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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)

Ferella v Official Trustee in Bankruptcy (FCAFC) - bankruptcy - inquiry into trustee's conduct - extended inquiry refused - appeal dismissed (B, G)

Scott v Williamson; Picken v Williamson (NSWCA) - negligence – road accident - breach of duty of care to keep proper look-out - appeal allowed in part (I)

Conridge v Flammia Trading as Manna & Flammia Solicitors (NSWSC) - mortgages - failure to join person jointly entitled to relief - summary dismissal refused (B)

Byrne v Rogers & Anor; Estate of Jeffrey Norman Rogers (NSWSC) - missing will - court not satisfied deceased made will in favour of plaintiff's daughter - probate granted to plaintiff (B)

Harofam Pty Ltd v Scherman (VSCA) - sale of land - special condition for time of registration of subdivision of land did not comply with *Sale of Land Act 1962* (Vic) (B)

Lucas Drilling Pty Limited v Armour Energy Limited (QCA) - building contract - appeal allowed against interlocutory relief restraining appellants from calling on bank guarantee (B, C)



Westwing Concrete Pty Ltd v Skender (WASC) - contract - repudiation - first defendant personally liable to plaintiff for damages and interest (B, C)

Summaries with links (5 minute read)

Ferella v Official Trustee in Bankruptcy [2013] FCAFC 43

Full Court of the Federal Court of Australia

Dowsett, Foster & Nicholas JJ

Bankruptcy - Federal Magistrate made sequestration order against appellants' estates - respondent became trustee of each bankrupt estate - appellants applied for inquiry into respondent's conduct pursuant to s179 *Bankruptcy Act 1966* (Cth) in respect of 11 questions - primary judge ordered inquiry limited to certain questions - appellants sought extension of inquiry - held: no error shown in primary judge's decision to refuse inquiry into additional questions - there should be no inquiry beyond that ordered at first instance - appeal dismissed.

[Ferella](#) (B, G)

Scott v Williamson; Picken v Williamson [2013] NSWCA 124

Court of Appeal of New South Wales

Beazley P; McColl & Barrett JJA

Negligence - road accident - appellants injured when hit by vehicle driven by first respondent while crossing road to board minibus operated by second respondent - proceedings governed by *Civil Liability Act* (NSW) 2002 and *Motor Accidents Compensation Act* (NSW) 1999 - appeal from judgment in respondents' favour, and provisional assessment of contributory negligence and damages - held: appeal allowed in part - first respondent breached duty of care to keep proper look-out because he should have seen appellants in sufficient time - evidence did not establish second respondent created dangerous situation - even if second respondent had duty to warn, duty was discharged by reasonable actions - assessment of contributory negligence appropriate - not appropriate to assess damages where appellants' credit under challenge - assessment of damages remitted to District Court.

[Scott](#) (I)

**Conridge v Flammia Trading as Manna & Flammia Solicitors [2013] NSWSC 498**

Supreme Court of New South Wales

McCallum J

Mortgages - summary dismissal - claim against two solicitors arising out of loan transaction - defendants sought dismissal of proceedings under r6.20 *Uniform Civil Procedure Rules* 2005 (NSW) on basis plaintiff's ex-wife was jointly entitled to relief claimed by plaintiff but not party to proceedings - held: court not persuaded to dismiss proceedings - no risk of ex-wife suing defendants in later proceedings as action statute-barred - order made pursuant to r6.20(2) that ex-wife was not to be joined as party to proceedings.

[Conridge](#) (B)

Byrne v Rogers & Anor; Estate of Jeffrey Norman Rogers [2013] NSWSC 511

Supreme Court of New South Wales

White J

Succession - deceased's 1994 will appointed plaintiff as executor and left estate to plaintiff - plaintiff's daughter contended deceased made subsequent will leaving estate to her - no will produced - application of standard of proof in *Briginshaw v Briginshaw* (1938) 60 CLR 336 to daughter's allegation that absence of will was explained by plaintiff having removed it from deceased's house - held: court not satisfied plaintiff removed will or that deceased made will in favour of daughter - probate of will in solemn form granted to plaintiff.

[Byrne](#) (B)

Harofam Pty Ltd v Scherman [2013] VSCA 104

Court of Appeal of Victoria

Nettle AP; Neave & Garde AJA

Sale of land - appeal from finding that special condition of contract, which provided for time of registration of plan of subdivision, did not comply with s9AE(2) *Sale of Land Act* 1962 (Vic) - interpretation of s9AE(2) - construction of special condition - held: judge did not err in following *Solid Investments Australia Pty Ltd v Clifford* [2010] VSCA 59 - plain and ordinary meaning of s9AE(2) was to require, at time contract was made, a specific period of time in which plan of subdivision must be registered - special condition denied certainty which s9AE(2) was enacted to create - appeal dismissed.

[Harofam](#) (B)

**Lucas Drilling Pty Limited v Armour Energy Limited [2013] QCA 111**

Court of Appeal of Queensland

McMurdo P, White JA & Daubney J

Contract - appellant entered agreement with respondent for provision of drilling services - agreement provided for bank guarantee - primary judge granted interlocutory injunction restraining appellant from calling on bank guarantee - construction of agreement - held: primary judge erred in finding sufficient likelihood of respondent succeeding on argument that appellant breached agreement by failing to return performance bond - primary judge's discretion miscarried - appeal allowed.

[Lucas Drilling](#) (B, C)**Westwing Concrete Pty Ltd v Skender [2013] WASC 181**

Supreme Court of Western Australia

Heenan J

Contract - dispute arising under contract for provision of labour and equipment - plaintiff alleged defendants repudiated contract - plaintiff claimed balance of moneys due for labour supplied, hire of equipment and incidental services from first defendant or alternatively from second defendant - held: plaintiff entitled to enforce rights which accrued before termination of contract - defendants failed to comply with fundamental obligation under agreement to pay plaintiff agreed value for services - contract was between plaintiff and first defendant personally not second defendant - first defendant personally liable to plaintiff for damages and interest.

[Westwing Concrete](#) (B, C)

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