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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)

**Bindah v Carter Holt Harvey Woodproducts Australia Pty Ltd** (NSWCA) - workers compensation - permanent impairment did not result from workplace injury - appeal dismissed (I G)

**JK v State of NSW** (NSWSC) - negligence - school teacher guilty of criminal misconduct towards student ordered to indemnify State and pay 90% of consent judgment (I G)

**Epov v Epov; Epov v Epov** (NSWSC) - succession - family provision orders granted to widow and child of deceased by prior marriage (B)

**Commonwealth Bank of Australia v Roskott (No.2)** (NSWSC) - mortgage - default judgment - stay of writ of possession pending appeal refused (B)

**Seabreeze Manly v Toposu** (NSWSC) - security of payments - arrangement between parties was a construction contract - challenge to determination failed (C)

**Siemens Ltd v Forge Group Power Pty Ltd (in liq)** (WASC) - equity - interlocutory injunction - insolvent company restrained from recourse to bank guarantees (I B C)



**BGM v Australasian Lawyers Group Pty Ltd t/as Butlers Barristers & Solicitors (WASC) - solicitors - costs agreement not fair and reasonable and set aside (I)**

## Summaries with links (5 minute read)

### **Bindah v Carter Holt Harvey Woodproducts Australia Pty Ltd [2014] NSWCA 264**

Court of Appeal of New South Wales

Meagher, Ward & Emmett JJA

Workers compensation - worker injured in course of employment sought compensation under *Workers Compensation Act 1987* (NSW) - employer rejected worker's claim for compensation for permanent impairment - Appeal Panel of Workers Compensation Commission confirmed medical assessment certificate that stated permanent impairment did not result from workplace injury - applicant sought to appeal from primary judge's dismissal of application for judicial review - ss4, 9, 9A, 16, 65, 65A, 66 & 67 *Workers Compensation Act 1987* (NSW) - ss 105, 288, 289, 293, 294, 319, 320, 321, 323, 324, 325, 326, 327, 328, 329 & 366 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - whether Appeal Panel wrongly determined liability and causation in place of an arbitrator - whether arbitrator characterised injury as a *frank injury* or as exacerbation or aggravation of pre-existing condition - *injury* - construction of Appeal Panel's Certificate of Determination - held: no error on part of primary judge - Appeal Panel had asked and answered correct question - no error in construction of consent determination - no constructive jurisdictional error or non-jurisdictional error on face of record by Panel - appeal dismissed.

[Bindah](#) (I G)

### **JK v State of NSW [2014] NSWSC 1084**

Supreme Court of New South Wales

Harrison AsJ

Negligence - plaintiff claimed she suffered psychiatric injury as result of sexual assaults by teacher at school where she had been a student - plaintiff sued NSW, the school's principal and the deputy principal - consent judgment entered - NSW sought indemnity or contribution from teacher - s5B *Civil Liability Act 2002* (NSW) - ss3 & 5 *Employees Liability Act 1991* (NSW) - non delegable duty of care - held: Court satisfied settlement sum was reasonable - unlikely Court would have found sufficient connection between teacher's employment and teacher's wrongful acts - more likely Court would have found school authority was not aware teacher was involved in sexual assaults committed upon plaintiff which took place off school premises and outside school hours and that it was not vicariously liable for teacher's behaviour - teacher ordered to indemnify NSW - Court satisfied nearly all fault could be attributed to teacher's actions - just and equitable that teacher pay 90% of judgment sum.

[JK](#) (I G)

**Epov v Epov; Epov v Epov [2014] NSWSC 1086**

Supreme Court of New South Wales

Hallen J

Succession - deceased's widow and child by a prior marriage sought family provision orders - Ch3 *Succession Act 2006* (NSW) - defendant was also deceased's child by prior marriage and was beneficiary named in will - adequacy of provision - defendant's legitimate claims upon deceased's bounty and deceased's obligation and responsibility to provide for him - held: no dispute each applicant was an *eligible person* under s57(1) - Court satisfied deceased did not make adequate provision for proper maintenance and advancement in life for each of each of the applicants by his will - provision orders made.

[Epov \(B\)](#)**Commonwealth Bank of Australia v Roskott (No.2) [2014] NSWSC 1093**

Supreme Court of New South Wales

Garling J

Stay - mortgage - applicants defaulted under terms and conditions of loan facility provided by bank - bank commenced proceedings against applicants - applicant's defence concerning Bill of Exchange struck out - bank granted default judgment - applicants sought stay of writ of possession on basis it was in interests of justice to preserve their ownership and possession of home pending hearing and determination of appeal - held: prospects of success on appeal only minimal - no existence of particular hardship in case of applicants - Court unpersuaded interests of justice required stay - application refused.

[Commonwealth Bank of Australia \(B\)](#)**Seabreeze Manly v Toposu [2014] NSWSC 1097**

Supreme Court of New South Wales

McDougall J

Security of payments - developer sought to restrain enforcement of adjudicator's determination made under *Building and Construction Industry Security of Payment Act 1999* (NSW) in favour of first defendant subcontractor - whether there was a *construction contract* as defined in the Act between developer and subcontractor - *arrangement* - multilateral arrangement - ss4, 8 & 13 - evidence demonstrated there was an arrangement under which subcontractor undertook to perform construction work for developer's project for benefit of developer - subcontractor did work on an express and accepted basis that developer undertook to pay it and was liable to pay it directly for the work done - developer under contract with builder had instructed builder to give work to subcontractors including first defendant on that basis - developer accepted an obligation to pay subcontractor direct for work done - arrangement amounted to a construction contract between the parties - challenge to determination failed.

[Seabreeze Manly \(C\)](#)

**Siemens Ltd v Forge Group Power Pty Ltd (in liq) [2014] QSC 184**

Supreme Court of Queensland

P McMurdo J

Equity - interlocutory injunction - contract - Siemens sought interlocutory injunction to restrain insolvent company from recourse to three bank guarantees given in respect of construction of a power station - conceded that there was a serious question to be tried - s471B *Corporations Act 2001* (Cth) - held: Siemens demonstrated likelihood of losses for which it could not be adequately compensated by award of damages - loss of reputation difficult to quantify fairly and in any case was a loss which Siemens would have to recover from an insolvent party - balance of convenience favoured injunction - injunction granted on usual undertaking by Siemens that it would prosecute proceeding with due diligence and undertaking to provide security.

[Siemens Ltd](#) (I B C)**BGM v Australasian Lawyers Group Pty Ltd t/as Butlers Barristers & Solicitors [2014] WASC 290**

Supreme Court of Western Australia

Master Sanderson

Solicitors - costs agreement - client sought to set aside a costs agreement he entered into with solicitor on grounds it was not fair and reasonable under s288(2) *Legal Profession Act 2008* (WA) - construction of costs agreement - whether increase in rates deterred client from using solicitor's services - whether client would have settled with former wife if aware of full amount of outstanding costs - disclosure - held: solicitor failed to comply with all disclosure obligations under Pt 10 - solicitor did not comply with requirement to provide client with a reasonable estimate of amount of legal costs payable by the client if matter settled - client was sophisticated client who understood provisions of costs agreement - however, costs agreement was not fair or reasonable - agreement did not ensure documents provided to the client were internally consistent - costs agreement set aside under s288.

[BGM](#) (I)

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