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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allianz Australia Insurance Ltd v BlueScope Steel Ltd (NSWCA) - workers compensation insurance policy - insurer's liability for amount paid to settle claim - appeal allowed in part (I B C)

Barangaroo Delivery Authority v Lend Lease (Millers Point) Pty Ltd (NSWCA) - development contract - *Current Market Value* of land - nominee's payments not included (I B C)

Cicek v Estate of Solomon (NSWCA) - solicitors' duties - negligence - loan agreement - reliance on further evidence refused - appeal dismissed (I B)

Nominal Defendant v Bacon (NSWCA) - negligence - motor vehicle accident - Nominal Defendant liable - damages reduced by 50% for contributory negligence - (I)

Tien v Pho (VSC) - administrative law - real property - no error in VCAT's adjustment of parties' rights as tenants in common (B G)

Wagdy Hanna & Associates Pty Ltd v National Library of Australia (ACTCA) - deed of release - claims in relation to conduct of tender - appeal dismissed (I B)



Quill v Smith & Willmott (TASSC) - solicitors' duties - advocate's immunity - summary termination refused (I)

Summaries with links (5 minute read)

Allianz Australia Insurance Ltd v BlueScope Steel Ltd [2014] NSWCA 276

Court of Appeal of New South Wales

Basten, Meagher & Ward JJA

Insurance - workers compensation - former employee of BlueScope developed mesothelioma and sued BlueScope and BHP - Allianz was BlueScope's workers compensation insurer - Allianz appealed from decision of Dust Diseases Tribunal that it had to pay BlueScope for money paid to settle claim - primary judge found BlueScope breached policy by late notification of claim but should be excused under s18 *Insurance Act 1902* (NSW) because there was no prejudice to Allianz - primary judge also found settlement without insurer's consent was not breach of policy - held: no misconstruction of test of *irretrievable prejudice* - no error in conclusion no prejudice suffered - primary judge erred in finding Allianz had to take defence of claim once notified by BlueScope - primary judge had not made findings necessary to conclude BlueScope did not have to comply with condition of policy that it not settle without Allianz's written authority - primary judge erred in finding Allianz breached contract to indemnify, or had repudiated contract, by declining to indemnify BlueScope - appeal allowed in part - certain questions remitted to Tribunal.

[Allianz Australia Insurance Ltd](#) (I B C)

Barangaroo Delivery Authority v Lend Lease (Millers Point) Pty Ltd [2014] NSWCA 279

Court of Appeal of New South Wales

Beazley P, Leeming JA & Tobias AJA

Contract - construction - Authority and developer entered contract to develop Barangaroo - contract granted developer right to develop site and to nominate person to enter into lease of premises - developer promised to pay Authority amounts determined by reference to *Current Market Value* of land on which premises were to be built - nominee agreed, in exchange for its nomination, to make monthly payments to developer to fund development of site - primary judge held these payments should not be included in cash flow calculation determining *Current Market Value*- held: primary judge had not erred in construing contractual language - Court construed contract so as to avoid *working commercial inconvenience* - Court rejected Authority's submission that, because definition of *Current Market Value* required exclusion of debt financing from cash flow analysis, and payments were not debt financing, payments should be included in calculation - appeal dismissed.

[Barangaroo Delivery Authority](#) (I B C)

Cicek v The Estate of the Late Mark Solomon [2014] NSWCA 278

Court of Appeal of New South Wales



Meagher, Barrett & Ward JJA

Negligence - solicitors' duties - loan agreement - unrepresented litigants - appellants claimed former solicitor retained in relation to property transactions was negligent and breached fiduciary duties - appellants also alleged unconscionable conduct against bank from whom they had obtained loan jointly with another couple - proceedings dismissed for want of evidence following dismissal of an application to rely on further evidence - appellants appealed on ground refusal did not facilitate just resolution of real issues in proceedings - held: no error in judgment warranting appellate intervention - further evidence did not disclose reasonably arguable case as pleaded - dictates of justice are best served by dismissing the appeal.

[Cicek](#) (I B)

Nominal Defendant v Bacon [2014] NSWCA 275

Court of Appeal of New South Wales

McColl, Macfarlan & Ward JJA

Negligence - motor vehicle accident - causation - respondent injured in motor vehicle accident when her car collided with an unregistered truck travelling in opposite direction on an unsealed country road in dusty conditions - primary judge held Nominal Defendant liable for damages but reduced them by 50% for contributory negligence - Nominal Defendant appealed from finding that truck driver's action caused accident and assessment of contributory negligence - s5D *Civil Liability Act 2002* (NSW) - held: no error in finding that truck driver's negligence was a necessary condition of accident or in discretionary decision on contributory negligence - appeal and cross-appeal dismissed.

[Nominal Defendant](#) (I)

Tien v Pho [2014] VSC 391

Supreme Court of Victoria

Kaye J

Administrative law - real property - parties jointly purchased property in 1995 - parties each sought order that property be sold and proceeds of sale divided - plaintiff appealed from VCAT's orders pursuant to s233 *Property Law Act 1958* (Vic) adjusting parties' rights as tenants in common in property - VCAT had concluded that failure of plaintiff to pay for her share of purchase price and mortgage debt was an appropriate reason for adjusting rights of the parties pursuant to s233 - held: VCAT had power to apply Pt IV of the Act as amended by *Property (Co-Ownership) Act 2005* (Vic) to property acquired before commencement of amending Act - plaintiff failed to demonstrate any error of law by VCAT - appeal failed - proceedings dismissed.

[Tien](#) (B G)

Wagdy Hanna & Associates Pty Ltd v National Library of Australia [2014] ACTCA 32

Court of Appeal of the Australian Capital Territory

Penfold, Burns & Cowdroy JJ



Deed of release - respondent (NLA) called for tenders for provision of repository required for its library - appellant lodged tender - NLA decided to award tender to third party - appellant instituted proceedings in Federal Court of Australia making various claims against NLA - proceedings settled by deed - appellant issued present proceedings raising issues of breach of duty of confidence and unjust enrichment - appellant claimed there were unique features to its tender, that NLA had provided information about those unique features to third party, and that third party had incorporated appellant's features in its design - effect of releases provided in deed of settlement - limitations - estoppel - held: application to adduce further evidence rejected - primary judge correct to conclude release contained in deed sufficiently wide to include conduct of tender process and any breach of any alleged duty owed by NLA - Court agreed with primary judge that proceedings before primary judge fell within ambit of terms of deed and that deed therefore released NLA from any liability for which it might be liable under claim before primary judge - primary judge correct to conclude any similarities between appellant's tender and building constructed by third party were not result of third party having access to confidential material in appellant's tender - appeal dismissed.

[Wagdy Hanna](#) (I B)

Quill v Smith & Willmott [2014] TASSC 45

Supreme Court of Tasmania

Holt AsJ

Solicitors' duties - immunity from suit - client sued former solicitor and barrister for damages for negligence and breach of retainer - defendants claimed they were immune from suit and sought summary termination of proceedings - extension of advocate's immunity to work done out of court leading to decision affecting conduct of case in court - held: client's allegations extended back to failure to advise a considerable time before mediation and entry of agreed orders - such failure may arguably be too far removed from conduct of proceedings in court to be covered by immunity - whether defendants had benefit of advocate's immunity in relation to client's claim was not so clear as to justify summarily terminating proceedings on pleadings and denying client opportunity to present case in the ordinary way at trial - applications for summary termination of proceedings dismissed.

[Quill](#) (I)

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