

Friday 21 June 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Sopikiotis v Vince (FCA) - bankruptcy - applications by bankrupt against trustee - no improper conduct of trustee (B)

Lam v Rolls Royce PLC (NSWSC) - negligence - aircraft engine failure - representative proceeding - subpoena for passenger manifest not set aside (I, B, C)

O'Donoghue v Jet Fighter Flights Pty Ltd (in liq) (NSWSC) - compensation to relatives - deceased killed in recreational aircraft flight - settlement approved by court (I)

Groz Investments Pty Ltd v Ronro Pty Ltd (NSWSC) - contract - joint ventures - defendant to pay plaintiff amount in respect of two joint ventures (B, C)

Winky Pop Pty Ltd v Mobil Refinery Australia Pty Ltd (VSC) - evidence - subpoena - claim for non-disclosure of certain documents on basis of client legal privilege largely upheld (I B, C, G)

Thiess Pty Ltd v Warren Brothers Earthmoving Pty Ltd (QSC) - security of payments - adjudicator's decision affected by jurisdictional error - decision void (I, C, G)



Fishpool v Incat Tasmania Pty Ltd (TASFC) - workers compensation - determination of preliminary issue related to respondent principal's defence - *employer* - appeal dismissed (I)

Summaries with links (5 minute read)

Sopikiotis v Vince [2013] FCA 592

Federal Court of Australia

Gordon J

Bankruptcy - bankrupt applicant sought orders under ss179(1)(a) & (b) *Bankruptcy Act 1966* (Cth) removing trustee, restraining trustee from taking action in administration of bankrupt estate and removing caveat lodged by trustee over property - applicant also sought relief under s178 of the Act in respect of alleged decision by trustee to *issue a warrant of arrest* - held: first application faced various insurmountable hurdles - failure to identify improper conduct by trustee and no suggestion of any improper conduct - applicant to deliver up certificate of title to property and complete statement of affairs - no act, omission or decision by trustee to which s178 application could attach - applications failed.

[Sopikiotis](#) (B)

Lam v Rolls Royce PLC [2013] NSWSC 805

Supreme Court of New South Wales

Beech-Jones J

Subpoena - negligence - plaintiff was crew member on QF32 flight that experienced uncontained engine failure on departure from Singapore - plaintiff alleged engine failure due to fatigue cracking in pipe - plaintiff claimed Rolls Royce negligent in manufacture, inspection and installation of pipe and that she suffered loss, damage and psychiatric injury as result - representative proceeding under Pt10 *Civil Procedure Act 2005* (NSW) - Qantas applied to set aside plaintiff's subpoena for production of passenger manifest - necessity to facilitate the just, quick and cheap resolution of issues in proceedings: s56(1) of the Act - proposed degree of intrusion - likelihood that production of material would enhance s56 objectives - held: court declined to set aside part of subpoena requiring production of passenger manifest - one part of subpoena varied - other parts set aside.

[Lam](#) (I, B, C)

**O'Donoghue v Jet Fighter Flights Pty Ltd (in liq) [2013] NSWSC 781**

Supreme Court of New South Wales

Slattery J

Compensation to relatives - deceased killed in recreational aircraft flight accident - application for approval of settlement of proceedings under s6B *Compensation to Relatives Act 1897* (NSW) brought by widow on behalf of herself and her children - requirement of court's approval of settlement where proceedings commenced on behalf of persons under legal incapacity: s76 *Civil Procedure Act 2005* (NSW) - necessity for court to apportion benefits - expert actuarial evidence - apportionment where children have reached majority - held: settlement of proceedings and proposed apportionment of settlement sum approved.

[O'Donoghue](#) (I)

Groz Investments Pty Ltd v Ronro Pty Ltd [2013] NSWSC 794

Supreme Court of New South Wales

Rein J

Contract - joint venture - plaintiff claimed defendant owed it money in respect of the joint ventures - held: letters and minutes of meeting between parties constituted a binding agreement for plaintiff to pay defendant money in relation to an additional joint venture - plaintiff entitled to payment from defendant of money sought in respect of the two joint ventures subject to offset of amount owed by plaintiff under binding agreement and any credit to which defendant was entitled upon finalisation of accounts.

[Groz Investments](#) (B, C)

Winky Pop Pty Ltd v Mobil Refinery Australia Pty Ltd [2013] VSC 315

Supreme Court of Victoria

Digby J

Evidence - subpoena - plaintiff property developer sought relief against defendant in nuisance, negligence and for compensation under *Pipelines Act 2005* (Vic) in relation to pipeline leak they alleged contaminated their land - plaintiffs also sought injunction or damages in alternative - plaintiffs sought production of documents from Victorian Minister for Planning and Department of Planning and Community Development (DPCD) - Minister and DPCD objected to subpoena - held: no likelihood of prejudice to proper functioning of government by production and inspection of documents asserted to contain matters of State - non-disclosure on bases of confidentiality and public interest immunity rejected - non-disclosure on basis of irrelevance largely rejected - non-disclosure on basis of legal client privilege largely upheld - orders made.

[Winky Pop](#) (I, B, C, G)

Thiess Pty Ltd v Warren Brothers Earthmoving Pty Ltd [2013] QSC 141

Supreme Court of Queensland

AM Lyons J

Security of payments - respondent sought order quashing adjudication under *Building and Construction Industry Payments Act 2004* (Qld) - primary judge found respondent entitled to declaration decision was void due to adjudicator's failure to exercise power in accordance with Act - applicant sought that court exercise its discretion to decline to make declaration on basis jurisdictional error affected only part of decision - applicant sought to rely on recent decision in *BM Alliance Coal Operations Pty Ltd v BGC Contracting Pty Ltd & Ors (No 2)* [2013] QSC 67 - held: adjudicator's jurisdictional error tainted the whole of the decision-making process - no sufficient basis to decline to make declaration sought by respondent - adjudicator's decision declared void - costs orders made.

[Thiess](#) (I, C, G)**Fishpool v Incat Tasmania Pty Ltd [2013] TASFC 6**

Full Court of the Supreme Court of Tasmania

Porter, Wood & Escourt JJ

Workers compensation - worker employed by labour hire company injured while working at respondent's premises - appeal from decision on preliminary issue related to respondent's defence - appellant contended primary judge erred in finding respondent was an *employer* for purposes of s138AB *Workers Rehabilitation and Compensation Act 1988* (Tas) and in finding appellant was required to lodge with Workers Rehabilitation and Compensation Tribunal, an election to claim damages from respondent prior to commencing action - statutory construction - object and purpose of s138AB - held: appellant did not succeed on either ground of appeal.

[Fishpool](#) (I)**A Glass of Water**

by David Musgrave

Un seul verre d'eau éclaire le monde Cocteau

Behind the wedding couple, a mirror harbours
their reception.

Outside, from the verandah, the harbour mirrors
the exception



of city from sky, hills snug with houses
and a glass of water standing on the railing,
half empty or half full. In the failing
afternoon light
brightening buildings counterpoint the darkness,
glinting upside-
down inside the glass, and the newly-weds,
seen from outside
joining hand to hand for the wedding reel,
glide under its meniscus, head over heels.

[David Musgrave](#)

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