



Monday 19 December 2011

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Parbery; in the matter of Lehman Brothers Australia Ltd (in liq) - *Cross-Border Insolvency Act 2008* (Cth) (I, B, C, G)

Metz Holdings Pty Ltd v Simmac Pty Ltd (No 3) - Costs (I, B, C, G)

Mitchell Morgan Nominees Pty Ltd & Anor v Vella & Ors - Proportionate liability (I, B, C, G)

Konstantopoulos v R & M Beechey Carriers Pty Ltd - Contract - lease - appeal dismissed (I, B, C, G)

AMP Capital Property Nominees Ltd & Anor v Westfield Management Ltd - s601NB *Corporations Act 2001* (Cth) - appeal allowed (B, C)



Summaries with links (5 minute read)

Parbery; in the matter of Lehman Brothers Australia Ltd (in liq) [2011] FCA 1449

Federal Court of Australia

Jacobson

Cross-Border Insolvency Act 2008 (Cth) - application made under Articles 25 & 27 for letter of request to be sent to United States court - *Perpetual Trustee Co Ltd v BNY Corporate Trustee Services Ltd* [2009] EWHC 2953; [2010] 2 BCLC 237 considered.

[Parbery](#) (I, B, C, G)

[Perpetual Trustee Company Ltd](#) - decision High Court of England & Wales, Chancery Division 17 November 2009

Metz Holdings Pty Ltd v Simmac Pty Ltd (No 3) [2011] FCA 1450

Federal Court of Australia

Barker J

Costs - application for indemnity costs - *Federal Court Rules* Order 23 Rule 11 - offer had been made to first & second respondents to settle proceedings by way of letter - first and second respondents to pay applicants' costs on a party & party basis until 23 February 2011 & thereafter on indemnity basis.

[Metz Holdings Pty Ltd](#) (I, B, C, G)

[Metz Holdings Pty Ltd](#) - decision 25 August 2011

Mitchell Morgan Nominees Pty Ltd & Anor v Vella & Ors [2011] NSWCA 390

Court of Appeal of New South Wales

Bathurst CJ; Giles, Campbell & Macfarlan JJA; Sackville AJA

Proportionate liability - *Civil Liability Act* 2002 (NSW) - loan & mortgage transaction - summary of primary judge's findings relevant to appeal set out at par 15 of judgment of Giles JA - detailed analysis of UK & Australian case law including *St George Bank Ltd v Quinerts Pty Ltd* [2009] VSCA 245: summary of that case in 'Benchmark' Friday 30 October 2009.

[Mitchell Morgan Nominees Pty Ltd](#) (I, B, C, G)

[Vella](#) - file no. SC 4059/06 - decision Supreme Court of New South Wales 28 May 2008

[Vella](#) - file no. SC 4122/06 - decision Supreme Court of New South Wales 28 May 2008: see Benchmark I, B & IBC Friday 30 May 2008 - six sets of proceedings consolidated & heard together - banking - joint venture to promote boxing event - mortgages over land at Leppington & Mangrove Mountain - forgery - loan agreements -



apportionment - proportionality - *Australian Securities & Investments Commission Act 2001 (Cth)* - s32 *Cheques Act (1986) (Cth)* - s5 *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)* - s9 *Law Reform (Miscellaneous Provisions) Act 1965 (NSW)*

[Vella](#) - decision 6 March 2009: see Benchmark I, B & IBC Tuesday 10 March 2009 - costs - cross-claims

Konstantopoulos v R & M Beechey Carriers Pty Ltd [2011] NSWCA 388

Court of Appeal of New South Wales

Basten & Young JJA, Handley AJA

Contract - lease - for decision appealed from, see Benchmark Tuesday 13 July 2010 & link below - appeal dismissed.

[Konstantopoulos](#) (I, B, C, G)

[Konstantopoulos](#) - decision 9 July 2010 - contract - the defendants leased part of commercial and industrial premises from the plaintiffs - the plaintiffs alleged that the defendants damaged the a part of the premises by using a forklift truck that was too heavy, and that the defendants were therefore liable for the cost of the repairs - a clause in the lease provided that any damage to that part of the premises would be regarded as reasonable wear and tear - held: this clause had effect according to its terms, and the defendants were therefore not required to bear the costs of the repairs - held: the defendants could not be liable in negligence as a result of using the premises in a way that was within the permitted use of the premises specified by the lease.

AMP Capital Property Nominees Ltd & Anor v Westfield Management Ltd [2011] NSWCA 386

Court of Appeal of New South Wales

Giles, Campbell & Meagher JJA

Corporations Act 2001 (Cth) - managed investment scheme - joint venture agreement - trust deed & unit holders agreement - whether appellants should be restrained from exercising their voting rights at meeting of unit holders called under s601NB - appeal allowed.

[AMP Capital Property Nominees Ltd](#) (B, C)

[Westfield Management Ltd](#) - decision Supreme Court of New South Wales - injunctive relief granted



Composed at Christmastide 1819

by

William Wordsworth

(1770-1850)

The minstrels played their Christmas tune
To-night beneath my cottage-eaves;
While, smitten by a lofty moon,
The encircling laurels, thick with leaves,
Gave back a rich & dazzling sheen,
That overpowered their natural green.

Through hill & valley every breeze
Had sunk to rest with folded wings:
Keen was the air, but could not freeze,
Nor check, the music of the strings;
So stout & hardy were the band
That scraped the chords with strenuous hand !

And who but listened ? - till was paid
Respect to every Inmate's claim,
The greeting given, the music played
In honour of each household name,
Duly pronounced with lusty call,
And "Merry Christmas" wished to all.....

These are the opening verses of the introductory poem in
"The River Duddon - A Series of Sonnets" published in 1820

[A Victorian Christmas](#)

[Wassailing - Wikipedia, the free encyclopedia](#)



To All Our Readers

**Love & Joy come to You,
And to You your Wassail too,
And We wish You,
We wish You
A Happy New Year
And We wish You a Happy New Year !**

We'll be continuing to publish 'Benchmark' this week. The last bulletin for the year will be dated Friday 23 December 2011

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