

Friday 20 July 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Gulbis v Strikis - wills and estates - legal practitioners - *Legal Profession Act* 2004 (NSW) - *Probate and Administration Act* 1898 (NSW) (B)

Australian and New Zealand Banking Group Ltd v Londish - practice and procedure - application to file amended defence - *Civil Procedure Act* 2005 (NSW) - *Uniform Civil Procedure Rules* 2005 (NSW) - *Contracts Review Act* 1980 (NSW) (I, B, C, G)

Nu Line Construction Group Pty Ltd v Fowler (aka Grippaudo) - indemnity costs - *Calderbank* offer - conduct of litigation under *Civil Procedure Act* 2005 (NSW) (I, B, C)

Clegg v Williams - torts - personal injury - motor vehicle accident - assessment of damages - no question of principle - *Civil Procedure Act* 2005 (NSW) (I)

Balnaves v Smith & Anor - torts - personal injury - damages - loss of earnings and earning capacity - loss of income (I, B)



Summaries with links (5 minute read)

Gulbis v Strikis [2012] NSWSC 807

Supreme Court of New South Wales

Slattery J

Plaintiff and plaintiff's husband (deceased) were joint tenants of a residential property (**the property**) - plaintiff now registered proprietor of the property - plaintiff appointed defendant as executor of deceased's will - plaintiff seeks Certificate of Title to the property under the *Legal Profession Act* 2004 (NSW) (**the Act**) - defendant claims entitlement to lien over property - whether defendant entitled to lien on basis of unpaid legal fees as plaintiff's solicitor or, alternatively, as executor of deceased's estate - whether parties had a client/solicitor relationship - whether defendant complied with the Act - whether contention that defendant acting as executor tenable - whether defendant complied with the *Probate and Administration Act* 1898 (NSW).

[Gulbis](#) (B)

Australian and New Zealand Banking Group Ltd v Londish [2012] NSWSC 809

Supreme Court of New South Wales

Harrison AsJ

Withdrawal of admissions - application s64(1)(b) *Civil Procedure Act* 2005 (NSW) to file and serve amended defence - plaintiff seeks money owing under agreement with defendant - agreement between parties secured by second mortgage over defendant's property - plaintiff concedes amended defence raises arguable defences under *Contracts Review Act* 1980 (NSW) and unconscionability - original defence prepared without legal advice - amended defence withdraws admissions made in original defence - whether amended defence properly pleaded - whether defendant can withdraw admissions - whether withdrawal of admissions in accordance with r 12.6 *Uniform Civil Procedure Rules* 2005 (NSW) - consideration of case law - whether admissions contrary to actual facts - whether admissions made inadvertently without due consideration of material matters - whether in interests of justice to permit withdrawal of admissions.

[Australian and New Zealand Banking Group](#) (I, B, C, G)

Nu Line Construction Group Pty Ltd v Fowler (aka Grippaudo) [2012] NSWSC 816

Supreme Court of New South Wales

Ward J

Costs - indemnity costs - plaintiff claimed restitutionary and other relief in relation to money said to have been paid by plaintiff to defendant - claim dismissed - plaintiff accepts it must pay defendants' costs but opposes departure from ordinary basis of assessment - defendants seek order for indemnity costs on two bases: the principles in *Calderbank v Calderbank* [1975] 3 All ER

333, and the regime for conduct of litigation set out in the *Civil Procedure Act* 2005 (NSW) (**the Act**) - defendant made informal offer to plaintiff prior to proceedings - defendants' onus to satisfy court that it should exercise costs discretion in favour of defendants - whether defendants' offer of compromise genuine - whether plaintiff's rejection of offer unreasonable - whether plaintiff's conduct of litigation was in breach of the Act.

[Nu Line Construction Group](#) (I, B, C)

Clegg v Williams [2012] NSWSC 709

Supreme Court of New South Wales

SG Campbell J

Torts - personal injury - plaintiff suffered orthopaedic injuries and brain injury in motor vehicle accident - plaintiff was passenger in car driven by defendant - parties settled question of liability on basis of defendant's negligence and plaintiff's contributory negligence - court approved parties' settlement under the *Civil Procedure Act* 2005 (NSW) - question of assessment of damages - approval of agreed heads of damage - calculation of additional heads of damage.

[Clegg](#) (I)

Balnaves v Smith & Anor [2012] QSC 192

Supreme Court of Queensland

Byrne SJA

Torts - personal injury - boating accident - plaintiff seriously injured in collision between boats - liability apportioned against plaintiff to extent of 65% - parties agreed on special damages and general damages other than economic loss - plaintiff executive chairman and major shareholder of Southern Star Group Ltd (SSG) - subsequent to his injuries the plaintiff facilitated take-over of SSG by Southern Cross - plaintiff claims loss of opportunity to continue to earn income as SSG's executive chairman and to increase value of shareholdings in SSG - whether plaintiff would not have facilitated take-over had he not been injured - whether establishment of capital loss in relation to shareholdings - whether plaintiff entitled to damages for loss of earnings, earning capacity and income.

[Balnaves](#) (I, B)



Summer Farm

by Norman MacCaig

Straws like tame lightnings lie about the grass
And hang zigzag on hedges. Green as glass
The water in the horse-trough shines.
Nine ducks go wobbling by in two straight lines.

A hen stares at nothing with one eye,
Then picks it up. Out of an empty sky
A swallow falls and, flickering through
The barn, dives up again into the dizzy blue.

I lie, not thinking, in the cool, soft grass,
Afraid of where a thought might take me - as
This grasshopper with plated face
Unfolds his legs and finds himself in space.

Self under self, a pile of selves I stand
Threaded on time, and with metaphysic hand
Lift the farm like a lid and see
Farm within farm, and in the centre, me.

<http://www.poetryfoundation.org/bio/norman-maccaig>

[Click Here to access our Benchmark Search Engine](#)