

Friday 25 July 2014

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Coshott v Prentice** (FCAFC) - bankruptcy - interest in property vested in trustee in bankruptcy - appeal against orders for sale allowed in part (B)

**JFTA Pty Ltd (In Liq) v John Holland Pty Ltd** (FCA) - summary dismissal - party showed no interest in reviving litigation - no activity for three years - proceedings dismissed (I B C)

**Rossiter v Core Mining Ltd** (NSWSC) - evidence - employment contract - permission refused to have evidence of key witness taken by audiovisual link (I B)

**Munsie v Dowling** (NSWSC) - contempt of court - ex parte suppression order - breach of order by publication of matter including on internet - declaration (I)

**Queensland Heritage Council v The Corporation of the Sisters of Mercy of the Diocese of Townsville** (QCA) - planning and environment - convent entered in Heritage Register - limitations on grounds of appeal - appeal allowed (C G)



**Argus Probity Auditors and Advisors Pty Ltd v Queensland Rail Ltd (QSC)** - defamation - limitation of actions - right to information - publications unknown to plaintiffs when limitation period expired - extension of time granted (I)

**Poniatowska v Channel Seven Sydney Pty Ltd (SASC)** - defamation - pleadings - applications to amend pleading and defence - certain amendments allowed (I)

## Summaries with links (5 minute read)

### **Coshott v Prentice [2014] FCAFC 88**

Full Court of the Federal Court of Australia

Siopis, Katzmann & Perry JJ

Bankruptcy - conveyancing - trusts and trustees - primary judge held that bankrupt's interest in his matrimonial home (property) vested in trustee in bankruptcy - whether bankrupt's interest was held on trust for family superannuation fund and therefore not divisible among Coshott's creditors - held: no error in findings Coshott's share in property vested in trustee in bankruptcy - sham doctrine irrelevant - Coshott failed to establish Coshott's interest held on trust for superannuation fund - s30 *Bankruptcy Act 1966* (Cth) did not confer power to make order for sale where order would destroy interest of a person who was not the bankrupt - however there was power to order sale under s66G of the Conveyancing Act - s66G required that, where corporation not appointed trustee for sale, there must be at least two trustees - appeal against the orders for sale allowed in part - no reason to disturb primary judge's exercise of discretion to award indemnity costs

[Coshott](#) (B)

### **JFTA Pty Ltd (In Liq) v John Holland Pty Ltd [2014] FCA 760**

Federal Court of Australia

Katzmann J

Summary dismissal - JFTA installed petrochemical facilities - John Holland sub-contracted JFTA for supply and installation of fuel hydrant line - JFTA began to install pipeline but problems developed - John Holland directed JFTA to remove and replace pipeline - JFTA sought relief against John Holland on basis it engaged in misleading or deceptive conduct contrary to *Trade Practices Act 1974* (Cth) and that sub-contract be set aside - John Holland sought summary dismissal of proceedings for want of prosecution - held: John Holland had a potential liability - nearly three years of inactivity - JFTA had shown by conduct it had no intention of reviving litigation - John Holland should be able to free itself from potential liability - no injustice in disposing of proceedings when JFTA chose not to litigate - proceedings dismissed.

[JFTA Pty Ltd \(In Liq\)](#) (I B C)

**Rossiter v Core Mining Ltd [2014] NSWSC 969**

Supreme Court of New South Wales

McDougall J

Evidence - plaintiff sued defendants on employment contracts, estoppel, and misleading and deceptive conduct based on defendants' representations - defendants sought to have evidence of principal witness taken by audiovisual link on basis witness would be required to travel from London to Sydney to give evidence - interests of justice - credit - held: Court did not find application persuasive - insufficient explanation for inability to attend - where credit in issue, it is important for Court to be able to observe witness - case not substantially documentary - head-on clash between two key witnesses - taking evidence by audiovisual link would pose a significant impediment to Court's resolution of the factual issues in dispute - application refused.

[Rossiter](#) (I B)**Munsie v Dowling [2014] NSWSC 962**

Supreme Court of New South Wales

Nicholas AJ

Contempt of court - ex parte suppression order - plaintiffs sought declaration defendant was in contempt of court for publishing matter, including on internet, in breach of order made in proceedings - *Court Suppression and Non-Publication Orders Act 2010* (NSW) - r40.7(3) *Uniform Civil Procedure Rules 2005* (NSW) - held: Court satisfied beyond reasonable doubt defendant well-aware of terms of order and had disobeyed prohibition against disclosure - defendant acted in contravention of order - Court satisfied beyond reasonable doubt defendant guilty of contempt of court - declaration made.

[Munsie](#) (I)**Queensland Heritage Council v The Corporation of the Sisters of Mercy of the Diocese of Townsville [2014] QCA**

Court of Appeal of Queensland

McMurdo P, Gotterson JA &amp; Douglas J

Environment and planning - Sisters of Mercy appealed to Planning and Environment Court from Council's decision to enter convent in Heritage Register - Council sought to strike out parts of respondent's notice of appeal - Council sought to appeal from order giving respondent leave to file and serve amended notice of appeal - whether appeal must be limited to cultural heritage criteria set out in s35(1) *Queensland Heritage Act 1992* (Qld) (QHA) because of express limitation to potential grounds of appeal in s162(1) - held (by majority): Council had right to apply for leave to appeal under *Sustainable Planning Act 2009* (Qld) - powers of Court could only be exercised if ground of appeal under s162(1) of QHA made out - issue whether ground of appeal under s162(1) established should be determined in first instance to save costs associated with potentially unnecessary litigation of issues - appeal allowed - paragraph of order of Planning and Environment Court set aside.

[Queensland Heritage Council](#) (C G)





## **Argus Probity Auditors and Advisors Pty Ltd v Queensland Rail Ltd [2014] QSC 161**

Supreme Court of Queensland

Flanagan J

Defamation - limitation of actions - plaintiffs sued defendant alleging it defamed them in dissemination of file note - after proceedings commenced, plaintiff sought further relevant documents through Right to Information process - plaintiffs obtained access to documents revealing further causes of action - documents statute-barred pursuant to s10AA *Limitation of Actions Act 1974* (Qld) - plaintiffs sought extension of limitation period pursuant to s32A - whether it was unreasonable for plaintiffs to commence defamation action arising from documents within 1 year of date of publication - held: Court satisfied it was required to extend time because defamatory publications were unknown to plaintiffs prior to the expiry of limitation period - extension of time granted

[Argus Probity Auditors and Advisors Pty Ltd](#) (I)

## **Poniatowska v Channel Seven Sydney Pty Ltd [2014] SASC 95**

Supreme Court of South Australia

Parker J

Pleadings - defamation - action arising from television program broadcast - plaintiff sought to amend statement of claim - defendants sought to amend defence pursuant to r54 *Supreme Court Civil Rules 2006* (SA) - defamation trial part-heard - matters that may need to be taken into account in determining whether late application for permission to amend should be granted - held: amendment of plaintiff's pleadings refused except in respect of addition of one paragraph - defendant permitted to amend defence in certain respects including defences of justification and fair comment.

[Poniatowska](#) (I)

### **There may be chaos still around the world by George Santayana**

There may be chaos still around the world,  
 This little world that in my thinking lies;  
 For mine own bosom is the paradise  
 Where all my life's fair visions are unfurled.  
 Within my nature's shell I slumber curled,  
 Unmindful of the changing outer skies,  
 Where now, perchance, some new-born Eros flies,  
 Or some old Cronos from his throne is hurled.  
 I heed them not; or if the subtle night  
 Haunt me with deities I never saw,



I soon mine eyelid's drowsy curtain draw  
To hide their myriad faces from my sight.  
They threat in vain; the whirlwind cannot awe  
A happy snow-flake dancing in the flaw.

[George Santayana](#)

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