

Friday 23 August 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Wealthsure Pty Limited v Selig (No 2) (FCA) - corporations - stay of execution of judgment discharged (B)

Ryan & Briggs as executrices of the estate of the late Donoghue v Wikramanayake (NSWSC) - contract - executrices' claims for return of deceased parents' accommodation bonds dismissed (I B C)

Hargraves Secured Investments Ltd v Sharpe (NSWSC) - mortgages - injunction restraining mortgagee from selling properties refused (B)



Plenary Research Pty Ltd v Biosciences Research Centre Pty Ltd (VSCA) - contract - agreement required dispute to be resolved by dispute resolution procedures - appeal dismissed (I B C)

Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd [No. 3] (VSC) - building contract - payment dispute - summary judgment refused - stay granted in part (C)

Cardiff Capital v SMEC Australia Pty Ltd [No. 2] (WASC) - discovery - objections to inspection of documents produced under subpoenas dismissed (I B C)

The Wilderness Society of WA (Inc) v Minister for Environment (WASC) - administrative law - assessment of proposal to establish precinct for processing liquefied natural gas - decisions of EPA and Minister invalid (C G)

Summaries with links (5 minute read)

Wealthsure Pty Limited v Selig (No 2) [2013] FCA 847

Federal Court of Australia

Besanko J

Corporations - respondents sought order that stay of execution of judgment against second appellant be discharged - second appellant was bankrupt and Official Trustee had elected to abandon his appeal against the judgment - scope of liberty to apply provision - prejudice - provisions of *Bankruptcy Act 1966* (Cth) relating to election and insurance policies - held: application was within liberty to apply provision - even if prejudice made out by first appellant it would not be proper basis for staying execution of judgment against party who no longer challenged judgment against him - stay of execution in favour of second appellant discharged.

[Wealthsure](#) (B)

Ryan & Briggs as executrices of the estate of the late Donoghue v Wikramanayake **[2013] NSWSC 1150**

Supreme Court of New South Wales

Slattery J

Contract - equity - interference with contractual relations - trade practices - executrices of parents' estates sought return of accommodation bonds paid by parents under resident agreements with operator of aged care facility - first and second defendants were shareholders and directors of company which owned property on which facility was built and which it leased to operator -



company, now deregistered, had commercial lease arrangements with operator which entitled it to receipt of accommodation bonds and required it to pay the bonds back to residents on their exit from facility - Ch 4 *Aged Care Act 1997* (NSW) - held: plaintiffs' causes of action against defendants failed - plaintiffs unable to establish constructive trust requiring defendants to restore funds, interference with contractual relations created under residential agreement or misleading and deceptive conduct under s52 *Trade Practices Act 1974* (Cth) - claims dismissed.

[Ryan & Briggs as executrices of the estate of the late Donoghue](#) (I B C)

Hargraves Secured Investments Ltd v Sharpe [2013] NSWSC 1151

Supreme Court of New South Wales

Adams J

Mortgages - possession - service - applicant sought injunction against selling of properties by mortgagee - applicant alleged mortgagee and its agents had failed to properly advertise property so that it would be sold for considerably less than its true value - other main ground for application concerned service of requisite notice under s57 *Real Property Act 1900* (NSW) - premises in which applicant was resident had two addresses - question was whether notice was sent to *applicant's last known residential or business address* in compliance with s170 *Conveyancing Act 1919* (NSW) - notice was addressed to one address - held: not appropriate to injunct sale on ground of complaint of undervalue - applicant to be left to action for damages if needed - where there were two addresses for a property, a notice complied with Conveyancing Act if it was addressed to either address - notice of motion dismissed.

[Hargraves Secured Investments](#) (B)

Plenary Research Pty Ltd v Biosciences Research Centre Pty Ltd [2013] VSCA 217

Court of Appeal of Victoria

Maxwell P, Tate JA & Garde AJA

Contract - dispute concerning project agreement for design, construction and operation of research facility - primary judge held that clause of agreement required dispute to be resolved by independent expert in accordance with *Accelerated Dispute Resolution Procedures* set out in another clause of agreement - appellant contended primary judge erred in interpretation of clauses of agreement - principles applicable to construction of commercial contracts - *expressio unius est exclusio alterius* - held: primary judge's construction of agreement was correct - appeal dismissed - form of declaration varied.

[Plenary Research](#) (I B C)

**Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd [No. 3] [2013] VSC 435**

Supreme Court of Victoria

Vickery J

Building contract - proceedings relating to contract for construction of rail freight terminal, container paved area and locomotive workshop - contractor sought summary judgment for progress payments payable under clause of building contract - principal filed defence and counterclaim - contractor sought to stay matters raised in counterclaim pursuant to s8 *Commercial Arbitration Act 2011* (Vic) - principal also sought summary judgment for amount owing under certificate issued by superintendent- s63 *Civil Procedure Act 2010* (Vic) - O22 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - construction of contract - evidence - held: each party had a *real* chance of success on material presented on the other's summary judgment application - applications for summary judgment refused - stay granted in part - purported joinder of company by principal as second plaintiff by counterclaim set aside as irregular.

[Lysaght Building Solutions](#) (C)**Cardiff Capital v SMEC Australia Pty Ltd [No 2] [2013] WASC 309**

Supreme Court of Western Australia

Pritchard J

Discovery - subpoena - plaintiff claimed defendant breached contract or duty of care in preparing engineering designs for residential subdivision development - plaintiff objected to inspection of documents produced under subpoenas issued by defendant to eight parties - principles governing determination of objections to inspection of subpoenaed documents- legitimate forensic purpose - relevance - overview of litigation - held: grounds of objection to inspection of documents rejected - plaintiff's objection dismissed.

[Cardiff Capital](#) (I B C)**The Wilderness Society of WA (Inc) v Minister for Environment [2013] WASC 307**

Supreme Court of Western Australia

Martin CJ

Administrative law - applicants asserted decisions made in connection with Minister's environmental assessment of proposal to establish precinct for processing liquefied natural gas were unlawful and therefore invalid- held: EPA's decision to submit assessment report to Minister was not valid exercise of powers conferred upon it by the *Environmental Protection Act 1986* (WA) because there was no valid assessment of proposal - assessment was undertaken following process directed and controlled by decisions purportedly taken by EPA - decisions were invalid due to



being taken at meetings at which those participating in decision-making were disqualified by reason of their pecuniary interest in proposal - as a result, Minister's decision to authorise implementation of proposal in accordance with assessment was also invalid, as was EPA's decision that another proposal was a derived proposal - court to hear from parties as to appropriate relief.

[The Wilderness Society of WA](#) (C G)



Gathering Leaves

By Robert Frost

Spades take up leaves
No better than spoons,
And bags full of leaves
Are light as balloons.

I make a great noise
Of rustling all day
Like rabbit and deer
Running away.

But the mountains I raise
Elude my embrace,
Flowing over my arms
And into my face.

I may load and unload
Again and again
Till I fill the whole shed,
And what have I then?

Next to nothing for weight,
And since they grew duller
From contact with earth,
Next to nothing for color.

Next to nothing for use.
But a crop is a crop,
And who's to say where
The harvest shall stop?

[Robert Frost](#)

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