

Friday 21 September 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Alstom Ltd ACN 000 038 237 v Sirakas - applications for summary judgment and for defence to be struck out (I, B, C)

Brookfield Australia Investments Ltd v Lucas Stuart Pty Ltd - construction contract - whether *roofs claim* settled (I, B, C)

Bauen Constructions Pty Ltd v Sky General Services Pty Ltd & Anor - security of payments legislation - application for declaration that adjudication determinations void or alternatively that they be quashed (B, C)

ATF Mining Electrics Pty Ltd v Bramco Electronics Pty Ltd - contracts - application for declaration of breach of deed of settlement and release and patent licence agreement (I, B, C, G)



Firstmac Fiduciary Services Pty Ltd & Anor v HSBC Bank of Australia Ltd - contracts - deed of sale - determination of separate questions (I, B, C, G)

Golijan v Motor Accidents Authority of New South Wales - judicial review of decision of MAS review panel (I, G)

Zahos v Michael - procedure - real property - application to strike out pleadings or for dismissal of proceedings (B)

Pisano v Precision Solid Plasterers Pty Ltd & Anor - accident compensation - appeal from dismissal of serious injury application (I, C)

Pathway Investments Pty Ltd & Anor v National Australia Bank Ltd - objection by APRA to production of protected documents (B, G)

Summaries with links (5 minute read)

Alstom Ltd ACN 000 038 237 v Sirakas [2012] NSWSC 1064

Supreme Court of New South Wales

Lindsay J

Summary judgment - proceedings for fraudulent breach of duties by employee of plaintiff companies - plaintiff sought order pursuant to r12.7(2) *Uniform Civil Procedure Rules* 2005 (NSW) (**Rules**) for defence to be struck out for failure to conduct defence with *due despatch* - further order sought pursuant to r13.1 of the Rules for summary judgment - want of prosecution - whether inference defendant made deliberate decision to abandon defence - whether refusal or failure of defendant to comply with orders and directions of the court - whether defendant had not conducted defence with *due despatch* or intention of conducting it at all - whether foundation for summary judgment - quantification of judgment.

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



Brookfield Australia Investments Ltd v Lucas Stuart Pty Ltd [2012] NSWSC 1130

Supreme Court of New South Wales

Stevenson J

Contract - claims for damages in relation to construction contract - negotiations to settle proceedings - plaintiff sought declaration pursuant to s73 *Civil Procedure Act* 2005 (NSW) that *roofs claim* settled - offer and acceptance must precisely correspond: *Carter on Contract*, vol 1; *Boreland v Docker* [2007] NSWCA 94 - analysis of offer and acceptance in relation to *roofs claim* - whether acceptance of offer - first purported acceptance - second purported acceptance - whether conditions.

[Brookfield Australia Investments](#) (I, B, C)

Bauen Constructions Pty Ltd v Sky General Services Pty Ltd & Anor [2012] NSWSC 1123

Supreme Court of New South Wales

Sackar J

Security of payments legislation - plaintiff sought declaration that adjudication determinations void or alternatively for order that they be quashed - whether plaintiff entitled to relief where payment claim served outside 12 month period prescribed by s13(4)(b) *Building and Construction Industry Security of Payment Act* 1999 (NSW) (**Act**) - whether failure to exercise jurisdiction - whether failure to address requirements of s22(2)(a) of the Act by misconstruing s13(4)(b) - whether denial of natural justice for failure to consider adjudication response - whether adjudication response lodged.

[Bauen Constructions](#) (B, C)

ATF Mining Electrics Pty Ltd v Bramco Electronics Pty Ltd [2012] NSWSC 1126

Supreme Court of New South Wales

Sackar J

Contracts - plaintiff sought declarations that defendant breached deed of settlement (**Deed**) and release and patent licence agreement (**Agreement**) - principles of construction - objective intention of the parties: *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 - purpose and object of the transaction: *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451 - surrounding circumstances: *Fuji Xerox Finance Ltd v CSG Ltd* [2012] NSWSC 890 - construction of patents - principles relating to patent specifications: *Kinabalu Investments Pty Ltd v Barron & Rawson Pty Ltd* [2008] FCAFC 178, *Décor Corp Pty Ltd v Dart Industries Inc* (1988) 13 IPR 385 - expert evidence: *Kimberly-Clark Australia*



Pty Ltd v Multigate Medical Products Pty Ltd (2011) 92 IPR 21 - whether defendant infringed patent and thereby in breach of Deed and Agreement - whether basis for quantification of damages.

[ATF Mining Electrics](#) (I, B, C, G)

Firstmac Fiduciary Services Pty Ltd & Anor v HSBC Bank of Australia Ltd [2012] NSWSC 1122

Supreme Court of New South Wales

Sackar J

Contracts - deed of sale for broker-originated residential mortgage - determination of separate questions - whether plaintiffs' claims constituted *claims* for the purpose of clause of deed - whether claim for breach of ss52 and 82 of the *Trade Practices Act* 1974 (Cth) barred or excluded by clause of deed - construction of clause of deed - objective intention of the parties - purpose and object of the transaction: *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451 - surrounding circumstances: *Codelfa Construction Pty Ltd v State Rail Authority* (NSW) (1982) 149 CLR 337 - validity of clause which has effect of barring a claim - whether permissible to agree on temporal or monetary limits in context of a statutory remedy - exclusion clauses: *Darlington Futures Limited v Delco Australia Pty Ltd* (1986) 161 CLR 500 - distinction between contractual term purporting to bar statutory remedy altogether and one purporting to impose monetary or temporal limit on extent of the remedy.

[Firstmac Fiduciary Services](#) (I, B, C, G)

Golijan v Motor Accidents Authority of New South Wales [2012] NSWSC 1106

Supreme Court of New South Wales

Beech-Jones J

Motor accidents - plaintiff sought judicial review of certificate issued by MAS review panel constituted under s63 *Motor Accidents Compensation Act* 1999 (NSW) (Act) - whether failure to consider radiological studies - nature and extent of obligation to consider evidentiary material: *Allianz Australia Insurance Ltd v Cervantes* [2012] NSWCA 244 - whether failure to provide adequate reasons - whether failure to afford natural justice - whether review panel confronted with competing medical opinions - whether erroneous finding in relation to back injury - whether review panel overlooked extract from report - whether failure to consider or properly consider relevant evidence - whether *an error on the face of the record*.

[Golijan](#) (I, G)

Zahos v Michael [2012] NSWSC 1110

Supreme Court of New South Wales

Harrison AsJ

Procedure - real property - claim for judgment debt - application by fourth defendant to strike out pleadings pursuant to r14.28 *Uniform Civil Procedure Rules* 2005 (**Rules**) or for dismissal of proceedings pursuant to r13.4 of the Rules - whether amended statement of claim did not disclose reasonable cause of action - whether an abuse of process - whether pleading pursuant to s37A *Conveyancing Act* 1919 (NSW) in relation to transfer of interest in property from first defendant to fourth defendant adequate - adequacy of pleadings: *Szanto v Bainton* [2011] NSWSC 985.

[Zahos](#) (B)

Pisano v Precision Solid Plasterers Pty Ltd & Anor [2012] VSCA 226

Court of Appeal of Victoria

Harper & Tate JJA; Beach AJA

Accident compensation - appeal from dismissal of application under s134AB(16)(b) *Accident Compensation Act* 1985 (Vic) (**Act**) for injuries sustained in course of employment - whether plaintiff demonstrated capacity for employment - whether miscategorisation of plaintiff's evidence - whether plaintiff's injury a *serious injury* within the meaning of the Act - whether failure to provide adequate reasons - whether misapprehension of medical evidence - whether *novus actus interveniens*.

[Pisano](#) (I, C)

Pathway Investments Pty Ltd & Anor v National Australia Bank Ltd [2012] VSC 429

Supreme Court of Victoria

Pagone J

Procedure - objection by Australian Prudential Regulation Authority (**APRA**) to produce protected documents - whether production of protected documents prohibited by ss56(1) & 56(2) *Australian Prudential Regulation Authority Act* 1998 (Cth) (**Act**) - leave sought to rely on additional ground for objection under s56(8) of the Act - whether statutory prohibition justifies court to excuse APRA from compliance with subpoena: *O42A Supreme Court (General Civil Procedure) Rules* 2005 (Vic).

[Pathway Investments](#) (B, G)



The Eagle

By Alfred, Lord Tennyson

He clasps the crag with crooked hands;
Close to the sun in lonely lands,
Ring'd with the azure world, he stands.

The wrinkled sea beneath him crawls;
He watches from his mountain walls,
And like a thunderbolt he falls.

<http://www.poetryfoundation.org/bio/alfred-tennyson>

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