



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bruton Holdings Pty Ltd (in liq'n) v Commissioner of Taxation - Trustees' powers & rights - plaintiff's application for leave to appeal granted - Commissioner's application for security for costs dismissed (B)

Ellis v Reko Pty Ltd - Limitation of actions – s109(3) *Motor Accidents Compensation Act 1999* (NSW) - "full and satisfactory explanation" - application for leave to appeal dismissed (I)

Groeneveld Australia Pty Ltd & Ors v Nolten & Ors (No 3) - Director's duties - contracts - "good faith" - tort of deceit (I, B)

Crowe v Trevor Roller Shutter Services Pty Ltd - Personal injuries - s47.02, Rule 47.03 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - jury fees (I)

R v Hargraves & Stoten - Criminal law - taxation scheme - two appellants - appeals against conviction dismissed - appeals against sentence upheld (I, B)

Eames v Brisbane City Council & Anor - Development applications - application for leave to appeal from Planning & Environment Court decision (C)



Lampropoulos v Lynne Kolnik as Executor of the Will of Gerald Thomas Foley - Costs - special costs orders - interest on costs (I)

National Concreting Pty Ltd & Anor v Fix Force Contracting Ltd & Anor - Application to set aside default judgment - duress - equitable set-off (C)

Summaries with links (5 minute read)

Thursday 25 November 2010

Bruton Holdings Pty Ltd (in liq'n) v Commissioner of Taxation [2010] FCA 1278

Federal Court of Australia

Jagot J (in Sydney)

Trustees' powers & rights - plaintiff applying for leave to appeal from declarations to the effect that plaintiff is not entitled to indemnification by exoneration or recoupment out of the property of the Bruton Educational Trust for expenses incurred in certain proceedings after 28 February 2007 - first defendant, the Commissioner, seeking security for the costs of the appeal in the sum of \$38,590 and a stay or dismissal of the appeal failing payment - plaintiff's application granted - Commissioner's application dismissed.

[Bruton Holdings](#) (B)

[Bruton Holdings](#) - decision 3 September 2010: see 'Benchmark' B & IBC Tuesday 7 September 2010 for this decision & links to other decisions (including from High Court & Full Court of the Federal Court) in this case – ss449E & 504(1) *Corporations Act* 2001 (Cth) – ss21 & 23 *Federal Court of Australia Act* 1976 - whether corporate trustee in liquidation entitled to indemnification by exoneration or recoupment out of trust assets for costs incurred after it became a bare trustee - answer 'no;'

[Bruton Holdings](#) - decision 9 September 2010 - declaration that plaintiff not entitled to indemnification by exoneration or recoupment out of the property of the Bruton Educational Trust for expenses incurred in proceedings NSD 1222 of 2006.



Ellis v Reko Pty Ltd [2010] NSWCA 319

Court of Appeal of New South Wales

Beazley & Young JJA; Handley AJA

Limitation of actions – s109(3) *Motor Accidents Compensation Act 1999* (NSW) - accident with forklift at work - for decision appealed from, see 'Benchmark' I & IBC Monday 9 November 2009 & link below - application for leave to appeal dismissed - "full and satisfactory explanation."

[Ellis \(I\)](#)

[Ellis](#) - decision District Court of NSW 4 November 2009 - applicant seeking leave to commence proceedings against defendant pursuant to s109(3)(1)(a) *Motor Accidents Compensation Act 1999* (NSW) - exercise of discretion - related workers compensation proceedings - whether full & satisfactory explanation for delay - applicant had not discharged onus - application dismissed.

Groeneveld Australia Pty Ltd & Ors v Nolten & Ors (No 3) [2010] VSC 533

Supreme Court of Victoria

Davies J

Director's duties - contracts - "good faith" - tort of deceit - first defendant was managing director of first plaintiff - dismissal from employment - plaintiffs claiming entitlement to equitable & common law remedies against first defendant & companies associated with him for the alleged breaches, including declarations that first defendant had contravened statutory, fiduciary & contractual duties - defendants have consented to judgment on specified claims but first defendant opposing the Court granting the declarations sought by plaintiffs on the ground that there could be no utility in those declarations, given that his consent to judgment would result in monetary awards to plaintiffs - declaratory relief refused - plaintiffs entitled to judgment on all claims against defendants - detailed examination of case law from the United States of America & Australia.

[Groeneveld Australia](#) (I, B)

Crowe v Trevor Roller Shutter Services Pty Ltd [2010] VSC 536

Supreme Court of Victoria

Beach J

Personal injuries - s47.02, Rule 47.03 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - defendant seeking extension of time to pay first day's jury fees - jury to be dispensed with - proceedings to be heard as a cause.

[Crowe](#) (I)

**R v Hargraves & Stoten [2010] QCA 328**

Court of Appeal of Queensland

Muir & Fraser JJA; Atkinson J

Criminal law - taxation scheme - two appellants - appeals against conviction & sentence - conspiracy to dishonestly cause a loss to the Commonwealth - appellants were directors & shareholders of company producing local phone directories - appeals against conviction dismissed - appeals against sentence upheld - detailed examination of Australian case law.

[Hargraves & Stolen](#) (I, B)

Eames v Brisbane City Council & Anor [2010] QCA 326

Court of Appeal of Queensland

Holmes & Muir JJA; Mullins J

Development applications - land at Toowong - appellant had appealed to Planning & Environment Court against first respondent's approval of second respondent's development application - appellant had raised jurisdictional issue that was decided against appellant in a preliminary decision of Planning & Environment Court - appellant seeking leave to appeal from that decision - application refused.

[Eames](#) (C)

[Eames](#)- decision 25 February 2010 - *Integrated Planning Act 1997* (Qld) - easements - activity of rubbish vehicles entering upon land to collect garbage - "development" - material change of use of premises - held that no inconsistency between development & terms of easement - jurisdictional point decided in favour of co-respondent - an interesting decision.

Lampropoulos v Lynne Kolnik as Executor of the Will of Gerald Thomas Foley [2010] WASC 193

Supreme Court of Western Australia

Simmonds J

Costs - special costs orders - allowance for Counsel & solicitor attending mediation - approach to be adopted where more than one issue & defendant successful but not on all issues - interest on costs - pre-judgment interest on costs- whether jurisdiction to award such interest - interest on costs from date of judgment for costs (the *incipitur* rule) – s280(2) *Legal Profession Act 2008* (WA).

[Lampropoulos](#) (I)



In the District Court of Queensland...

National Concreting Pty Ltd & Anor v Fix Force Contracting Ltd & Anor [2010] QDC 446

District Court of Queensland

Tutt DCJ

Application to set aside default judgment - debt "repayment plan" - whether valid defence & counter-claim exist - whether repayment plan entered into under duress - equitable set-off - application to set aside default judgment against first defendant dismissed - application to set aside default judgment against second defendant allowed - Australian case law considered.

[National Concreting](#) (C)

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