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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)

Montanile v Board of Trustees of the National Elevator Industry Health Benefit Plan (Supreme Court of the United States) - equity - employee benefits plan sought enforcement of equitable lien over participant's settlement funds - enforcement of lien refused - case remanded (I B C)

Dank v Nationwide News Pty Ltd (NSWSC) - damages - defamation - mitigating impact of true imputation reduced damages to be awarded for plaintiff's success to zero - judgment for plaintiff - no damages awarded (I)

Legatum Limited v Salim (NSWSC) - judgments and orders - registration and enforcement of judgment obtained in Dubai International Financial Centre Court (I B C)

Tan v Russell (VSC) - contract for sale - no valid termination of contract by email sent to real estate agent - plaintiffs' claim failed (I B C)

Thorne Developments Pty Ltd v Thorne (QCA) - corporations - deed of appointment - trust deed - appointment of respondent as trustee of trust valid - respondent not required by trust deed to vacate office - appeal dismissed (I B C)

Gerblich v Perpetual Trustees Victoria Ltd (SASC) - mortgages - determination of terms for payment of money into Court pending resolution of proceedings - appeal dismissed (B)

BGC Construction Pty Ltd v Citygate Properties Pty Ltd (WASC) - construction contract - application to enforce adjudicator's determinations refused - determinations quashed (I B C)

Summaries With Link (Five Minute Read)

Montanile v Board of Trustees of the National Elevator Industry Health Benefit Plan

Supreme Court of the United States: Docket No 14-723.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor & Kagan JJ
Equity - petitioner injured by drunk driver - employee benefit plan regulated by *Employee Retirement Income Security Act of 1974* (ERISA) paid amount for medical expenses. - petitioner sued and obtained settlement against drunk driver - Board sought reimbursement from settlement under subrogation clause of plan - petitioner's attorney refused - Board sued petitioner under §502(a)(3) ERISA - Board sought equitable lien on settlement funds or petitioner's property - petitioner contended there was no identifiable fund because he had spent most of settlement - Eleventh Circuit held that even if petitioner had dissipated fund, plan entitled to re-imburement from petitioner's general assets - held: basis for Board's claim was equitable - if fund dissipated on non-traceable items, lien eliminated and plaintiff could not attach defendant's general assets - arguments for enforcement of equitable lien failed - case remanded for District Court.

[Montanile](#) (I B C)

Dank v Nationwide News Pty Ltd [2016] NSWSC 295

Supreme Court of New South Wales

McCallum J

Damages - defamation - three claims heard together - plaintiff failed on two claims and succeeded on the other - defendants contended that jury's finding that plaintiff oversaw administration of dangerous medication to footballers overwhelmed the "defamatory impact" of imputations on which plaintiff succeeded - defendants contended plaintiff entitled only to nominal damages - whether any damages should be awarded - ss22(3), 25 & 26 *Defamation Act 2005* (NSW) - held: Court concluded that mitigating impact of true imputation reduced damages to extent there should be no award in plaintiff's favour - judgment for plaintiff - no damages awarded.

[Dank](#) (I)

Legatum Limited v Salim [2016] NSWSC 298

Supreme Court of New South Wales

Schmidt J

Judgments and orders - enforcement of foreign judgment - plaintiff and defendant litigated claim in Dubai International Financial Centre Court - judgment given for plaintiff - plaintiff sought registration and enforcement of Dubai Court's judgment - onus -held: Court satisfied evidence established that the four considerations in *Bhushan Steel Ltd v Severstal Export GmbH* [2012] NSWSC 583 had been met - orders granted.

[Legatum](#) (I B C)

Tan v Russell [2016] VSC 93

Supreme Court of Victoria
Cameron J

Contract - sale of land - defendant was registered proprietor of company - plaintiffs sought declaration contract for sale of land was terminated by notice of termination sent by email to real estate agent - whether plaintiffs validly terminated contract by email within cooling off period under s31(3) *Sale of Land Act 1962 (Vic)* - *Electronic Transactions (Victoria) Act 2000 (Vic)* - implied or ostensible authority - statutory authority - held: real estate agent did not have necessary authority to receive notice of termination pursuant to s31 - plaintiff's claim failed - defendant complied with contractual obligations concerning notice of default and rescission - counterclaim succeeded.

[Tan](#) (I B C)

Thorne Developments Pty Ltd v Thorne [2016] QCA 63

Court of Appeal of Queensland
Gotterson, Morrison & Phillipides JJA

Corporations - appellant was trustee of family discretionary trust - appellant deregistered - sole director (Mr Thorne) declared bankrupt - appellant's registration reinstated by ASIC under s601AH(1) *Corporations Act 2001 (Cth)* - different sole director appointed (Mr Casey) - by deed of appointment Thorne Mr Thorne, appointed respondent wife and brother as trustees of trust - brother relinquished office prior to appellant's reinstatement - appellant was refused declarations as to invalidity of respondent's appointment - primary judge held deed of appointment validly appointed respondent, no substance to contention appointment not bona fide exercise of power, and trust deed did not require respondent to vacate office - proper construction of deed of appointment and trust deed - s188 *Bankruptcy Act 1966 (Cth)* - ss601AD, 601AE & 601AH *Corporations Act* - ss10, 12 & 80(1) *Trusts Act 1973 (Qld)* - held: grounds of appeal failed - appeal dismissed.

[Thorne](#) (I B C)

Gerblich v Perpetual Trustees Victoria Ltd [2016] SASC 14

Supreme Court of South Australia
S Doyle J

Mortgages - injunction - appellant borrowed amount from respondent secured by mortgage over appellant's property - mortgagee sought possession following default by borrower - respondent's claim for summary determination dismissed - Master ordered appellant to make payments to protect respondent's interests pending resolution of possession proceedings - appellant appealed - held: no error in Master's exercise of discretion to determine payment terms pending proceedings' resolution - appeal dismissed.

[Gerblich](#) (B)

BGC Construction Pty Ltd v Citygate Properties Pty Ltd [2016] WASC 88



Supreme Court of Western Australia

Tottle J

Construction contract - dispute concerning construction of extension to shopping centre - three applications - BGC sought leave to enter judgment against Citygate regarding two determinations made by adjudicator - Citygate sought to quash determinations - - whether adjudicator exceeded authority conferred by *Construction Contracts Act 2004* (WA) - whether claims out of time - slip rule - balance of probabilities - rebuttal materials - "material personal interest" - adequacy of reasons - ss26, 29, 31, 32 & 36 *Construction Contracts Act* - regs 4 & 5 *Construction Contracts Regulations 2004* (WA) - held: application to enforce determinations dismissed - jurisdictional error established - determinations quashed.

[BCG](#) (I B C)

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