

Wednesday 26 October 2011

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

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Executive Summary (1 minute read)

Watts, in the matter of Watts - s206G(1) Corporations Act 2001 (Cth) (I, B, C)

Australian Securities & Investments Commission v Letten (No 14) - Costs (B)

Adrian Garfield Barwick v Goodridge - Application for leave to join Bankruptcy trustee as defendant to proceedings (B)

Landmark Group Pty Ltd v Lane Cove Council - Development application - appeal upheld (I, B, C)

Meriton Apartments Pty Ltd v Council of the City of Sydney - Environmental Planning & Assessment Act 1979 (NSW) - appeal dismissed (B, C)

Montessori Academy Pty Ltd v Strathfield Council - Development consent - childcare centre - appeal upheld (C)

Wilson Parking Australia 1992 Pty Ltd v Council of the City of Sydney - cl66(2) City of Sydney Local Environmental Plan 2005 - appeal dismissed (C)



Aksentijevic v Victoria Racing Club Ltd - s134AB(22) *Accident Compensation Act 1985* (Vic) - application to file amended pleading refused (I)

Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd (formerly SC Land Richmond Pty Ltd) & Ors (No 2) - Building cases - case management (I, C)

Singh v Alston Post Pty Ltd - Negligence - property damage - appeal dismissed (I)

St Barnabas Nominees Pty Ltd v Stallard Corp Pty Ltd [No 2] - Contracts - claim for interest under contract for sale of land (B, C)

R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal & Anor - UK decision - apparent bias - professional disciplinary proceedings & self-regulation - appeal allowed (I, B, C)

Summaries with links (5 minute read)

Watts, in the matter of Watts [2011] FCA 1185

Federal Court of Australia

Yates J

Corporations Act 2001 (Cth) – application to the Court by person disqualified from managing corporations for leave under s206G(1) “to act as a director of corporations or companies” or, in the alternative, “to act as a director of proprietary limited & not for profit corporation[s] or companies limited by guarantee” – application for leave refused.

[Watts](#) (I, B, C)

Australian Securities & Investments Commission v Letten (No 14) [2011] FCA 1174

Federal Court of Australia

Gordon J

Costs – the plaintiff’s costs & the Receivers & Westpac’s costs of Interlocutory Process to be paid on an indemnity basis by Mirvac.

[Australian Securities and Investments Commission](#) (B)



[Australian Securities and Investments Commission](#) – decision 7 October 2011: see Benchmark B & IBC Wednesday 19 October 2011 - *Corporations Act* 2001 (Cth) - unregistered managed investment schemes – receivers seeking directions - Hotel Management Agreement - whether Receivers justified in refusing to pay to Mirvac Hotels Pty Ltd the Termination Fee claimed by Mirvac under the Agreement between seventh defendant & Mirvac, as an expense of the receivership of seventh defendant – answer ‘yes’ - extensive consideration of UK, Australian & NZ case law including *In re Toshoku Finance UK plc* [2002] UKHL 6; [2002] 1 WLR 671.

Adrian Garfield Barwick v Goodridge [2011] NSWSC 1233

Supreme Court of New South Wales

Black J

Bankruptcy Act 1966 (Cth) – application by plaintiff for leave under r6.30 *Uniform Civil Procedure Rules* 2005 (NSW) to join Bankruptcy trustee as defendant to proceedings in substitution of bankrupt defendant – application not successful - extensive consideration of UK & Australian case law.

[Adrian Garfield Barwick](#) (B)

Landmark Group Pty Ltd v Lane Cove Council [2011] NSWLEC 1303

Land & Environment Court of New South Wales

Hussey C

Development applications - appeal against Council's refusal of development application for five storey residential flat building containing 60 dwellings over basement car-parking for one hundred & four vehicles - capacity of local road network to accommodate evacuating vehicles in a bushfire event – appeal upheld

[Landmark Group](#) (I, B, C)

Meriton Apartments Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1294

Land & Environment Court of New South Wales

Tuor C

Environmental Planning & Assessment Act 1979 (NSW) - appeal against Council's refusal of application under s96(2) to modify consent for development application – modification sought: reduction of total contribution payable by including a credit of \$265,778.58 for a past workforce - appeal dismissed.

[Meriton Apartments](#) (B, C)

**Montessori Academy Pty Ltd v Strathfield Council [2011] NSWLEC 1299**

Land & Environment Court of New South Wales

Hussey C

Development consents - appeal upheld - development consent granted for alterations, conditions, associated landscaping to existing dwelling to permit its use as a childcare centre subject to conditions.

[Montessori Academy](#) (C)

Wilson Parking Australia 1992 Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1298

Land & Environment Court of New South Wales

Dixon C

cl66(2) *City of Sydney Local Environmental Plan 2005* - assessment as to whether four identified public uses in cl66(2) relevant & if so, whether proposed uses otherwise reasonably & adequately serviced by public transport or existing car parking services – development application refused consent – appeal dismissed.

[Wilson Parking](#) (C)

Aksentijevic v Victoria Racing Club Ltd [2011] VSC 541

Supreme Court of Victoria

Kaye J

s134AB(22) *Accident Compensation Act 1985* (Vic) - industrial accident - proposed amendment to pleading - claim for aggravated &/or exemplary damages – application to file amended pleading refused.

[Aksentijevic](#) (I)

Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd (formerly SC Land Richmond Pty Ltd) & Ors (No 2) [2011] VSC 518

Supreme Court of Victoria

Dixon J

Building cases - case management – application to strike out late served witness statements – exercise of discretion – *Civil Procedure Act 2010* (Vic) – application dismissed.

[Dura](#) (I, C)

**Singh v Alston Post Pty Ltd [2011] VSC 534**

Supreme Court of Victoria

Osborn J

Negligence - appeal from magistrate's decision - claim for property damage caused by motor vehicle collision- whether Magistrate bound to conclude respondent guilty of contributory negligence – onus on appellant – Magistrate's conclusion open – appeal dismissed – Australian case law considered.

[Singh \(I\)](#)**St Barnabas Nominees Pty Ltd v Stallard Corp Pty Ltd [No 2] [2011] WASC 289**

Supreme Court of Western Australia

Edelman J

Contracts – construction of contract - claim to interest under \$9 million contract for sale of land – St Barnabas entitled to the disputed amount - counter-claim dismissed.

[St Barnabas Nominees](#) (B, C)

From the United Kingdom...

R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal & Anor [2011]

EWCA Civ 1168

Court of Appeal of England & Wales, Civil Division

Rix, Sullivan & Black LJ

Apparent bias – professional disciplinary proceedings & self-regulation - whether presence of Institute of Legal Executives (ILEX) council member & director of ILEX on disciplinary tribunal & of Council's vice-president on the appeal tribunal was in breach of doctrines that no one may be a judge in his own cause &/or of apparent bias – appeal allowed – orders of both disciplinary tribunal & appeal tribunal quashed – an interesting review of UK case law.

[Kaur](#) (I, B, C)

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