

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

Executive Summary (1 minute read)

Silvestro v S R Factors Pty Ltd - *Trade Practices Act 1974* (Cth) - appeal in relation to cross-claim - appellant contending that, in not taking action for over six years to recover debt & to sue appellant, respondent had denied appellant his rights of subrogation because debts now irrecoverable against customer or insurer of smash repair business - appeal dismissed

Batterham v Makeig - Contracts - project agreement - consultants' costs - appeal allowed

Hanna v Uniting Church in Australia Property Trust (NSW) - Personal injuries - school camp - no breach of duty

Frisbo Holdings Pty Ltd v Austin Australia Pty Ltd (No 2) - Costs - defendants seeking indemnity costs orders from plaintiff in personal injuries proceedings - first defendant's claim for indemnity costs against plaintiff rejected - second defendant entitled to an order for indemnity costs from day after service of offer of compromise

Agricultural & Rural Finance Pty Ltd & Anor v John Edward Atkinson & Ors - Test cases - undertakings given to Court at first instance by sundry defendants agreeing to be bound on common questions by findings in test case - construing consent orders

Heilpern v Anasco - *Contracts Review Act 1980* (NSW) - contract for sale of a unit at Coogee - non est factum not established - contract not unjust - decree for specific performance granted

Thoroughvision Pty Ltd v Sky Channel Pty Ltd & Anor - *Commercial Arbitration Act 1984* (Vic) - meaning of "manifest error of law on the face of the award" - application to set aside award pursuant to s42 dismissed

Roads Corporation v Love - Apprehension of bias principle

Till v Nominal Defendant - Parens patriae jurisdiction

Summaries with links (5 minute read)

Tuesday 27 April 2010

Silvestro v S R Factors Pty Ltd [2010] NSWCA 74

Court of Appeal of New South Wales

Macfarlan & Young JJA; Sackville AJA

Trade Practices Act 1974 (Cth) - appeal in relation to cross-claim - factoring agreement - appellant contending that, in not taking action for over six years to recover debt & to sue appellant, respondent had denied appellant his rights of subrogation because debts now irrecoverable against customer or insurer of smash repair business - appellant contending delay by respondent constituted "unconscionable conduct" within ss51AA & 51AC - *Limitation Act 1969* (NSW) - primary judge correct in rejecting cross-claim - appeal dismissed.

[Silvestro](#)

Batterham v Makeig [2010] NSWCA 86

Court of Appeal of New South Wales

McCull & Young JJA; Sackville AJA

Contracts - project agreement - for decision appealed from, see 'Benchmark' 13 May 2009 & link below - damages - trade practices - misleading or deceptive conduct - consultants' costs & costs ancillary to consultants' services - council fees - "experienced" - "professional" - no reliance on representation - appeal allowed - cross-appeal dismissed.

[Batterham](#)

[Makeig](#) - decision 1 May 2009 - contracts - fiduciary obligations - *Fair Trading Act 1987* (NSW) - *Partnership Act 1892* (NSW) - misleading or deceptive conduct - plaintiff seeking declaratory & other relief - development project in relation to two parcels of land in Kitchener, one of which owned by first defendant - second defendant a company associated with first defendant - owners of second parcel of land at time project commenced not involved in these proceedings - plaintiff contending that by their conduct defendants had breached fiduciary obligations owed to him & had invalidly purported to terminate agreement constituting alleged joint venture, thereby repudiating that agreement - defendants denying Kitchener Project Agreement was intended to create any binding legal relationship - held binding contract - consultants costs - Council lodgement fees.

Hanna v Uniting Church in Australia Property Trust (NSW) [2010] NSWSC 293

Supreme Court of New South Wales

Hislop J

Personal injuries - school camp - injury to right ankle - first defendant owner of the school & second defendant organiser of the camp sued in negligence - plaintiff also suing first defendant in contract for breach of an implied term to exercise reasonable care & skill to ensure plaintiff's safety whilst at school or attending activities arranged for students - no breach of duty - verdict for defendants.

[Hanna](#)

Frisbo Holdings Pty Ltd v Austin Australia Pty Ltd (No 2) [2010] NSWSC 298

Supreme Court of New South Wales

Hislop J

Costs - defendants seeking indemnity costs orders from plaintiff - in personal injuries proceedings, first defendant had been sued as head contractor for construction of hotel - it had designed & prepared drawings for construction of pool & spa - second defendant had been sued as constructor of pool & spa - first defendant also seeking an order in the nature of, but not identical to, a Bullock or Sanderson order, to the effect that first defendant's costs are to include both defendants' costs of cross-claim: His Honour declined to make that order - first defendant's claim for indemnity costs against plaintiff rejected - second defendant entitled to an order for indemnity costs from 11.00 am on day after service of offer of compromise.

[Frisbo Holdings](#)

[Frisbo Holdings](#) - decision 11 March 2009: see 'Benchmark' I & IBC Friday 12 March 2010 - personal injuries - joint tortfeasors - liability to contribute to settlement - causation - injury (tetraplegia) sustained whilst in pool/spa area of hotel - judgment for defendants - judgment for second defendant on first defendant's cross claim.

Agricultural & Rural Finance Pty Ltd & Anor v John Edward Atkinson & Ors [2010] NSWSC 311

Supreme Court of New South Wales

Einstein J

Test cases - case in which plaintiff had commenced proceedings against two hundred & sixteen defendants - loan agreements - investments made by defendants in one or more of two prescribed interest projects known as Port Macquarie Tea Tree Plantation Project No 1 & Port Macquarie Tea Tree Plantation Project No 2 - undertakings given to Court at first instance by sundry defendants agreeing to be bound on common questions by findings in test case - construing consent orders.

[Agricultural & Rural Finance & Anor](#)

Heilpern v Anasco [2010] NSWSC 317

Supreme Court of New South Wales

Brereton J

Contracts Review Act 1980 (NSW) - plaintiff suing for specific performance of a contract for sale, made between herself as purchaser & defendant as vendor, of a unit at Coogee - defendant vendor resisting claim on grounds that contract was not her deed (*non est factum*), or ought not be enforced per s7 of the Act - *non est factum* not established - contract not unjust - decree for specific performance granted.

[Heilpern](#)

Thoroughvision Pty Ltd v Sky Channel Pty Ltd & Anor [2010] VSC 139

Supreme Court of Victoria

Croft J

Commercial Arbitration Act 1984 (Vic) - judicial review of awards - application for leave to appeal an award - meaning of "manifest error of law on the face of the award" - reference to arbitration of question of construction of a document - meaning of "misconduct" - no manifest error on the face of the record - no misconduct - application for leave to appeal under s38 refused - application to set aside award pursuant to s42 dismissed - thorough analysis of Australian & United Kingdom case law, (including *Gordian Runoff Ltd v Westport Insurance Corporation [2010] NSWCA 57*: see para. 57 of judgment), in an interesting decision.

[Thoroughvision](#)

Roads Corporation v Love [2010] VSC 153

Supreme Court of Victoria

Cavanough J

Apprehension of bias principle - disputed claim for compensation made by the respondent in relation to compulsory acquisition of part of his land - plans for building of a freeway - expert planning evidence to be called - detailed consideration of case law from the United Kingdom, Australia and Ireland.

[Roads Corporation](#)



Till v Nominal Defendant [2010] QSC 121

Supreme Court of Queensland

McMeekin J

Parens patriae jurisdiction - enquiry into person's mental state required - proceedings in relation to motor vehicle accident - where plaintiff refused to be psychiatrically examined - order made that question of plaintiff's capacity to bring the proceedings pending in the Supreme Court be referred to Queensland Consumer & Administration Tribunal for determination.

[Till](#)