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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)

Swire Pacific Ship Management (Australia) Pty Ltd v Bose (FCA) - workers compensation - injury did not result from *reasonable disciplinary action* - appeal dismissed (I)

Razdan v Westpac Banking Corporation (NSWCA) - contract - margin lending facility - no misleading, deceptive or unconscionable conduct by bank - appeal dismissed (B)

Nefiko Pty Ltd v Statewide Form Pty Ltd (NSWSC) - security of payments - no material failure by adjudicator to comply with natural justice - interlocutory relief refused (C)

Bateman v Fairfax Media Publications Pty Ltd (NSWSC) - pleadings - defamation - defences - application of newspaper rule to defences of honest opinion and comment of stranger (I)

Boerkamp v The Hon Matthew Guy (VSC) - administrative law - standing to challenge Minister's decision to prepare, adopt and approve planning development amendment (C G)

SeaRoad Logistics v Patricks Stevedores (VSC) - leases and tenancies - proper construction of head lease and sublease - rent review clause - obligation to pay rent increase (B)



Queensland Building & Construction Commission v Robuild Pty Ltd (QCA) - administrative law - Commission failed to properly serve notice of infringement on company - leave to appeal refused (C G)

Summaries with links (5 minute read)

Swire Pacific Ship Management (Australia) Pty Ltd v Bose [2014] FCA 378

Federal Court of Australia

Siopis J

Workers compensation - worker employed as a chief engineer - worker developed major depressive disorder following disciplinary action including order to leave his vessel - worker was refused compensation under *Seafarers Rehabilitation and Compensation Act 1992 (Cth)* - employer appealed from decision of Administrative Appeals Tribunal that worker was entitled to compensation - AAT found worker suffered a major depressive disorder contributed to in material degree by actions of employer - AAT also found injury caused by disciplinary action which was not reasonable in that worker was not given an opportunity to be heard and was denied procedural fairness - ss3, 10(4) & 26(1) - *injury* - exemption for *reasonable disciplinary action* - held: AAT did not err in approach to question whether exclusion in respect of *reasonable disciplinary action* applied – steps leading to disciplinary decision were not disciplinary action - AAT did not misconstrue content of test whether *disciplinary action* was *reasonable disciplinary action* within meaning of the definition in s3 - appeal dismissed.

[Swire Pacific Ship Management \(Australia\) \(I\)](#)

Razdan v Westpac Banking Corporation [2014] NSWCA 126

Court of Appeal of New South Wales

McCull & Macfarlan JJA; Bergin CJ in Eq

Contract - appellant entered margin lending facility with bank - facility went into margin call during GFC - bank employee told lender that if gearing ratio reached around 95% bank would immediately sell portfolio - Westpac sold portfolio - proceeds of sale were less than amount outstanding on loan - appellant unable to pay shortfall - bank sought to recover amount - appellant filed cross-claim alleging that if sale had occurred as soon as the ratio reached 95% he would not have suffered loss and pleading misleading and deceptive conduct, unconscionable conduct, estoppel and breach of implied term to act reasonably and in good faith - primary judge entered verdict for bank - held: employee's statement was not a representation for purposes of s51A *Trade Practices Act 1974 (Cth)*, s41 *Fair Trading Act 1987 (NSW)* and s12BB *Australian Securities and Investments Commission Act 2001 (Cth)* because bank's conduct did not have tendency to lead appellant into error and reasonable person in his position would not have treated statement as made with intention of inducing him to take particular action - no link between representation and



loss - reliance not demonstrated - no estoppel - assuming term of reasonableness and good faith was implied into facility bank did not breach term - no unconscionable conduct by bank - appeal dismissed.

[Razdan](#) (B)

Nefiko Pty Ltd v Statewide Form Pty Ltd [2014] NSWSC 442

Supreme Court of New South Wales

Ball J

Security of payments - interlocutory injunction - defendant engaged to perform construction work on house for owner who lived in it - defendant served payment claim under *Building and Construction Industry Security of Payment Act 1999* (NSW) and notice of intention to lodge adjudication application - plaintiff asserted adjudicator did not have jurisdiction because contract was not between defendant and plaintiff but with owner of house and that Act's operation was excluded by s7(2)(b) as residential building work - plaintiff sought interlocutory injunction restraining defendant from enforcing adjudication determination on basis adjudicator failed to comply with rules of natural justice - held: Court not satisfied any material failure on adjudicator's part to provide natural justice - adjudicator took into account all relevant factual matters referred to in submissions - interlocutory relief refused.

[Nefiko](#) (C)

Bateman v Fairfax Media Publications Pty Ltd [2014] NSWSC 400

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - doctor alleged a number of defamatory imputations conveyed by newspaper articles - doctor objected to pleaded defences of honest opinion, comment and fair report - application of *newspaper rule* about disclosure of identity of sources - ss29(1) & 31(3) *Defamation Act 2005* (NSW) - held: newspaper had acknowledged identity of sources was a fact relevant to positive defences raised - it would derogate from overriding purpose of s56 *Civil Procedure Act 2005* (NSW) to allow provision of necessary particulars to be deferred - defences of honest opinion of commentator and comment of a stranger to be struck out unless defendants provide particulars identifying persons whose honest opinion or comment is relied on - application to have defence of fair report struck out refused.

[Bateman](#) (I)

Boerkamp v The Hon Matthew Guy [2014] VSC 167

Supreme Court of Victoria

Emerton J

Administrative law - standing - proposed development of golf course and recreational facility - plaintiff, who had challenged an earlier proposal, challenged Minister's decision to intervene and to prepare, adopt and approve planning scheme amendment - plaintiff sought declarations Minister's decision was contrary to law and void - Minister contended plaintiff did not have standing to seek relief because he did not have special interest in validity of amendment - ss17, 18, 19, 20(4), 57 &



82 *Planning & Environment Act 1987* (Vic) - held: plaintiff was valid objector to development and entitled to bring proceedings in Victorian Civil and Administrative Tribunal seeking review of local Council's decision to grant permit for use and development of land - plaintiff had standing based principally on his position as applicant in VCAT proceedings and because of his interest in another golf course – Minister's intervention deprived him of opportunity to have VCAT review conditions to which development was subject.

[Boerkamp](#) (C G)

SeaRoad Logistics v Patricks Stevedores [2014] VSC 170

Supreme Court of Victoria

Almond J

Leases and tenancies - defendant provided port stevedoring, transport and logistics services - plaintiff provided freight forwarding and logistics services - defendant leased land (cargo terminal) from head lessor - defendant agreed to sell and assign freight forwarding business to plaintiff - sale agreement required defendant to sublease part of cargo terminal to plaintiff for term of head lease including any options as exercised by plaintiff - plaintiff took possession of subleased land from defendant - plaintiff objected to rent increase proposed under agreed sublease - proper construction of head lease and sublease - held: rent review clause of head lease was incorporated by reference into agreed sublease with necessary modifications - regime for rent review agreed sublease was same as regime for rent review under head lease - plaintiff obliged to pay 80 per cent of rent increase as provided for under provisions of clause incorporated in agreed sublease.

[SeaRoad Logistics](#) (B)

Queensland Building & Construction Commission v Robuild Pty Ltd [2014] QCA 81

Court of Appeal of Queensland

Holmes & Muir JJA; Applegarth J

Administrative law - tribunal member found Commission had not effected service of infringement notice on company for offence under s72(10) *Queensland Building Services Authority Act 1991* (Qld) - tribunal member found Commission had not served notice at licensee's address in register of licensees in accordance with s109A(1) and that Commission could not show it had served notice under s39 because it failed to establish whether address was principal place of business or an office - Queensland Civil and Administrative Tribunal refused leave to appeal from tribunal member's decision - service of documents - service by post in ss39 & 39A *Acts Interpretation Act 1954* (Qld) (AIA) - ss72(10), 99 & 109 *Queensland Building Services Authority Act 1991* (Qld) - s150 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) - held: appeal tribunal member found s109A expressed contrary intention to application of AIA because it referred specifically to address in register of licensees - Court found s109A made clear a more expansive view of service including means of service available under s39 AIA - however no injustice in error or reason to suppose different outcome would be produced - leave to appeal refused.

[Queensland Building & Construction Commission](#) (C G)

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