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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)

Hazard Systems Pty Ltd v Car-Tech Services Pty Ltd (In liq) (NSWCA) - equity - no absolute assignment of rights to insurer in deeds of release - appeal allowed (I B)

Despot v Registrar-General of NSW (NSWCA) - principal and agent - power of attorney not given for purpose of securing payment to company - breach of fiduciary duty - appeal allowed in part (B C)

Brotherhood of St Laurence v McCabe (VSCA) - estoppel - trial did not miscarry due to counsel's remarks on effect of previous County Court decision (I)



Duffy v Salvation Army (Vic) Property Trust (VSCA) - negligence - work injury - employer breached duty of care to provide safe system of work - appeal allowed (I G)

Heywood v Commercial Electrical Pty Ltd (QCA) - negligence - employer breached duty of care to provide safe system of work - appeal allowed (I C)

Caffey v Leatt-Hayter [No 3] (WASC) - trade practices - business acquired in reliance on misleading and deceptive conduct - damages (B)

Stekovic v Polyseal Waterproofing Technologies Pty Ltd and Contexx Pty Ltd (ACTSC) - workers' compensation - injured worker entitled to ongoing compensation payments - appeal allowed (I)

Summaries with links (5 minute read)

Hazard Systems Pty Ltd v Car-Tech Services Pty Ltd (In liq) [2013] NSWCA 314

Court of Appeal of New South Wales

Basten, Meagher & Barrett JJA

Equity - assignment - subrogation - standing - limitation of actions - respondent stripped and fitted NSW police cars owned by state entity - fires damaged cars - cars covered by ISR insurance policy issued to respondent - under one deed of release insurer agreed to pay amount to state entity in settlement of its claims against respondent - under second deed of release insurer agreed to pay amount to State of NSW in settlement of proceedings commenced against respondent - respondent sued applicant supplier in negligence and for pure economic loss being payments made to State pursuant to the deeds - applicant alleged respondent had no standing to sue due to assignments of rights to insurer contained in deeds - appeal from decision permitting respondent to amend statement of claim to correct mistake in name of plaintiff, substitute insurer as plaintiff in respect of claims for economic loss and join insurer as second plaintiff - ss64 & 65 *Civil Procedure Act 2005* (NSW) - effect of assignments - held: neither deed complied with s12 *Conveyancing Act 1919* (NSW) - no *express notice in writing* to applicant - no absolute assignment - insurer was equitable assignee of respondent's rights - inappropriate to substitute insurer as plaintiff - appropriate to join insurer as second plaintiff - no mistake in name of plaintiff - appeal allowed - orders varied.

[Hazard Systems Pty Ltd \(I B\)](#)

**Despot v Registrar-General of NSW [2013] NSWCA 313**

Court of Appeal of New South Wales

Meagher & Ward JJA; Bergin CJ in Eq

Principal and agent - power of attorney - construction company controlled by second respondent undertook to renovate appellant's unit - appellant/home owner executed general power of attorney in favour of second respondent which was used by him to sell home owner's unit to purchaser and to apply major part of proceeds to satisfy debt said to be owed by home owner to company - held: primary judge erred in holding power of attorney was given to second respondent for purpose of securing repayment of money owing to company - power of attorney revocable and gave rise to fiduciary obligations - second respondent breached fiduciary duty by directing money to company - primary judge erred in not ordering company to pay to home owner amount received by it in excess of amount to which it was entitled - amount recoverable either as moneys paid for no consideration or pursuant to equitable obligation to account for knowing receipt of moneys paid in breach of fiduciary duty - home owner entitled to payment of outstanding amount by purchaser - appeal allowed in part.

[Despot](#) (B C)

Brotherhood of St Laurence v McCabe [2013] VSCA 257

Court of Appeal of Victoria

Warren CJ; Osborn & Santamaria JJA

Estoppel - effect of previous decision of County Court on trial of claim for damages for personal injury - County Court held respondent was injured in course of employment in manner and on dates alleged in common law proceedings - respondent's counsel claimed previous decision gave rise to estoppel which would decide against appellant's contentions - judge directed jury to disregard counsel's comments and gave directions concerning legal effect of estoppel - jury found for respondent - appellant contended trial miscarried due to remarks of respondent's counsel - held: direction to disregard counsel's comments directly responded to primary submission of appellant's counsel - direction simple and easily comprehensible - no need to discharge jury - comments not irresistibly prejudicial or irremediably confusing - direction as to effect of estoppel was in terms agreed by appellant - jury instructed that they were bound by judge's directions - must be assumed jury acted in accordance with directions - appellant bound by choice not to take exception to cumulative adequacy of judge's directions - appeal dismissed.

[Brotherhood of St Laurence](#) (I)



Duffy v Salvation Army (Vic) Property Trust [2013] VSCA 253

Court of Appeal of Victoria

Hansen & Tate JJA; Beach AJA

Negligence - employer's duty of care - appellant worker alleged he was injured while rushing to catch a heavy object at premises occupied by respondent during work for the dole program - worker claimed respondent failed to provide safe system of work, breached regulations under *Occupational Health and Safety Act 2005* (Vic) and failed to comply with Pt IIA, s14B(3) *Wrongs Act 1958* (Vic) - trial judge dismissed claim on basis of rejection of appellant's account of incident - appellant claimed core features of incident were corroborated by witness and should have been accepted - held: not open to trial judge to conclude it was *wholly improbable, wholly unlikely, and an impossibility for the incident to occur in the manner described* - trial judge wrong to conclude that even if incident did occur as appellant alleged there was no negligence or breach of duty - decision to rush toward mirror was misjudgment not contributory negligence - matter remitted for determination of issue of quantum of damages.

[Duffy](#) (I G)

Heywood v Commercial Electrical Pty Ltd [2013] QCA 270

Court of Appeal of Queensland

Muir & Morrison JJA; M Wilson J

Negligence - workplace injury - appellant trainee electrician cut himself on piece of steel while alighting ladder - trainee knew piece of steel was sharp and had placed it aside for future use near ladder - steel used to protect cables from damage - employer's duty of care - evidence - causation - failure to warn - held: risk that appellant would leave offcut in place where it could cause injury to himself or another was foreseeable - employer did not take basic measures to minimise obvious workplace risk - employer breached duty to provide appellant with safe system of work - breach caused loss suffered by appellant - appeal allowed.

[Heywood](#) (I C)

Caffey v Leatt-Hayter [No 3] [2013] WASC 348

Supreme Court of Western Australia

Beech J

Trade practices - misleading and deceptive conduct - second defendant company owned business of which first defendants were directors - plaintiffs claimed they agreed to purchase business and took steps in reliance on misleading and deceptive conduct by defendants arising from information memorandum provided by company's selling agent and from statements made by



director to plaintiffs at meeting - ss10, 75B & s79 *Fair Trading Act 1987* (WA) - ss52, 82, 82(1B) & 84 *Trade Practices Act 1974* (Cth) - held: company and one director engaged in misleading and deceptive conduct including by silence and were liable to pay damages to first plaintiff for loss and damage in acquiring business in reliance on that conduct - no basis for reduction of damages for contributory negligence.

[Caffey](#) (B)

Stekovic v Polyseal Waterproofing Technologies Pty Ltd and Contexx Pty Ltd

[2013] ACTSC 195

Supreme Court of the Australian Capital Territory

Burns J

Workers' compensation - appellant worker injured when he slipped while exiting scissor lift in course of employment - appellant appealed pursuant to s197(1) *Workers Compensation Act 1951* (ACT) from Magistrate's finding that appellant's entitlement to payment of compensation pursuant to Pts 4.2, 4.3 & 4.5 of the Act ceased as at 20 March 2010 - medical evidence - held: Magistrate failed to consider whether appellant was suffering from chronic pain syndrome secondary to lumbar spine injury suffered in accident - no evidence that appellant's pain had resolved by 20 March 2010 - Magistrate erred in finding treating doctor felt obliged to withdraw involvement in appellant's treatment because of appellant's inconsistent responses on medical examination and assessment - appellant had ongoing entitlements to payment of compensation - appellant was entitled to reimbursement for all medical procedures for which he had paid above those already paid by insurer - appeal upheld.

[Stekovic](#) (I)

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