

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3) - Application that one United Kingdom witness & another potential witness, also in the United Kingdom, be permitted to present themselves for cross-examination there by video link, rather than travelling to Australia (I, B, C)

Huntingdale Village Pty Ltd (Receiver & Managers App'd), in the matter of Huntingdale Village Pty Ltd (Receiver & Managers App'd) - s1337H *Corporations Act* 2001 (Cth) - transfer of civil proceedings from Federal Court to Supreme Court of Western Australia (I, B, C)

Guthrie v Spence - *Limitation Act* 1969 (NSW) - "cause of action" - "substantially" - "affairs" - "management of his or her affairs" (I)

Meriton Apartments Pty Limited v Fair Trading Administration Corporation - *Building Services Corporation Act* 1989 (NSW) now *Home Building Act* 1989 (NSW) - statutory indemnification schemes for home owners including Comprehensive Insurance Scheme (I, C)

Praetorin Pty Ltd v TZ Ltd - s247A *Corporations Act* 2001 (Cth) - application for order granting plaintiffs access to certain documents (B)

Cosentino v Kent & Anor - Torts - malicious prosecution - application for leave to appeal refused (I)

Syben v Mackay TFS Pty Ltd - Assessment of damages - personal injuries - resultant injury - whether s308C *Workers' Compensation & Rehabilitation Act* 2003 (Qld) prohibits award of damages for costs of future domestic services (I)

RACQ Insurance Ltd v Wilkins - *Motor Accident Insurance Act 1994* (Qld) - respondent injured in motor vehicle accident in Queensland had commenced proceedings in Supreme Court of Australian Capital Territory - held that Queensland Supreme Court had jurisdiction under s50 to enforce compliance with applicant's statutory obligations under ss45 & 46A (I)

Giordan & Sofia Margaroff v Vincent Stanizzo t/a V F Stanizzo - Professional negligence - caveat not registered - subsequent dealings - apportionment (I)

Summaries with links (5 minute read)

Thursday 19 November 2009

Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3) [2009] FCA 1306

Federal Court of Australia

Buchanan J (in Sydney)

Evidence by video link - application by applicant that it be allowed to rely on hearsay evidence of statements made by persons in United Kingdom - s64 *Evidence Act 1995* (Cth) - application by applicant that one witness & another potential witness (each in United Kingdom) be permitted to present themselves for cross-examination there by video link, rather than travelling to Australia - application by respondent for further security for costs - proceedings alleging breach of contract & misleading & deceptive conduct matters - *Trade Practices Act 1974* (Cth) - email marketing software - licence agreement - maintenance & support agreement - detailed examination as to position in Australian case law regarding evidence by video link & cross-examination.

[Campaign Master \(UK\)](#) (I, B, C)

Huntingdale Village Pty Ltd (Receiver & Managers App'd), in the matter of Huntingdale Village Pty Ltd (Receiver & Managers App'd) [2009] FCA 1323

Federal Court of Australia

Gordon J (in Melbourne)

s1337H *Corporations Act 2001* (Cth) - transfer of civil proceedings - application by first defendant & receivers seek to have proceeding transferred to Supreme Court of Western Australia - loan

agreement - deed of guarantee & indemnity - five plaintiffs & fourth defendant part of what was commonly known as Westpoint Group - factors for and against transfer - proceedings transferred to Supreme Court of Western Australia - detailed consideration of principles & Australian case law.

[Huntingdale Village](#) (I, B, C)

Guthrie v Spence [2009] NSWCA 369

Court of Appeal of New South Wales

Basten & Campbell JJA; Handley AJA

Limitation Act 1969 (NSW) - "cause of action" - "substantially" - "affairs" - "management of his or her affairs" - personal injuries - respondent subject to disability by virtue of being a minor until he turned 18, around middle of 1996: s11(3)(a) - primary judge had found that action brought against school operated by second appellant Trustees & appellant teacher at school not statute-barred - primary judge had accepted respondent's contention he had remained under disability in period after his eighteenth birthday - *Civil Liability Amendment (Personal Responsibility) Act 2002* (NSW) - appeal dismissed - comprehensive analysis of legislation & of United Kingdom & Australian case law.

[Guthrie](#) (I)

Meriton Apartments Pty Limited v Fair Trading Administration Corporation [2009] NSWSC 1238

Supreme Court of New South Wales

Einstein J

Building Services Corporation Act 1989 (NSW) now *Home Building Act 1989* (NSW) - statutory indemnification schemes for home owners including Comprehensive Insurance Scheme - insurance claim made by the Owners of Strata Plan to defendant relating to building constructed by plaintiff in Jones St. Ultimo - defendant's application for dismissal of proceedings brought by plaintiff builder for declaratory relief that claims made by Owners of Strata Plan & settled &/or paid by defendant regulatory authority constitute settlements & payments *ultra vires* the Scheme - whether plaintiff builder has standing to challenge acceptance & approval of claim by regulatory authority other than in proceedings for recovery by defendant against plaintiff - order that proceedings be stayed till commencement by defendant of recovery proceedings against plaintiff - detailed consideration of United Kingdom & Australian case law.

[Meriton Apartments](#) (I, C)

Praetorin Pty Ltd v TZ Ltd [2009] NSWSC 1237

Supreme Court of New South Wales

Barrett J

s247A *Corporations Act* 2001 (Cth) - plaintiffs members of TZ Limited , a company admitted to official list of Australian Securities Exchange - application for order granting plaintiffs access to certain documents of TZL - "concerns" expressed by plaintiff shareholders - whether those concerns amount to showing of case for investigation - held that they did not.

[Praetorin](#) (B)

Cosentino v Kent & Anor [2009] QCA 355

Court of Appeal of Queensland

McMurdo P, Chesterman JA & A Lyons J

Torts - malicious prosecution - application for leave to appeal refused.

[Cosentino](#) (I)

[Cosentino](#) - District Court decision 24 April, 2009 - plaintiff alleging that first defendant, on behalf of the second defendant, maliciously & without reasonable cause instigated police investigation of plaintiff which resulted in her being charged - charge was dismissed - case law from United Kingdom, Australia and New Zealand considered regarding third party as prosecutor - plaintiff's claim dismissed.

Syben v Mackay TFS Pty Ltd [2009] QSC 367

Supreme Court of Queensland

Jones J

Assessment of damages - personal injuries - Griffiths v Kerkemeyer - where plaintiff had suffered series of injuries from different incidents with damages to be assessed on resultant injury - whether s308C *Workers' Compensation & Rehabilitation Act* 2003 (Qld) prohibits award of damages for costs of domestic services to be incurred in the future - judgment for plaintiff in sum of \$877,271.22.

[Syben](#) (I)

RACQ Insurance Ltd v Wilkins [2009] QSC 365

Supreme Court of Queensland

Applegarth J

Motor Accident Insurance Act 1994 (Qld) - respondent injured in motor vehicle accident in Bundaberg, Queensland obliged to comply with statutory obligations as to provision of medical reports & undergoing medical examination - respondent had commenced proceedings in Supreme



Court of Australian Capital Territory - whether Supreme Court of Queensland had jurisdiction to enforce respondent's statutory obligations under Queensland Act - held that the Court had jurisdiction under s50 to enforce compliance with applicant's statutory obligations under ss45 & 46A of the Act.

[RACO Insurance](#) (I)

In the District Court of New South Wales...

Giordan & Sofia Margaroff v Vincent Stanizzo t/a V F Stanizzo [2009] NSWDC 294

District Court of New South Wales

Knox SC DCJ

Professional negligence - instructions to defendant solicitor to prepare caveat to protect interest in plaintiffs' home - caveat not registered - subsequent dealings - breach of duty - apportionment - concurrent wrongdoers - responsibility to be equally assessed as between defendant & one of plaintiffs' children.

[Giordan and Sofia Margaroff](#) (I)