

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Watts v Bendigo & Adelaide Bank Ltd - *Bankruptcy Act 1966* (Cth) - stay application pending final judgment in appeal - application for return of passports from trustee & permission to travel overseas (B)

HFGC Nominees (No 2) Pty Ltd v Hancock as Liquidator of 246 Arabella Investments Pty Ltd (in liq'n) - *s511 Corporations Act 2001* (Cth) - first & second plaintiff seeking order that would permit second plaintiff to use taxpayer's name to pursue appeal on its behalf in Administrative Appeals Tribunal from Commissioner's objection decision (B)

Astram Financial Services Pty Ltd v Bank of Queensland Ltd - *Trade Practices Act 1974* (Cth) - owner managed branch agreement - guarantee & indemnity for business term loan - allegations of misleading and/or deceptive conduct (s52); unconscionable conduct (s51AC) - trusts (I, B)

Goodwin v Commissioner of Police - *Police Regulation (Superannuation) Act 1906* (NSW) - "hurt on duty" - causal connection (I)

Nicholls v Michael Wilson & Pnrs Ltd - Employment law - declarations - reasonable apprehension of bias - appeal allowed (I, B, C)



Downey v Acting District Court Judge Boulton (No 5) - Constitutional law - judicial review - apprehended bias - court attendance notices - "partly heard" - appeal dismissed (I)

Workers Compensation Nominal Insurer v Detailed Flooring Pty Ltd - *Corporations Act 2001* (Cth) - winding up terminated on undertakings (I, B)

Citigroup v CrediProtect - *Trade Practices Act 1974* (Cth) - sale of debt book - whether deed of sale & deed of guarantee obtained by unconscionable conduct (B)

Sapwell v Lusk & Anor - Personal injuries - employer's duty of care - safe system of work - plaintiff assaulted by customer when alone at work - assesment of damages - judgment for plaintiff (I)

Summaries with links (5 minute read)

Friday 17 September 2010

Watts v Bendigo & Adelaide Bank Ltd [2010] FCA 1013

Federal Court of Australia

Yates J (in Sydney)

Bankruptcy Act 1966 (Cth) - stay application pending final judgment in appeal granted - application for return of passports from trustee & permission to travel overseas granted with conditions - Australian case law considered.

[Watts](#) (B)

HFGC Nominees (No 2) Pty Ltd v Hancock as Liquidator of 246 Arabella Investments Pty Ltd (in liq'n) [2010] FCA 1005

Federal Court of Australia

Perram J (in Sydney)

s511 *Corporations Act 2001* (Cth) - taxpayer was lessor of premises at South Dowling Street, Surry Hills at which business conducted - following an audit of taxation affairs of taxpayer



Commissioner disallowed interest expenses as a deduction & imposed penalties & interest - taxpayer in liquidation & first defendant liquidator, declined to pursue appeal from Commissioner's objection decision - second plaintiff a shareholder of taxpayer & holds his shares on trust for two other family trusts of which first plaintiff the trustee - first & second plaintiff seeking order that would permit second plaintiff to use taxpayer's name to pursue appeal on its behalf in Administrative Appeals Tribunal from Commissioner's objection decision - second plaintiff entitled to order granting him leave to pursue Tribunal proceedings in name of taxpayer - first plaintiff's application dismissed as was the balance of second plaintiff's claims.

[HFGC Nominees \(No 2\)](#) (B)

Astram Financial Services Pty Ltd v Bank of Queensland Ltd [2010] FCA 1010

Federal Court of Australia

Buchanan J (in Sydney)

Trade Practices Act 1974 (Cth) - owner managed branch agreement ("OMB") first applicant the company established to conduct franchise - contracts - guarantee & indemnity for business term loan - allegations of misleading and/or deceptive conduct (s52); unconscionable conduct (s51AC); breach of statutory franchising code of conduct by which Bank was bound (s51AD) - claims not established - cross-claim by Bank - "tendency" evidence - trusts - trustee remains personally liable even if documents were signed as trustee - first, second & third applicants jointly & severally liable for respondent's costs of & in connection with application & cross claim.

[Astram Financial Services](#) (I, B)

Goodwin v Commissioner of Police [2010] NSWCA 239

Court of Appeal of New South Wales

McColl & Basten JJA; Sackville AJA

Police Regulation (Superannuation) Act 1906 (NSW) - "hurt on duty" - causal connection between traumatic events & diagnosis of post-traumatic stress disorder - causal connection between PTSD & major depressive illness - s142N *District Court Act 1973* (NSW) - award of the Court "in point of law" - appeal allowed - District Court judgment set aside - matter remitted.

[Goodwin](#) (I)



Nicholls v Michael Wilson & Pnrs Ltd [2010] NSWCA 222

Court of Appeal of New South Wales

Basten & Young JJA; Lindgren AJA

Employment law - declarations - reasonable apprehension of bias - respondent company incorporated in British Virgin Islands & carrying on business in Kazakhstan - London arbitration - appeal & cross-appeal - primary judge had made declarations of various classes of wrongdoing and an order that in consequence appellant was liable, jointly & severally with the other four appellants to pay to respondent (the plaintiff below) the sums of \$US3,508,793, €555,258 & \$AUS4,000,000 - primary judge had made declarations of breach of fiduciary duty, breach of contract, inducement of breach of contract, & conspiracy to injure by unlawful means, also numerous declarations of accessory liability, including accessory liability under second limb of rule in *Barnes v Addy* & knowing participation in breaches of duty - primary judge had dismissed an application by appellants for dismissal of proceeding as an abuse of process - appeal allowed - declarations & orders made by primary judge set aside - comprehensive consideration of legislation, text & case law.

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

[Wilson](#) - decision 6 October 2009: see 'Benchmark' I, B & IBC Thursday 8 October 2009 - employment law - fiduciary obligations - when & to what extent employees may owe fiduciary obligations to employer - accessory liability - confidential information - conspiracy to defraud - interference with contractual relations - causation - defendants claiming proceedings amount to an abuse of process - equitable remedies - identifying the appropriate remedy in the case of a breach of fiduciary obligation - monetary compensation - causation - text & case law from the United Kingdom, Australia, Canada & New Zealand considered.

[Wilson](#) - decision 11 December 2009: see 'Benchmark' Tuesday 2 February 2010 - employment law - fiduciary obligations - equitable compensation - joint & several liability - for decision 6 July 2009, see 'Benchmark I, B & IBC Thursday 8 October 2009 & link below - *'nullus commodum capere potest de injuria sua propria'* principle (*'no man can take advantage of his own wrong'*) - text & case law from the United Kingdom & Australia considered.

Downey v Acting District Court Judge Boulton (No. 5) [2010] NSWCA 240

Court of Appeal of New South Wales

Allsop P; Basten & Macfarlan JJA

Constitutional law - judicial review - apprehended bias - appointment of Acting Judges - court attendance notices - *Prevention of Cruelty to Animals Act 1979* (NSW) - s18(3A) *District Court Act 1973* (NSW) - "partly heard" - appeal dismissed - comprehensive consideration of legislation & case law from the United Kingdom & Australia.

[Downey](#) (I)



Workers Compensation Nominal Insurer v Detailed Flooring Pty Ltd [2010] NSWSC 1056

Supreme Court of New South Wales

Barrett J

Corporations Act 2001 (Cth) - application by creditor/contributory/director for order setting aside winding up order or alternatively, terminating the winding up - standing of creditor or contributory to seek order setting aside winding up order - held any such application must be by the company - company cannot apply at instigation of officers except with s471A(1A) approval - winding up terminated on undertakings.

[Workers Compensation Nominal Insurer](#) (I, B)

Citigroup v CrediProtect [2010] NSWSC 1054

Supreme Court of New South Wales

McDougall J

Trade Practices Act 1974 (Cth) - sale of debt book - whether deed of sale & deed of guarantee obtained by unconscionable conduct - misleading or deceptive conduct - unconscionability - Citigroup entitled to judgment for amount claimed - cross-claim failed.

[Citigroup](#) (B)

Sapwell v Lusk & Anor [2010] QSC 344

Supreme Court of Queensland

Atkinson J

Personal injuries - employer's duty of care - safe system of work - plaintiff was employed by defendants as optical technician in optometry shop - plaintiff sexually assaulted by customer when alone at work - risk of injury to plaintiff was foreseeable - plaintiff developed severe post traumatic stress disorder, depression & anxiety following the assault - where employer owes a duty of care to employees to provide a safe system of work - employer owes duty of care to employees to take reasonable care to protect employees from the criminal behaviour of third parties - whether defendants had breached their duty to take reasonable care to avoid the foreseeable risk of injury to plaintiff - assessment of damages - gross assessment at \$496,846.74, less agreed refund to WorkCover \$109,212.92 - judgment for plaintiff in net sum of \$387,633.82.

[Sapwell](#) (I)

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