

Tuesday 23 April 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

McCracken v Phoenix Constructions (Queensland) Pty Ltd (FCAFC) - bankruptcy - appeal against sequestration order re debt no longer owing - appeal allowed (B)

Wentworth Metals Group Pty Ltd v Leigh and Owen (as liquidators of Bonython Metals Group Pty Ltd): In the matter of Bonython Metals Group Pty Ltd (In liq) (FCA) - corporations - application to restrain liquidators from selling interest in joint venture dismissed (B)

Dang v Chea (NSWCA) - damages - motor vehicle accident - appeal from award of damages for accommodation and future care - appeal upheld (I)

Oliveri v P M Sulcs & Associates Pty Ltd (in liq) (NSWCA) – costs assessment – solicitor/client costs - claim for interest on costs - failure to include statement of interest in costs agreement - claim failed (I, B)



Konneh v State of New South Wales (No.2) (NSWSC) – wrongful arrest, false imprisonment, assault - novel pleading - two solicitors on the record - application to strike out paragraphs of statement of claim dismissed (I, G)

Newman v Brinkgreve; The Estate of Floris Verzijden (NSWSC) - wills and estates - deceased intended informal document to form alteration to will - probate granted (B)

Class Electrical Services v Go Electrical (NSWSC) - security of payments - adjudicator's determination not in respect of single construction contract - determination quashed (I, C)

Summaries with links (5 minute read)

McCracken v Phoenix Constructions (Queensland) Pty Ltd [2013] FCAFC 41

Full Court of the Federal Court of Australia

Lander, Siopis & Gilmour JJ

Bankruptcy - appeal against sequestration order - judgment debt set aside - held: sequestration order could not be made without existence of debt for liquidated sum in excess of \$5000 which existed at time of act of bankruptcy: s52(1) & 44 of the Act - debt relied upon by creditor for act of bankruptcy and in petition no longer existed at time of creditor's petition hearing – order for costs was not a liquidated sum and cannot ground creditor's petition - sequestration order set aside - creditor's petition dismissed.

[McCracken](#) (B)

Wentworth Metals Group Pty Ltd v Leigh and Owen (as liquidators of Bonython Metals Group Pty Ltd): In the matter of Bonython Metals Group Pty Ltd (In liq) [2013] FCA 349

Federal Court of Australia

Griffiths J

Corporations - interlocutory application for orders restraining liquidators from proceeding with offer to sell second defendant's interest in joint venture project to third defendant - liquidators' power to sell and dispose of company property: ss477(1)(a) & (2)(c) *Corporations Act 2001* (Cth) - held: liquidators not under duty to achieve *best possible price* - plaintiffs failed to demonstrate prima facie unreasonableness or defect affecting decisions of liquidators - balance of convenience against plaintiffs - no serious question to be tried - application dismissed.

[Wentworth Metals Group](#) (B)

**Dang v Chea [2013] NSWCA 80**

Court of Appeal of New South Wales

McCull JA, Preston CJ of LEC & Garling J

Damages - motor vehicle accident - liability admitted - reasonableness of award for future accommodation and care - primary judge assessed damages on basis it was reasonable for respondent to be provided with rented accommodation and 24-hour care - held: aim of damages was to fulfill respondent's reasonable, not ideal, requirements: *Arthur Robinson (Grafton) Pty Ltd v Carter* [1968] HCA 9 - award of damages manifestly excessive - appeal upheld - damages to be recalculated to give effect to accommodating respondent in facility

[Dang](#) (I)

Oliveri v P M Sulcs & Associates Pty Ltd (in liq) [2013] NSWCA 84

Court of Appeal of New South Wales

Macfarlan, Barrett & Ward JJA

Costs Assessment – solicitor/client costs - interest - whether assessor had power to award interest on applicant's costs and disbursements - held: applicant's claim for interest precluded by s190(2) *Legal Profession Act 1987* (NSW) because of failure to include statement as to interest in bill of costs - failure not remedied under r45(3) *Legal Profession Regulation 2002* (NSW) by inclusion of letter referring to interest - assessor had no power to award interest - application dismissed.

[Oliveri](#) (I, B, G)

Konneh v State of New South Wales (No.2) [2013] NSWSC 390

Supreme Court of New South Wales

Garling J

Pleadings – wrongful arrest, false imprisonment, assault - novel pleading - summary dismissal - plaintiff brought representative proceeding against State - State sought to strike out paragraphs of statement of claim under r14.28 *Uniform Civil Procedure Rules 2005* (NSW) – statement of claim signed by two solicitors “on the record” - interaction of authority on novelty and summary dismissal: *Gibson v Parkes District Hospital* (1991) 26 NSWLR 9 - court not satisfied paragraphs should be struck out - not in interests of justice to allow dual representation - plaintiff to elect one solicitor.

[Konneh](#) (I, G)



Newman v Brinkgreve; The Estate of Floris Verzijden [2013] NSWSC 371

Supreme Court of New South Wales

Hallen J

Wills and estates - probate in solemn form sought of will and codicil, being informal amending document - whether court was satisfied deceased intended informal document to form amendment to will - evidence - testamentary intention - held: evidence pointed clearly to finality of deceased's intention that document was to form alteration to will - probate granted.

[Newman](#) (B)

Class Electrical Services v Go Electrical [2013] NSWSC 363

Supreme Court of New South Wales

McDougall J

Security of payments - construction contract - dispute concerning amount owing by plaintiff - plaintiff claimed adjudicator's determination erroneous because there was no single construction contract which it related to - meaning of *construction contract* under s4 *Building and Construction Industry Security of Payment Act 1999* (NSW) - held: there were multiple construction contracts between the parties - determination invalid because it was not made in respect of claim under one construction contract - no discretionary ground for withholding relief - determination quashed.

[Class Electrical Services](#) (I, C)

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