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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

Shoalhaven City Council v Humphries (NSWCA) - work injury damages - no breach of duty of care by employer - damages reduced (I)

Ellis Management Services Pty Ltd v Taylor (VSCA) - accident compensation - serious injury - leave to bring proceedings for damages for pain and suffering - appeal dismissed (I)

Wolfe v Permanent Custodians (VSCA) - loans and mortgages - possession of property - terms of arrangement with bank not unjust - no unconscionable conduct - appeal dismissed (B)



Reeves v O'Riley (QCA) – indemnity costs – rejection of settlement offer not unreasonable – no unusual circumstances warranting departure from ordinary rule – costs order not varied (B)

Re Yu (QSC) - wills and estates - deceased intended informal document created on iPhone to form will - probate granted (B)

Hartin v Rigel Constructions Pty Ltd (QSC) – work injury damages – causation - employer liable for workers injuries suffered in two successive incidents (I)

Romaldi Constructions Pty Ltd v Adelaide Interior Linings Pty Ltd (No 2) (SASCFC) - security of payments - stay of execution of judgment refused - appeal dismissed (C)

Summaries with links (5 minute read)

Shoalhaven City Council v Humphries [2013] NSWCA 390

Court of Appeal of New South Wales

Barrett & Leeming JJA; Tobias AJA

Work injury damages - worker employed by labour hire company was working for council - primary judge found council breached duty of care to worker - council appealed from refusal to reduce damages pursuant to s151Z(2) *Workers Compensation Act 1987* (NSW) for employer's breach of duty of care to worker and from assessment of damages - held: no error in general approach to damages - even if primary judge erred in finding no breach of duty by employer any breach did not cause worker's injuries - not appropriate to apportion liability - primary judge correct to decline to reduce worker's damages pursuant to s 151Z(2)(c) of the Act – obligation on employer's to ascertain host employers system of work but failure not causative of injury appeal allowed in part.

[Shoalhaven City Council](#) (I)

Ellis Management Services Pty Ltd v Taylor [2013] VSCA 326

Court of Appeal of Victoria

Osborn & Beach JJA

Accident compensation - employee sought leave under s134AB(16)(b) *Accident Compensation Act 1985* (Vic) to bring proceedings for damages for pain and suffering for injuries suffered at work - employer appealed from primary judge's decision to grant leave - s134AB(38)(b) of the Act - held:



no impermissible aggregation of pain and suffering consequences with lack of earning capacity consequences - no reliance on loss of earning capacity consequences in determining employee satisfied very considerable test - conclusion that injury met very considerable test not plainly wrong or erroneous - no failure to give sufficient reasons or make sufficient findings - appeal dismissed.

[Ellis Management Services](#) (I)

Wolfe v Permanent Custodians [2013] VSCA 331

Court of Appeal of Victoria

Warren CJ; Neave & Whelan JJ

Loans and mortgages - *National Consumer Credit Code 2010* - lender held mortgage over property securing loan to appellant and his former partner - appellant and partner were both parties to loan secured by partner's property - appellant and partner separated and entered terms of settlement including agreement to transfer property to appellant - there was default on loan - bank obtained default judgment for loan amount against appellant and default judgment for loan and possession of property against partner - appellant entered terms of arrangement with bank but defaulted on repayment due to incorrect completion of form - bank took possession of property - appellant contended terms of arrangement unenforceable - held: term as to default was not unjust - bank's conduct was neither unconscionable nor in breach of contractual duty to co-operate - unnecessary to deal with notice of contention concerning application of relevant credit legislation - appeal dismissed.

[Wolfe](#) (B)

Reeves v O'Riley [2013] QCA 285

Court of Appeal of Queensland

Holmes & Muir JJA; Mullins J

Costs - court dismissed appeal against declaration that certain correspondence constituted a binding agreement for transfer of property - respondent sought indemnity costs on basis of appellant's refusal of a Calderbank offer - respondent had made an offer of settlement within one week of notice of appeal being filed - held: Ch 9, Pt 5 *Uniform Civil Procedure Rules 2005* (Qld) concerning offers to settle had no application to Court of Appeal proceedings - argument on appeal was by no means hopeless though ultimately unsuccessful - rejection of offer not plainly unreasonable nor were there or any unusual features to case which would warrant a departure from the usual order for costs - no variation to costs order made in judgment.

[Reeves](#) (B)

**Re Yu [2013] QSC 322**

Supreme Court of Queensland

P Lyons J

Probate - informal document - deceased took his own life - before death deceased created series of documents on iPhone, one of which was expressed to be his last will - application for declaration that electronic document was will of deceased, that it be admitted to probate and that probate be granted to applicant - ss5, 10 & 18 *Succession Act 1981 (Qld)* - document - s36 *Acts Interpretation Act 1954 (Qld)* - held: deceased intended document which he created to form will.

[Re Yu \(B\)](#)**Hartin v Rigel Constructions Pty Ltd [2013] QSC 320**

Supreme Court of Queensland

Applegarth J

Work injury damages – negligence – worker was injured unloading truck, later worker suffered further injury when jolted while driving truck – employer admitted liability for injuries suffered in first incident – causation – held: worker suffered a disc injury and sciatica as a result of first incident - injury suffered in second incident was caused by employer’s negligence – injury in second incident would not have been so severe if not for worker’s first incident – damages for both injuries assessed

[Hartin \(I\)](#)**Romaldi Constructions Pty Ltd v Adelaide Interior Linings Pty Ltd (No 2)****[2013] SASCF 124**

Full Court of the Supreme Court of South Australia

Sulan, Blue & Stanley JJ

Security of payments - construction contract - adjudicator determined appellant liable to pay progress payment to subcontractor under *Building and Construction Industry Security of Payment Act 2009 (SA)* - appellant sued subcontractor for breach of contract and obtained interlocutory injunction restraining subcontractor from obtaining adjudication certificate - injunction discharged on appeal - subcontractor filed adjudication certificate as judgment debt - appellant appealed against refusal to stay execution of judgment pending determination of its damages claim and against discharge of injunction – held: appellant did not demonstrate prospects of success in its damages claim - no basis for grant of interlocutory injunction as no prejudice to appellant if



adjudication certificate filed as judgment - proper exercise of discretion was to deny stay of execution of judgment - appeal dismissed.

[Romaldi Constructions](#) (C)

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