B)

Tenser v Quigley (FCAFC) - costs - respondent to pay applicant's costs of defending respondent's claim - appeal allowed in part (I B)

Couttie v Bayside Council & Ors (VSC) - planning and environment - Tribunal erred in granting permit for development of land in Neighbourhood Residential Zone - appeal allowed - Tribunal's order set aside (I B C G)

GoConnect Ltd v Sino Strategic International Ltd (in liq) (VSCA) - corporations - application to set aside statutory demand on basis of genuine dispute dismissed - supplementary affidavits not admitted to evidence - leave to appeal refused (I B C G)

Thomas v Trades & Labour Hire Pty Ltd (in liq) & Anor (QCA) - negligence - driver and operator of tip truck injured when tailgate attached to tip truck dislodged and fell on foot - employer and host employer not liable - appeal dismissed (I B C G)

Geju Pty Ltd v Central Highlands Regional Council (No 3) (QSC) - costs - negligent misrepresentation - offers of settlement - successful plaintiff awarded indemnity costs against defendant (I B C G)

Staikopolous v City of West Torrens (SASC) - environment and planning - erroneous dismissal of appeal against Development Assessment Panel's refusal of application for development approval - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Sudha Natrajan v The Bank of East Asia Ltd [2016] SGCA 66

Court of Appeal of Singapore

Sundaresh Menon CJ, Judith Prakash JA & Tay Yong Kwang JA

Deed - avoidance - appeal concerned issue whether appellant executed a Deed of Assignment of Proceeds in duplicate on 10/1/14 - appellant testified she did not - primary judge found in respondent's favour - primary judge found appellant's evidence was not credible and drew adverse inference against appellant - inherent probabilities of case each party advanced - consideration of experts' opinions - handwriting analysis - standard of proof to establish forgery - held: Court concluded that on balance of probabilities evidence did not support finding appellant signed deed - appeal allowed.

[Sudha Natrajan](#) (I B)

Minichit Bunhom v Jazali bin Kastari & Anor [2016] SGHC 271

High Court of Singapore

See Kee Oon JC

Negligence - special damages - appellant was foreign worker injured in road traffic accident - only issue in proceedings was assessment of damages - appellant claimed special damages for medical expenses - appeal against decision in which District Judge disallowed medical expenses as head of special damages - whether employer had duty to bear cost of medical treatment for foreign worker's injuries in accident in which liability in third party was created - meaning of 'double recovery' when determining special damages where injured party had not borne and could not be liable to bear loss - held: no error in judgment of District Judge - appeal dismissed.

[Minichit Bunhom](#) (I B)

AAHG, LLC v Albert Hong Hin Kay [2016] SGHC 274

High Court of Singapore

Chua Lee Ming JC

Conversion - reversionary damage - restitution - unjust enrichment - plaintiff contended defendant wrongfully converted shares in company (Universal) - defendant had incorporated Universal - Universal sought loan from financing company (MEC) - under terms of loan, shares were to be transferred to MEC - defendant guaranteed payment of MEC loan - shares were registered in name of MEC's parent company (DVI) - defendant transferred shares to DVI - plaintiff contended defendant wrongfully converted the shares by transferring and/or procuring transfer of them from DVI to himself, and then transferring and/or causing transfer of them to another company (Columbia Asia) - held: defendant liable to pay damages to plaintiff for conversion of shares in Universal - defendant to pay plaintiff value of shares.

[AAHG](#) (I B)

Tenser v Quigley [2016] FCAFC 178

Full Court of the Federal Court of Australia

Nicholas, Katzmann & Markovic JJ

Costs - parties had business relationship as shareholders in company (Lunchalot) - relationship broke down - respondent sued applicant and Lunchalot for misleading or deceptive conduct and to recover money lent to Lunchalot - respondent also sought declarations and orders - primary judge ordered Lunchalot to pay amount to respondent and respondent to transfer his shares in Lunchalot and shares held by associates - primary judge dismissed applicant's cross-claim - primary judge required Lunchalot to pay 50% of respondent's costs and applicant to pay respondent's costs of defending cross-claim - applicant appealed - whether primary judge erred in not ordering respondent to pay applicant's costs of defending the respondent's claim, in making order concerning retransfer of 'Quigley Shares', or in costs orders in relation to cross-claim - held: each party had success in appeal - respondent to pay applicant's costs of defending respondent's claim - applicant failed in challenge to primary judge's order requiring applicant to pay respondent's costs of defending cross-claim - appeal allowed in part.

[Tenser](#) (I B)

Couttie v Bayside Council & Ors [2016] VSC 772

Supreme Court of Victoria

Emerton J

Planning and environment - plaintiffs sought to appeal against Civil and Administrative Tribunal's order setting aside authority's decision and granting a permit for development of land in Neighbourhood Residential Zone - statutory construction - whether failure to take relevant considerations into account - held: ground of appeal contending that Tribunal erred in failing to consider third purpose of Neighbourhood Residential Zone to 'limit opportunities for increased residential development' was made out - Tribunal also erred in not having regard to 'roof form and dormer windows' in context of Neighbourhood Character Policy's objective - appeal allowed - Tribunal's order set aside.

[Couttie](#) (I B C G)

GoConnect Ltd v Sino Strategic International Ltd (in liq) [2016] VSCA 315

Court of Appeal of Victoria

Santamaria & Kyrou JJA; Elliot AJA

Corporations - statutory demand - respondent demanded sum from applicant as a debt owed to it - applicant sought to set aside statutory demand - primary judge refused to admit applicant's supplementary affidavits into evidence, found there was no genuine dispute and dismissed application - applicant sought to appeal dismissal of application and also challenged primary judge's refusal to admit the supplementary affidavits - s459G *Corporations Act 2001* (Cth) - held: proposed grounds of appeal unsuccessful - leave to appeal refused.

[GoConnect](#) (I B C G)

Thomas v Trades & Labour Hire Pty Ltd (in liq) & Anor [2016] QCA 332

Court of Appeal of Queensland

Morrison & Philippides JJA; Flanagan J

Negligence - appellant injured during course of work as driver and operator of tip truck when tailgate attached to tip truck dislodged and fell on foot - appellant claimed damages in negligence from employer and host employer (Council) - trial judge found risk of injury to driver and operator was not reasonably foreseeable such as to give rise to duty of care to guard against risk, and that even if duty of care arose, claim would fail by lack of proof of causation - trial found no alleged deficiencies in system of work alleged had any causal bearing on accident - trial judge dismissed appellant's claim - s5 *Civil Liability Act 2003* (Qld) - ss305C, 306N, 306F & 306H *Workers' Compensation and Rehabilitation Act 2003* (Qld) - Sch 9 *Workers' Compensation and Rehabilitation Regulation 2003* (Qld) - held: trial judge erred in finding respondents did not breach duty of care - no error in finding on causation - appeal dismissed.

[Thomas](#) (I B C G)

Geju Pty Ltd v Central Highlands Regional Council (No 3) [2016] QSC 290

Supreme Court of Queensland

McMeekin J

Costs - negligent misrepresentation - plaintiff succeeded in claim for negligent misrepresentation against defendant - plaintiff disclosed settlement of separate claim against solicitors - plaintiff submitted, and defendant accepted, that assessed damages should be reduced by settlement amount - plaintiff also disclosed that it had made formal offers of settlement to defendant - plaintiff had achieved outcome no less favourable than offer - plaintiff sought indemnity costs - r360(1) *Uniform Civil Procedure Rules 1999* (Qld) - held: defendant failed to establish that order other than indemnity costs order was appropriate - plaintiff awarded indemnity costs.

[Geju](#) (I B C G)

Staikopolous v City of West Torrens [2016] SASC 183

Supreme Court of South Australia

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Parker J

Environment and planning - Commissioner dismissed appeal against Development Assessment Panel's refusal of application for development approval - Commissioner found he would have allowed appeal if land's suitability for intended use was the only consideration - Commissioner dismissed appeal on grounds not raised by Panel, holding proposed allotment inappropriate for intended use without significant tree's removal - held: Commissioner erroneously failed to have regard to terms of Principles of Development Control ('PDC') 3(a)(ii) and 3(e)(ii) - Commissioner erred in giving paramountcy to PDC 5 - Commissioner erroneously failed to take into account that common law provided a remedy in private nuisance relation to safety issue concerning overhanging limbs - appeal allowed.

[Staikopolous](#) (I B C G)

CRIMINAL

Executive Summary

Jonson v R (NSWCCA) - criminal law - recklessly inflicted grievous bodily harm - sexual intercourse without consent and knowledge of lack of consent - no error in findings of sentencing judge - appeal dismissed

R v Stapleton (No 2) (SASCFC) - criminal law - conviction for aggravated assault - fresh evidence - Court satisfied no reasonable jury could convict appellant - appeal allowed

Summaries With Link

Jonson v R [2016] NSWCCA 286

Court of Criminal Appeal of New South Wales

Bathurst CJ, Beazley P, Hall J, Bellew J & N Adams J

Criminal law - applicant pleaded not guilty, and was found guilty of, one count of recklessly inflicted grievous bodily harm (count 1) and two counts of sexual intercourse without consent and knowledge of lack of consent (counts 4 and 5) - applicant sentenced to nine years imprisonment, with non-parole period of six years and five months - applicant sought leave to appeal - applicant contended sentencing judge erred finding offences were aggravated due to being committed victim's home, erred in assessment of count 1's objective seriousness by double counting commission of offence in a child's presence, and erred in treatment of decision to plead not guilty - statutory construction - whether offender must be intruder for in victim's home for s21A(2)(eb) *Crimes (Sentencing Procedure) Act 1999* (NSW) to apply - held: no error in sentencing judge's findings - appeal dismissed.

[Jonson](#) (CL)



R v Stapleton (No 2) [2016] SASCFC 131

Full Court of the Supreme Court of South Australia

Kourakis CJ, Vanstone J & Chivell AJ

Criminal law - appellant convicted of aggravated assault against wife - first appeal against conviction dismissed - second appeal against conviction brought pursuant to s353A *Criminal Law Consolidation Act 1935* (SA) - material now before Court showed complainant had history of making false allegations for which she had no explanation - Updated Family Report prepared for Family Court proceedings had been tendered by appellant - psychiatrist's assessment in report found complainant traumatised by her childhood and that she suffered from dissociation episodes - held: Court satisfied in light of the fresh evidence that no reasonable jury could convict appellant - appeal allowed.

[Stapleton](#)

Benchmark

Sun of God
By David Conolly

No need to search the skies.
light

The light is here,
places
down here –
everywhere.
world.

Shimmering
Light
in people
source
whose lives
banish
rejection,
bitterness,
know
indifference,
fear.
they shine.

They beam

to reach
the shadow

in us
and our poor

from the Light-

whose birth
we celebrate.

They don't

they do it.
That's why

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