

Friday 24 August 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

DJ's Home and Property Maintenance v Dujkovic - whether service of payment claim regularly effected (I, C)

Ocean Star Resort Pty Ltd v Kwon & Anor (No 2) - currency of judgment and applicable interest rates (B, G)

Mahaffy v Darren E Eather t/as Bellevue Pastoral Company - application to vacate hearing date (I, B, C)

Paramount Lawyers Ltd v Maneschi - appeal - validity and enforceability of assignment of debt (I, B)

Transfield Services (Australia) Pty Ltd v Gaha - costs - competing claims for costs where proceedings resolved by consent without hearing on merits (I, B, C, G)



Eldson v Victorian WorkCover Authority - judicial review of certificate of opinion of medical panel (I, G)

Galaxy Homes Pty Ltd v National Mutual Life Association of Australasia Ltd - insurance contract - proper construction of life insurance policy (I, B)

Summaries with links (5 minute read)

DJ's Home and Property Maintenance v Dujkovic [2012] NSWSC 870

Supreme Court of New South Wales

McDougall J

Security of payments legislation - whether service of payment claim pursuant regularly effected - significance of service to establishing basis for payment dispute - requirements for service of notices: ss31(1)(b) & 31(2) *Building and Construction Industry Security of Payment Act 1999* (NSW) - whether injunctive relief should be discharged or continued.

[DJ's Home and Property Maintenance](#) (I, C)

Ocean Star Resort Pty Ltd v Kwon & Anor (No 2) [2012] NSWSC 897

Supreme Court of New South Wales

Slattery J

Judgments and orders - judgment for restitution of money paid in respect of abandoned 2004 agreement - whether judgment should be in Australian dollars and Korean won mixed currency judgment - court's power to express order in foreign currency: *Miliangos v George Frank (Textiles) Ltd* 1976 AC 443 - whether plaintiff should receive interest up to date of judgment - whether Australian or Korean commercial rates appropriate for calculation of interest.

[Ocean Star Resort](#) (B, G)

Mahaffy v Darren E Eather t/as Bellevue Pastoral Company [2012] NSWSC 936

Supreme Court of New South Wales

Garling J

Vacation of hearing date - Local Court appeal - self-represented plaintiff sought vacation of hearing date based on non-production of subpoenaed documents and insufficient time to prepare



for hearing due to partner's illness - whether subpoena seeks relevant documents - whether in interests of justice to vacate hearing date due to illness of partner - hearing date vacated.

[Mahaffy](#) (I, B, C)

Paramount Lawyers Ltd v Maneschi [2012] NSWSC 877

Supreme Court of New South Wales

Rothman J

Contract - Local Court appeal - client paid counsel directly, obtained purported assignment of debt owed by solicitors - whether assignment of debt arising under contract valid and enforceable: *Legal Profession Act* 1987 and 2004 - precise identification of debt - whether debt unenforceable due to misleading or deceptive conduct within s42 *Fair Trading Act* 1987 (NSW) - whether plaintiff indemnified for debt under terms of contract - whether plaintiff estopped from denying debt owing or amount of debt - whether misleading and deceptive conduct attracts remedy of estoppel - whether procedural unfairness in decision of Local Court.

[Paramount Lawyers](#) (I, B)

Transfield Services (Australia) Pty Ltd v Gaha [2012] NSWSC 865

Supreme Court of New South Wales

Ball J

Costs - competing claims for costs where proceedings resolved by consent without hearing on merits - general principle that each party to bear own costs when proceedings settled - two exceptions: where one party has acted so unreasonably that the other party should receive costs of the action or where both parties have acted reasonably but one party almost certain to have succeeded if matter fully tried: *Re Minister for Immigration and Ethnic Affairs (Cth); Ex parte Lai Qin* [1997] HCA 6 - whether plaintiff unreasonable to pursue case in circumstances where defendant made offer to settle at early stage.

[Transfield Services](#) (I, B, C, G)

Elsdon v Victorian WorkCover Authority [2012] VSC 347

Supreme Court of Victoria

Macaulay J

Accident compensation - application for judicial review pursuant to s3 of the *Administrative Law Act* 1978 (Vic) of certificate of opinion of medical panel - whether medical panel engaged in jurisdictional error by failing to apply legal principles in *Transport Accident Commission v Serwyllo*

[2010] VSC 421 in evaluating applicant's injury and impairment under Category IV of the *American Medical Association's Guides to the Evaluation of Permanent Impairment* - whether medical panel's reasons disclose error on the face of the record.

[Elsdon](#) (I, G)

Galaxy Homes Pty Ltd v National Mutual Life Association of Australasia Ltd [2012] SASC 141

Supreme Court of South Australia

Nicholson J

Life insurance - determination of preliminary issue whether policy capable of responding to claim - plaintiff terminated policy pursuant to contractual right - plaintiff diagnosed with cancer approximately two months later - insurer rejected plaintiff's claim for Terminal Illness benefit - consideration of competing constructions of policy - preliminary issues determined in favour of insured.

[Galaxy Homes](#) (I, B)

Neither Out Far Nor In Deep

By Robert Frost

The people along the sand
All turn and look one way.
They turn their back on the land.
They look at the sea all day.

As long as it takes to pass
A ship keeps raising its hull;
The wetter ground like glass
Reflects a standing gull.

The land may vary more;
But wherever the truth may be -
The water comes ashore,
And the people look at the sea.



They cannot look out far.
They cannot look in deep.
But when was that ever a bar
To any watch they keep?

<http://www.poetryfoundation.org/bio/robert-frost>

[Click Here to access our Benchmark Search Engine](#)