

Thursday 25 September 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Simmons v Rockdale City Council (No 2) (NSWSC) - costs - plaintiff successful against one defendant - plaintiff to pay other defendant's costs (I)

Sahab Holdings Pty Ltd v Castle Constructions Pty Ltd (NSWSC) - real property - easements - *Anshun estoppel* - summary dismissal of proceedings refused (B)

Prestige Lifting Services Pty Ltd v Wood (VSC) - solicitors' costs - claim for unpaid fees for acting for company - no contract between solicitor and company - appeal allowed (I B)

Maribyrnong City Council v Malios (VSC) - accident compensation - no error in opinion of medical panel - proceedings dismissed (I G)

Civil Mining & Construction Pty Ltd v Isaac Regional Council (QSC) - security of payments - concurrent dispute resolution under contract and statute - injunction refused (C)

Barklya Pty Ltd v Richtech Pty Ltd (QSC) - contract - claim for amount owing under funding deed - summary judgment refused (B)

Public Trustee v Alzheimer's Australia WA Ltd [No 2] (WASC) - Wills and estates - testamentary capacity - validity - probate in solemn form of Will (B)

Summaries with links (5 minute read)

Simmons v Rockdale City Council (No 2) [2014] NSWSC 1275

Supreme Court of New South Wales

Hall J

Costs - plaintiff injured while riding bicycle through car park adjacent to Club when he struck boom gate - plaintiff sued Council and Club - plaintiff succeeded against Council - dispute concerned plaintiff's liability for Club's costs - whether a Bullock or Sanderson order should be made in plaintiff's favour - held: plaintiff's failure to accept Club's offer of compromise reasonable - Club's costs payable on ordinary basis - reasonable for plaintiff to have sued Club - no basis for finding Council's conduct made it fair for it to bear liability for Club's costs - Bullock or Sanderson order refused - Council to pay plaintiff's costs - plaintiff to pay Club's costs.

[Simmons](#) (I)

Sahab Holdings Pty Ltd v Castle Constructions Pty Ltd [2014] NSWSC 1281

Supreme Court of New South Wales

White J

Real property - plaintiff sought easement over defendant's land - s88K *Conveyancing Act 1919* (NSW) - defendant applied for summary dismissal - *Anshun estoppel* - overlap of issues between earlier proceedings and present proceedings - held: Court not persuaded *Anshun estoppel* so clear that plaintiff's claim was not seriously arguable - overlap between proceedings related to significant issue - issue not necessarily decisive - no overlap in respect of other issues - summary dismissal refused.

[Sahab Holdings Pty Ltd](#) (B)

Prestige Lifting Services Pty Ltd v Wood [2014] VSC 465

Supreme Court of Victoria

Ginnane J

Solicitors' costs - solicitor sought unpaid fees for acting for company - instructions to act for company given by only one of its two directors - directors in dispute about conduct and control of company - Magistrate gave judgment for solicitor - no dispute about quantum of fees - whether solicitor had been validly retained by or authorised on behalf of company to perform work for it - ss3.4.17, 3.4.19 & 3.4.26 *Legal Profession Act 2004* (Vic) - held: Magistrate erred by finding a contract between company and solicitor - error affected Magistrate's decision - appeal allowed - company's counterclaim remitted to Magistrate's Court.

[Prestige Lifting Services Pty Ltd](#) (I B)



Maribyrnong City Council v Malios [2014] VSC 452

Supreme Court of Victoria

Macaulay J

Accident compensation - Council sought to quash medical panel's certificate of opinion under s68(2) *Accident Compensation Act 1985* (Vic) - panel concluded worker's employment with Council was a significant contributing factor to wrist injury and secondary depressive illness - held: Council did not establish panel failed to properly evaluate information and submissions concerning medical issues arising before employment with Council, or causal factors other than employment - proceeding dismissed.

[Maribyrnong City Council](#) (I G)

Civil Mining & Construction Pty Ltd v Isaac Regional Council [2014] QSC 231

Supreme Court of Queensland

P McMurdo J

Security of payments - parties entered contract for road works to be constructed by CMC for Council - Council challenged payment claim served by CMC under *Building and Construction Industry Payments Act 2004* (Qld) - Council contended claim was abuse of statutory scheme - Council contended nearly all of claim's components were subject of previous adjudications - those adjudications had been set aside - Council also submitted it had invoked dispute resolution provisions of contract - mediation under contract was expected to result in arbitration of same matters to be decided by adjudicator under statutory scheme - Council sought final injunction to prevent claim's progress under statutory scheme - ss17(5) & 17(6) - held: setting aside adjudicators' decisions put parties in same position as if there had been no adjudication - no impediment to concurrent process under both dispute resolution clause of contract and under the statutory scheme - injunction refused.

[Civil Mining & Construction Pty Ltd](#) (C)

Barklya Pty Ltd v Richtech Pty Ltd [2014] QSC 233

Supreme Court of Queensland

A Wilson J

Contracts - Barklya advanced Richtech money under funding deed - Barklya sought summary judgment against Richtech for amount owing under deed - Richtech claimed money was advanced in course of long standing arrangement for investment in real estate development - to be reimbursed only when developments complete - also claimed that, even if payments were loans, they were repayable only when Richtech had sufficient funds or profits from developments - held: factual circumstances and legal issues were sufficiently equivocal that summary judgment should not be given.

[Barklya Pty Ltd](#) (B)

**Public Trustee v Alzheimer's Australia WA Ltd [No 2] [2014] WASC 337**

Supreme Court of Western Australia

Pritchard J

Wills and estates - deceased died in October 2009 - August 2009 Will appointed Public Trustee as executor - Public Trustee sought grant of probate in solemn form of August 2009 Will - certain defendants contended deceased did not have capacity in August 2009 and advanced 1997 Will as last valid Will - s8 *Wills Act 1970* (WA) - Public Trustee alternatively advanced June 2009 Will which was identical to August 2009 Will - June 2009 Will drafted by Public Trustee, signed by deceased, stapled to letter, and returned to Public Trustee - Public Trustee had then requested deceased to sign August 2009 Will - held: deceased had testamentary capacity in August 2009 - August 2009 Will valid - unnecessary to consider Public Trustee's alternative case that June 2009 Will was valid - probate in solemn form of August 2009 Will granted.

[Public Trustee](#) (B)

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