



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Suzlon Energy Ltd v Bangad (Application of Credit Suisse Group SA) & Ors - Misnomer of party - amendment - costs (B, C)

Owners Corporation Strata Plan 64757 v MJA Group Pty Ltd - ss18C & 18E *Home Building Act* 1989 - s34 *Civil Liability Act* 2002 (NSW) - "completion of the work" in s18E - appeal dismissed (I, C)

Bayblu Holdings Pty Ltd v Capital Finance Australia Ltd - s420A *Corporations Act* 2001 (Cth) - caveats - interlocutory injunctions - application for leave to appeal dismissed (B, C)

Daniel Nassar & Marfern Pty Ltd v Innovative Precasters Group Pty Ltd (in liq'n) & Ors - *Corporations Act* 2001 (Cth) - application by liquidator for order to distribute a surplus (B)

Franchise Central (Australia) Pty Ltd & Ors v Fairfax Media Publications Pty Ltd & Anor - Defamation - amendment of pleadings - imputations (I, B)

Box v Mater Misericordiae Health Services Brisbane Ltd - Uniform Civil Procedure Rules 1999 (Qld) - Practice Direction - experts (I)



Bridgeport Pty Ltd v Yelyruss Pty Ltd (in liq) & Anor - *Personal Injuries Proceedings Act 2002 (Qld)* - leave sought to add a company as a contributor for purposes of Part 1 of the Act (I)

Michael Oscar Basedow as Administrator of First Growth Funds Ltd (Administrator app'd) - *Corporations Act 2001 (Cth)* - Administrator applying for directions under s447D(1) (B)

Steadman v London United Busways Ltd & Anor – United Kingdom decision - personal injuries - claimant passenger on bus thrown from her seat - trial of preliminary issue of liability as between the two defendants (I)

Grimes v Hawkins & Anor – United Kingdom decision - personal injuries - occupiers liability - dive into swimming pool at home of first defendant - trial of the issue of the liability of first defendant (I)

Bodey v Hall - United Kingdom decision - personal injuries - injury whilst travelling as groom in a pony & trap - *Animals Act 1971 (United Kingdom)* (I)

Go Dante Yap v Bank Austria Creditanstalt AG - Singapore decision - negligence - contracts - duty of care - duty to advise - proximity - Asian financial crisis of 1997 - appeal dismissed (I, B)

Summaries with links (5 minute read)

Thursday 18 August 2011

Suzlon Energy Ltd v Bangad (Application of Credit Suisse Group SA) & Ors [2011] FCA 921

Federal Court of Australia

Rares J

Misnomer of party - amendment to correct a mistake in name or identity of a party by substituting another - distinguishing misnomer from misjoinder - costs.

[Suzlon](#) (B, C)



Owners Corporation Strata Plan 64757 v MJA Group Pty Ltd [2011] NSWCA 236

Court of Appeal of New South Wales

Allsop P, Macfarlan & Young JJA

ss18C & 18E *Home Building Act* 1989 - s34 *Civil Liability Act* 2002 (NSW) - statutory interpretation - construction of notional contract - what is meant by "completion of the work" in s18E - whether a claim under s18C is an action for damages from a failure to take reasonable care discussed at par 52 - respondent owner of site at Francis Street, Dee Why - redevelopment on building on that site so as to create residential units - appellant sued in District Court - question as to was whether claim had been made within the statutory time limit primary judge held it had not - appeal dismissed.

[Owners](#) (I, C)

Bayblu Holdings Pty Ltd v Capital Finance Australia Ltd [2011] NSWCA 39

Court of Appeal of New South Wales

Tobias, Campbell & Macfarlan JJA

s420A *Corporations Act* 2001 (Cth) - caveats - interlocutory injunctions - first applicant constructed eight beach houses at Blue Bay & remained the registered proprietor of six of those properties which were mortgaged to the respondent - second applicant guarantor of mortgage debt - [Inglis v Commonwealth Trading Bank of Australia](#) (1971) 126 CLR 161 - receivers, managers & controllers - duties of controller - application for leave to appeal dismissed - extensive consideration of Australian text & case law.

[Bayblu](#) (B, C)

[Capital Finance](#) - decision 2 February 2011 - application by plaintiff for removal of caveats lodged by defendants on the title to land at Blue Bay - first defendant registered proprietor - plaintiff the first registered mortgagee, & second defendant guarantor - plaintiff owed in excess of \$8 million - plaintiff raising legal issue as to whether the interest claimed by first defendant as registered proprietor could give rise to a valid equitable interest - reasoning of Needham J in [Sinclair v Hope Investments](#) [1982] 2 NSWLR 870 - removal of caveats ordered;

[Inglis](#) - decision High Court of Australia 28 April 1972

Daniel Nassar & Marfern Pty Ltd v Innovative Precasters Group Pty Ltd (in liq'n) & Ors [2011]

NSWSC 889

Supreme Court of New South Wales

Hammerschlag J



Corporations Act 2001 (Cth) - application by liquidator for order to distribute a surplus - order pursuant to s488 for adjustment between contributories & distribution of surplus.

[Daniel](#) (B)

Franchise Central (Australia) Pty Ltd & Ors v Fairfax Media Publications Pty Ltd & Anor [2011] VSC 379

Supreme Court of Victoria

Beach J

Defamation - amendment of pleadings - imputations - plaintiffs seeking leave to file eighth statement of claim - first defendant publisher of BRW magazine - second defendant was employed by first defendant as journalist - first plaintiff a company that provides consultancy services in relation to franchising businesses - second plaintiff a director of first plaintiff - third plaintiff employee of first plaintiff - defendants published two articles in BRW; articles were also published on a website accessible to paid subscribers - plaintiffs granted leave to file and serve further amended statement of claim in the form of the eighth statement of claim & amended in conformity with these Reasons - second & third plaintiffs to provide further & better particulars.

[Franchise](#) (I, B)

Box v Mater Misericordiae Health Services Brisbane Ltd [2011] QSC 238

Supreme Court of Queensland

Fryberg J

Uniform Civil Procedure Rules 1999 (Qld) - Practice Direction - calling of named expert at trial - application dismissed.

[Box](#) (I)

Bridgeport Pty Ltd v Yelyruss Pty Ltd (in liq) & Anor [2011] QSC 237

Supreme Court of Queensland

Fryberg J

Personal Injuries Proceedings Act 2002 (Qld) - leave sought to add a company as a contributor for purposes of Part 1 of the Act in respect of claim made by second respondent to the application against the applicant - proposed first respondent in liquidation - service of Notice of Contribution - second respondent to application a plasterer - injury on building site - leg cut on glass - application dismissed.

[Bridgeport](#) (I)



Michael Oscar Basedow as Administrator of First Growth Funds Ltd (Administrator app'd)
[2011] SASC 132

Supreme Court of South Australia

Judge Burley a Master of the Supreme Court

Corporations Act 2001 (Cth) - Administrator applying for directions under s447D(1) - assignment & share transfer agreements - Administrator wishes to dispose of carbon assets - appropriate for Administrator to have entered into the assignment & the share transfer agreement.

[Michael](#) (B)

From the United Kingdom ...

Steadman v London United Busways Ltd & Anor [2011] EWHC 2136 (QB)

High Court of England & Wales, Queen's Bench Division

Swift J

Personal injuries - claimant passenger on bus operated by first defendant & being driven by their employee, Stephen Atkinson - bus was driving along Kensington High Street behind car driven by second defendant - late afternoon on a weekday - bus-driver braked, halting the bus - claimant thrown from her seat & struck her head - tetraplegia - trial of preliminary issue of liability as between the two defendants; that order was subject to an undertaking being given by first defendant that, if the Court should find that the second defendant was not negligent, first defendant would meet the claimant's claim in full - finding of no negligence on part of second defendant - first defendant's claim against second defendant dismissed.

[Steadman](#) (I)

Grimes v Hawkins & Anor [2011] EWHC 2004 (QB)

High Court of England & Wales, Queen's Bench Division

Justice Thirwall

Personal injuries - occupiers liability - dive into swimming pool at home of first defendant - tetraplegia - claimant's case that the injury to her cervical spine was aggravated by negligent treatment she received at hospital, the second defendant - hospital admitted breach of duty but denied causation - first defendant denied liability - trial of the issue of the liability of first defendant - expert evidence - first defendant not in breach of his duty to claimant under *Occupiers*



Liability Act 1957 (United Kingdom)- duty of care at common law - claim in negligence against first defendant also failed.

[Grimes \(I\)](#)

Bodey v Hall [2011] EWHC 2162 (QB)

High Court of England & Wales, Queen's Bench Division

David Pittaway QC (sitting as a Deputy Judge of the Queen's Bench Division)

Personal injuries - injury whilst travelling as groom in a pony & trap driven by defendant Mrs Hall on a country lane in Berkshire - horse became startled by an unknown stimulus & shot forward - severe head injury - no riding hat - claim had been pleaded in negligence, & strict liability under *Animals Act 1971 (United Kingdom)* - as the trial proceeded the allegation that Mrs Hall had acted negligently was not pursued & reliance was placed solely on s2 of the Act - liability for damage done by dangerous animals - the Court satisfied claimant fully appreciated risk that she was exposed to whilst being driven in pony & trap on the day of the accident.

[Bodey \(I\)](#)

From Singapore ...

Go Dante Yap v Bank Austria Creditanstalt AG [2011] SGCA 39

Court of Appeal of Singapore

Chao Hick Tin, Andrew Phang Boon Leong & V K Rajah JJA

Negligence - contracts - duty of care - duty to advise - proximity - dispute regarding losses suffered in appellant's investment portfolio following Asian financial crisis of 1997 - appellant claimed sixteen investments entered into by respondent in his name were not authorised by him - appellant contending respondent owed him a duty to advise whether to make, hold or dispose of investments - appellant claiming breach of contractual & tortious duties - primary judge dismissed claim - appeal dismissed - extensive consideration of text & case law from Singapore, United Kingdom & Australia.

[Go Dante \(I, B\)](#)

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