



Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Tuesday 24 June 2008

Centrestage Management Pty Ltd v Riedle [2008] FCA 938

Federal Court of Australia

Sundberg J (in Melbourne)

Computer program – literary work for purposes of Copyright Act 1968 (Cth) – Copyright Amendment (Computer Programs) Act 1999 (Cth) – Second Reading Speech - implied terms in contract – business efficacy - appellant provider of administration & computer consultancy services – it wrote a program for Salvation Army for home collection services - agreement with respondent, a computer programmer, that respondent would provide upgrade of program in three stages - whether Magistrate erred in holding that respondent was an independent contractor rather than an employee of appellant – industry practice - whether, on basis that respondent owned copyright in updated program, Magistrate erred in concluding that while it was implied term of relationship between the parties that appellant had a licence to use "application," licence did not extend to right to access & use source code - appeal dismissed.

[Centrestage Management](#) (I, B)

Black & Decker Inc v GMCA Pty Ltd (No 3) [2008] FCA 932

Federal Court of Australia

Heerey J (in Melbourne)

Costs – patent cases – multi-purpose power saw - applicant successful overall but not on all issues – whether appropriate to apportion costs on issue by issue basis – whether indemnity costs should be awarded on basis of conduct leading to loss of trial date and failure to admit facts – after consultation with practitioners, the Court proposes to implement on a trial basis certain procedures in relation to patent proceedings - an interesting judgement in which at par 11, His Honour quotes Lord Esher MR in Ungar v Sugg (1899) 9 RPC 113 at 117, recently cited by Jacob LJ in Nichia Corporation v Argos Ltd [2007] EWCA Civ 741 at [1]: see link below:

“A man had better have his patent infringed, or have anything happen to him in this world, short of losing all his family by influenza, than have a dispute about a patent. His patent is swallowed up, and he is ruined. Whose fault is it? It is really not the fault of the law: it is the fault of the mode of



conducting the law in a patent case. That is what causes all this mischief." (B, C)

[Black & Decker](#), and

[Nichia Corp v Argos Ltd \[2007\] EWCA Civ 741](#) – Court of Appeal of England & Wales - judgment Jacob LJ 19 July 2007

Tenderwatch Pty Ltd v Reed Business Information Pty Ltd [2008] FCA 931

Federal Court of Australia

Heerey J (in Melbourne)

Account of profits – training seminars on preparation of documents in response to invitations to submit tenders - infringing work used by infringer in delivery of seminar - whether there should be an apportionment of revenue – whether deduction from profit should be allowed for time spent by infringer in preparation of seminar.

[Tenderwatch](#) (B, C)

Lion Selection Limited [2008] ATP 14

Australian Takeovers Panel

Corporations Act 2001 (Cth) ss602, 657A, 657D – Indophil Resources NL – Xstrata Queensland Limited - supplementary disclosure - Lion shareholder meeting scheduled for 23 June 2008.

[Lion Selection](#) (B)

Green (as liquidator of Arimco Mining Pty Ltd) v CGU Insurance Ltd [2008] NSWCA 148

Court of Appeal of New South Wales

Hodgson, Basten & Campbell JJA

Security for costs – liquidator suing personally – see ‘Benchmark’ Tuesday 13 May 2008 & link below for decision appealed & cross-appealed against - CGU insurer of directors & officers of Arimco - principles as to ordering security for costs against plaintiff liquidators – litigation funding – whether involvement of funder for commercial profit relevant to ordering security for costs –Law Reform (Miscellaneous Provisions) Act 1946 (NSW) s6(4) – extensive consideration of case law - appeal & cross-appeal dismissed. (I, B)

[Green](#), and

[Martin John Green](#) - judgment Einstein J 9 May 2008 – order made that liquidator pay \$450,000 by way of security for costs by Bank Guarantee, failing which proceedings, commenced by him & set down for a four week trial commencing 15 July 2008, would be stayed.

The Uniting Church in Australia Property Trust (NSW) t/as Northaven Retirement Village v John Ernest Takacs [2008] NSWCA 141

Court of Appeal of New South Wales

Hodgson, McColl & Basten JJA

Negligence - personal injury – breach of statutory duty - Construction Safety Act 1912 (NSW) – Construction Safety Regulations 1950, Regs 73 & 74 (NSW) – painting contractor engaged to measure & quote was seriously injured when he fell from roof of building at Northaven Retirement Village,



owned & operated by Trust - whether "construction work" – whether owner in charge of construction work - whether owner negligent – appeal allowed – judgment for Trust - extensive consideration of legislation & case law. (C)

[The Uniting Church](#), and

[Takacs](#) - decision appealed against - reported decision 161 IR 155 – judgment Rothman J 6 March 2007.

In the matter of L.E.D. Builders Pty Ltd (admins apptd); L.E.D. Builders Pty Ltd (Admins Apptd) & Ors [2008] NSWSC 633

Supreme Court of New South Wales

Austin J

Application by administrators of three companies, LED Builders Pty Ltd, LED (North Coast) Pty Ltd & LED (South Coast) Pty Ltd for order under s439A(6) Corporations Act 2001 (Cth) extending by four weeks convening period for second meeting of creditors of the Companies in administration - part of Beechwood Group, which is under the effective control of Mr Larry King - three Companies are subsidiaries, the holding company of which is LEK Holdings Pty Ltd, which, in turn, is owned by a unit trust behind which there are sub-trusts and other companies – orders made as sought.

[In the matter of L.E.D. Builders](#) (I, B, C)

Anastasiou v Chubb Security (Australia) Pty Ltd [2008] VSC 211

Supreme Court of Victoria

Kaye J

Negligence – employer & employee – plaintiff security guard injured while evicting drunken patron – whether safe system of work – whether adequate training & instruction – whether contributory negligence – damages - pain & suffering – economic loss - judgment for plaintiff in sum of \$720,790.

[Anastasiou](#) (I)

Monzer Tabbouch v Scott Devlin & Ors [2008] NSWSC 600

Supreme Court of New South Wales

Einstein J

Conveyancing – notice to complete - where contract permits a party to issue a notice to complete calling for completion within 14 days from service of the notice [special condition 6] - where contract deems such a period of 14 days as reasonable & sufficient to make time of the essence - where the notice to complete issued by the purchaser required completion "on or before 3 pm" on the 14th day after service of the notice, which was in fact the last day within which completion was permissible – extensive consideration of case law.

[Monzer Tabbouch](#) (C)



And from the Qld District Court...

Anderson v Gold Coast City Council [2008] QDC 126

District Court of Queensland

Rackemann DCJ

Negligence – trip & fall on protruding service pit cover in footpath – whether duty – whether breach – whether footpath reasonably constructed – whether council knew or ought to have known of risk – appeal from Magistrate’s decision concluding that duty did not arise & that, even if it did, no breach of that duty had been established – on appeal, held that Council was not under a duty to eliminate risk posed by protruding edge of services cover but, in any event, evidence did not establish that Council had failed to act reasonably – appeal dismissed.

[Anderson](#) (I)

Key: (I) Insurance, (B) Banking, (C) Construction