

Friday, 22 April 2016

## Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Concrete Mining Structures Pty Ltd v Cellcrete Australia Pty Ltd (No 2)** (FCA) - security for costs - applications for security for costs by parties against each other - all applications dismissed (I B C)

**Aravanis & Roy (Trustees), in the matter of Destanovic (Bankrupt) v Destanovic** (FCA) - bankruptcy - property subject to a charge under s139ZR(1) *Bankruptcy Act 1966* (Cth) - trustees of bankrupt estate had power to sell property - declaration and orders (I B)

**Tanious v South Eastern Sydney Local Health District** (NSWCA) - notice of motion - coronial inquest - no jurisdiction to review other judge's orders - no arguable basis to order coronial inquest into death of applicant's father - motion dismissed (I B)

**Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd** (NSWSC) - professional negligence - contract - solicitors' duties - failure to conduct further ASIC search just before draw down of loan was breach of duty/retainer - causation not established (I B C G)

**Penfold v Predny** (NSWSC) - succession - family provision - application by child of deceased for further provision from deceased's Will - application dismissed (B)

**Special Broadcasting Service Corporation v Andrew Corbett** (NSWSC) - interlocutory injunction - employment contract - confidentiality - interlocutory injunction restraining respondent from working for ABC until outcome of proceedings granted (I B)

**Tenney v Matthews** (SASC) - contract - joint venture - no breach of settlement agreement - breach of loan agreement - judgment for defendants (I B C)

## Summaries With Link (Five Minute Read)

### **Concrete Mining Structures Pty Ltd v Cellcrete Australia Pty Ltd (No 2) [2016] FCA 360**

Federal Court of Australia

Edelman J

Security for costs - fiduciary duties - duties of confidence - copyright - unjust enrichment - *Barnes v Addy* - principal claim arising out of development of pump for mining industry - company (CMS) sued its former director and company of which former director was sole director (Cellcrete) - Cellcrete and former director brought cross-claim - parties sought security for costs against each other - ss1335 & 1335(1) *Corporations Act 2001* (Cth) - s56 *Federal Court of Australia Act 1976* (Cth) - r19.01 *Federal Court Rules 2011* (Cth) - held: applications dismissed - Court did not doubt Cellcrete and CMS had funds to meet costs order - even if Cellcrete and CMS did not have sufficient funds difference not significant and Court would not exercise discretion to order security.

[Concrete Mining](#) (I B C)

### **Aravanis & Roy (Trustees), in the matter of Destanovic (Bankrupt) v Destanovic [2016] FCA 388**

Federal Court of Australia

Farrell J

Bankruptcy - Federal Circuit Court of Australia made sequestration order against bankrupt's estate - applicants appointed trustees of bankrupt estate - bankrupt's wife was respondent - bankrupt had transferred joint tenancy interest in home to respondent - applicants sought declaration that property was subject to charge under s139ZR(6) *Bankruptcy Act 1966* (Cth), and orders for sale of property and distribution of proceeds - application sought in order to enforce Notice issued under s139ZQ - held: declaration as to amounts payable under Notice was justified - property subject to a charge under s139ZR(1) - applicants had power to sell property - declaration and orders.

[Aravanis](#) (I B)

### **Tanious v South Eastern Sydney Local Health District [2016] NSWCA 83**

Court of Appeal of New South Wales

Basten JA

Notice of motion - coronial inquest - applicant had proceedings on foot in common law division - Wilson J refused applicant leave to file and serve further amended statement of claim and ordered applicant to pay defendants' costs - applicant sought review of Wilson J's judgment and order for inquest into father's death - s84 *Coroners Act 2009* (NSW) - held: no jurisdiction to

review judgment and orders of another judge - Court's jurisdiction was appellate - applicant had not sought leave to appeal - Court had power to order an inquest but no arguable basis for making order identified - motion dismissed.

[Tanious](#) (I B)

## **Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd [2016] NSWSC 438**

Supreme Court of New South Wales

Hoeben CJ at CL

Professional negligence - contract - solicitors' duties - plaintiffs in business of lending money secured by property - plaintiffs were former clients who sued incorporated legal practice for professional negligence and breach of contract in relation to provision of services concerning loans - ss5B, 5D, 5E & 5O *Civil Liability Act 2002* (NSW) - held: plaintiffs made out case for breach of duty/retainer in relation to loan for failure to conduct further ASIC search just before draw down of loan - no defence established under s5O - however causation not established - judgment for defendant.

[Richtoll](#) (I B C G)

## **Penfold v Predny [2016] NSWSC 472**

Supreme Court of New South Wales

Hallen J

Succession - family provision - plaintiff child of deceased made claim for family provision out of deceased's estate pursuant to Pt 3.2 *Succession Act 2006* (NSW) - plaintiff sought provision which was greater than that provided for her in Will - held: Court not satisfied for purposes of s59(1)(c) that adequate provision for proper maintenance and advancement of plaintiff not made by deceased - Court had no jurisdiction to order further provision from deceased's estate - summons dismissed.

[Penfold](#) (B)

## **Special Broadcasting Service Corporation v Andrew Corbett [2016] NSWSC 461**

Supreme Court of New South Wales

Slattery J

Interlocutory injunction - employment contract - confidential information - SBS challenged validity of respondent's resignation - SBS sought interlocutory injunction against respondent to restrain him from working for ABC or other media organisation for remaining during of employment agreement, and to prevent respondent from disclosing SBS's confidential information, until final hearing of proceedings - held: Court concluded that it was appropriate to impose restraint on respondent providing services to ABC or other media organisation and to restrain him from misusing confidential information - respondent's undertaking regarding confidentiality may suffice - orders.

[Special Broadcasting Service](#) (I B)

## **Tenney v Matthews [2016] SASC 34**

Supreme Court of South Australia

Bampton J

Contract - joint venture - plaintiff and defendants were joint venturers - following mediation parties executed agreements settling matters in dispute and separating interests - plaintiff alleged breaches of settlement agreement seeking damages from defendants - defendants denied breach of settlement agreement and counterclaimed concerning alleged breaches of vendor loan agreement - defendants sought damages in amount of loan and enforcement of security over plaintiffs mining lease - ss6, 9, 9AA, 20, 21, 22, 26, 34, 35, 39, 73A & 73B *Mining Act 1971* (SA) - regs12 & 29 *Mining Regulations 2012* (SA) - held: no breach of settlement agreement - defendants established breach of loan agreement - defendants entitled to damages - judgment for defendants.

[Tenney](#) (I B C)

## CRIMINAL

### Executive Summary

**RB v R** (NSWCCA) - criminal law - sexual offences - indecency - no miscarriage of justice by Crown raising issue of motive to lie - appeal dismissed

**Sweetman v Tasmania** (TASCCA) - criminal law - trafficking controlled substance - sentence not manifestly excessive - appeal dismissed

### Summaries With Link

#### **RB v R [2016] NSWCCA 62**

Court of Criminal Appeal of New South Wales

Ward JA; Price & Adamson JJ

Criminal law - indecency - sexual offences towards complainant daughter aged between 10 and 16 years - appellant was convicted of five counts on indictment: - appellant contended on appeal that "There was a miscarriage of justice as a result of the Crown's address effectively inviting the jury to reason, 'why would they lie?'" - r4 *Criminal Appeal Rules* (NSW) - *R v Jovanovic* direction - held: trial judge "amply and correctly" directed jury concerning onus of proof and need for jury to be satisfied "beyond reasonable doubt of the truth of the complainant's evidence" - no miscarriage of justice or error established - appeal dismissed.

[RB](#)

#### **Sweetman v Tasmania [2016] TASCCA 5**

Court of Criminal Appeal of Tasmania



Wood, Estcourt & Pearce JJ

Criminal law - appellant pleaded guilty to trafficking controlled substance namely cannabis - sentence of 10 months' imprisonment imposed with 3 months to be served - balance of sentence conditionally suspended - appellant contended sentence was manifestly excessive - mitigatory factors - appellant's personal circumstances - whether sentence so far outside range that it demonstrated error - s3 *Misuse of Drugs Act 2001* (Tas) - held: sentence was not unreasonable or plainly unjust - appeal dismissed.

[Sweetman](#)



# Benchmark

## **The Late Worm**

By Kay Ryan

The worms  
which had been  
thick are thin  
upon the ground  
now that it's gotten  
later. They stick  
against the path,  
their pink chapped  
and their inching  
labored. It's a  
matter of moisture  
isn't it? Time, a  
measure of wet,  
shrinking, the  
drier you get.

[Kay Ryan](#)

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