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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Deal v Father Pius Kodakkathanath (HCA) - occupational health and safety - appellant injured in course of employment as school teacher in fall from step-ladder while removing displays - employer liable - appeal allowed (I B C G)

Roden v Bandora Holdings Pty Ltd (NSWCA) - environment and planning - consent to development application - development was for a 'tourist facility' prohibited on land zone under planning instrument - appeal allowed (I B C G)

Crossman v Sheahan (NSWCA) - equity - trusts and trustees - primary judge ordered first appellant and companies to repay money paid to them by trustee pursuant to settlement of contempt claim - appeal allowed (I B C G)

In the matter of GPJ Investments Pty Ltd and in the matter of Angelides Investments Pty Ltd (NSWSC) - corporations - winding up - liquidators' remuneration approved - special leave granted to distribute surplus (I B C G)

Matton Developments Pty Ltd v CGU Insurance Ltd (QCA) - insurance policy - appellant entitled to be indemnified under accidental overload clause - appeal allowed (I B C G)

Caason Investments Pty Ltd v Ausroc Metals Ltd (WASC) - corporations - extension of time granted to register interest on Personal Property Securities Register (I B C G)

Piscioneri v Reardon (ACTCA) - limitations - defamation - refusal of extension of time to bring proceedings - leave to appeal refused (I B C G)

Summaries With Link (Five Minute Read)

Deal v Father Pius Kodakkathanath [2016] HCA 31

High Court of Australia

French CJ, Kiefel, Bell, Gageler & Nettle JJ

Occupational health and safety - appellant claimed damages for injury suffered in course of employment as school teacher - injury suffered in fall from step ladder while removing displays from pin-board - appellant contended injury caused by respondent's negligence or breach of statutory duty under regs 3.1.1, 3.1.2 and 3.1.3 *Occupational Health and Safety Regulations 2007* (Vic) - trial judge found evidence did not establish appellant engaged in 'hazardous manual handling task' under reg 3.1.2 - on appeal Court found there was evidence that appellant was engaged in hazardous manual handling task but association between task and risk of injury not close enough to fall within in reg 3.1.2 - 'manual handling of an unstable load' - 'associated with a hazardous manual handling task' - 'reasonable practicability of identifying the risk' - ss2(1), 4, 20, 21 & 158 *Occupational Health and Safety Act 2004* (Vic) - held: there was evidence from which jury could have inferred it was reasonably practicable for respondent to identify task of removing displays using stepladder as involving hazardous manual handling, and reasonably practicable for respondent to take steps to eliminate or substantially reduce risk which eventuated - appeal allowed.

[Deal](#) (I B C G)

Roden v Bandora Holdings Pty Ltd [2016] NSWCA 220

Court of Appeal of New South Wales

McColl, Basten & Payne JJA

Environment and planning - first respondent lodged development application with second respondent for development described as 'a Rural Tourist Facility' - Council consented - appellant unsuccessfully challenged validity of consent - appellant challenged primary judge's finding that development was not a 'tourist facility' under relevant planning instrument, and contended primary judge made no finding as to unavailability of alternative locations where there was evidence of alternative locations - *Byron Local Environmental Plan 1988* (Byron LEP) - s124 *Environmental Planning Assessment Act 1979* (NSW) - s25B *Land and Environment Court Act 1979* (NSW) - held: development was for a 'tourist facility' and was prohibited on land zone under planning instrument - appeal allowed.

[Roden](#) (I B C G)

Crossman v Sheahan [2016] NSWCA 200

Court of Appeal of New South Wales

Basten, Ward & Payne JJA

Equity - trusts and trustees - first appellant financial consultant conceived trust structure involving acquisition of service stations by primary trust - first appellant was contingent beneficiary under sub-trust - corporate trustee of primary trust removed mechanism by which first appellant could obtain financial reward - first appellant sued trustee of primary trust and obtained interlocutory injunction to prohibit trustee from disposing of or encumbering trust assets - trustee mortgaged assets for loan and paid amounts to third parties - first appellant sued for contempt - first appellant settled claims for contempt on payment of sum by trustee - trustee replaced by respondents who alleged first appellant and companies were paid in breach of trust - respondents successful - first appellant and companies appealed against orders they repay money - apprehended bias - knowing receipt - releases contained in deeds - whether consent by beneficiary to breach of trust - s471B *Corporations Act 2001* (Cth) - s63 *Trustee Act 1925* (NSW) - r51.53 *Uniform Civil Procedure Rules 2005* (NSW) - held: appeal allowed.

[Crossman](#) (I B C G)

In the matter of GPJ Investments Pty Ltd and in the matter of Angelides Investments Pty Ltd [2016] NSWSC 1173

Supreme Court of New South Wales

Brereton J

Corporations - winding up - liquidators of companies sought approval of remuneration and special leave to distribute surplus in winding up of companies - ss473, 485(2) & 488 *Corporations Act 2001* (Cth) - reg 5.6.71 *Corporations Regulations* - rr7.9 & 7.10 *Supreme Court (Corporations) Rules 1999* (NSW) - held: Court satisfied remuneration was reasonable and should be approved - Court satisfied it should grant special leave to distribute surplus.

[GPJ & Angelides](#) (I B C G)

Matton Developments Pty Ltd v CGU Insurance Ltd [2016] QCA 208

Court of Appeal of Queensland

M McMurdo P, Fraser & Morrison JJ

Insurance - contractors and plants insurance - insurance company refused to indemnify crane owner for damage to crane when boom collapsed - there were competing hypotheses concerning circumstances in which boom collapsed - primary judge found policy did not respond to claim and that allegation that insurance company breached the contract of insurance failed - whether primary judge erred in finding appellant not entitled to be indemnified under accidental overload clause - 'overloading' - 'accidental, sudden and unforeseen' - ss13 & 54 *Insurance Contracts Act 1984* (Qld) held: 'overloading' caused damage to crane - damage was 'accidental, sudden and unforeseen' - appeal allowed.

[Matton](#) (I B C G)

Caason Investments Pty Ltd v Ausroc Metals Ltd [2016] WASC 267

Supreme Court of Western Australia

Master Sanderson

Corporations - plaintiff sought extension of time to register interest on Personal Property

Securities Register - plaintiff contended failure to register was inadvertent in reliance on s588FM(2) *Personal Properties Securities (Corporations and Other Amendments) Act 2010* (Cth) - held: there was level of inadvertence on plaintiff's part - no fraudulent or improper intention - no prejudice - extension of time granted.

[Caason](#) (I B C G)

Piscioneri v Reardon [2016] ACTCA 33

Court of Appeal of the Australian Capital Territory
Murrell CJ

Limitations - defamation - primary judge dismissed application under s33 *Limitation Act 1985* (ACT) for extension of time to bring defamation proceedings - applicant sought to appeal - whether primary judge made final decision or an interlocutory decision requiring leave to appeal - whether correctness of decision sufficiently in doubt to warrant leave to appeal - whether injustice to applicant if leave not granted - whether to grant leave to appeal - whether denial of procedural fairness - held: primary judge's decision not attended with sufficient doubt to warrant reconsideration - no significant injustice to applicant resulting from any error in decision - extension of time to seek leave to appeal refused.

[Piscioneri](#) (I B C G)

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