

## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

#### Executive Summary (1 minute read)

**Goyan v Motyka (No 2)** - costs - each applicant had pursued an application past the point where a reasonable applicant would have known that there was no chance of success - relevance of applicants receiving legal advice - indemnity costs ordered from a particular date (I)

**Greenwood v South Eastern Sydney & Illawarra Area Health Service** - medical negligence - application to amend pleadings - application futile, too late, and unfair - application refused (I)

**Humphries v Cooke** - professional negligence - extent of solicitors retainer - causation (I)

**Mao v Yehuxin Enterprise Pty Limited** - civil procedure - leave to discontinue - costs - whether plaintiff had achieved practical success - whether the defendants had behaved unreasonably (I, B, C)

**AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd** - civil procedure - categories for discovery should ordinarily be framed by reference to issues, or facts in issue, in the proceedings, and not by descriptions of the documents of which discovery is sought (I, B, C)

**Short v Crawley (No. 43)** - costs - consent orders varied after contested hearing - the fact that the judgment involved the exercise of a discretion did not justify departure from the usual rule that costs follow the event costs - application of the usual rule in such circumstances would not discourage parties from settling their own disputes (I)

**Deputy Commissioner of Taxation v AES Services (Aust) Pty Ltd (No 2)** - civil procedure - freezing orders - power of the court to make ancillary disclosure orders to ensure the effectiveness of freezing orders (I, B, C)

**Layton v Miller** - equitable charges - plaintiff provided money for defendant to purchase real property - defendant owned the property subject to an equitable charge in favour of the plaintiff (B)

## Summaries with links (5 minute read)

### Friday 27 November 2009

#### **Goyan v Motyka (No 2) [2009] FCA 1360**

Federal Court of Australia

Besanko J

Successful party applied for costs to be paid on an indemnity basis - little, if any, merit in either application - did each applicant pursue a case from the outset, where, properly advised, he or she should have known that the case had no chance of success? - held: no - was the point reached during the proceeding where, properly advised, each applicant should have known the proceeding had no chance of success? - held: yes - whether reliance on legal advice should excuse the applicants from the costs consequences of pursuing a hopeless case - held: no.

[Goyan](#) (I)

#### **Greenwood v South Eastern Sydney & Illawarra Area Health Service [2009] NSWSC 1279**

Supreme Court of New South Wales

Harrison J

Medical negligence - application by plaintiffs to amend pleadings to include damages for loss of chance for a better medical outcome - application to amend was futile, too late, and unfair to the defendant - application refused.

[Greenwood](#) (I)

#### **Humphries v Cooke [2009] NSWSC 1250**

Supreme Court of New South Wales

Price J

Professional negligence by solicitors - plaintiffs executed a Deed of Option that gave a company the option to purchase real property from them - sale was contingent on development consent being granted - development consent was not granted on time, and the purchaser rescinded the

contract - extent of retainer - breach of duty of care in informing vendors of the last date by which the development consent could be obtained - held: no causation of damage, as the development consent that could have been obtained by the final date would not have been sufficient to allow the vendors to enforce the contract.

[Humphries](#) (I)

**Mao v Yehuaxin Enterprise Pty Limited & Ors [2009] NSWSC 1270**

Supreme Court of New South Wales

Slattery J

The plaintiff and defendants engaged in a series of mutual financial transactions - the plaintiff claimed that by these transactions he had purchased the defendant's supermarket business - the defendants denied this - before trial, the defendants allowed lease of the business premises to expire - the plaintiff negotiated a new lease over the premises, and was therefore able to conduct a supermarket business from those premises without buying the defendants' business - the plaintiff sought leave to discontinue the proceedings, and costs - leave to discontinue granted - plaintiff also sought costs - held: although the plaintiff had achieved practical success, this was the result of his own commercial ingenuity, rather than through commencing these proceedings - held: the defendants had behaved unreasonably - defendants ordered to pay the plaintiff's costs from the date of failure to renew the lease.

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

**AMI Australia Holdings Pty Ltd v Fairfax Media Publications Pty Ltd [2009] NSWSC 1272**

Supreme Court of New South Wales

Brereton J

Discovery - discovery by categories not a substitute for subpoena - categories for discovery should ordinarily be framed by reference to issues, or facts in issue, in the proceedings, and not by descriptions of the documents of which discovery is sought.

[AMI Australia Holdings](#) (I, B, C)

**Short v Crawley (No 43) [2009] NSWSC 1274**

Supreme Court of New South Wales

White J

The Court had made orders sought by the plaintiff at a contested hearing, varying orders previously made by consent - neither party had made submissions on costs - the Court had

ordered that the defendant pay the plaintiff's costs, in reliance on the prima facie rule that costs follow the event - defendants now sought to discharge that costs order, and to have an order that the parties pay their own costs - held that the fact that a judgment involves the exercise of a discretion does not justify departure from the usual rule that costs follow the event - the Court did not accept that ordering costs in situations such as these would discourage parties from settling their disputes through consent orders - an "event", for the purposes of the rule that costs follow the event, does not mean each issue, but whether the plaintiff achieved substantially the relief sought - defendants' application refused.

[Short](#) (I)

**Deputy Commissioner of Taxation v AES Services (Aust) Pty Ltd (No 2) [2009] VSC 527**

Supreme Court of Victoria

J Forrest J

The Court had made freezing orders, orders that the respondents serve affidavits identifying all their assets - the Court also ordered that the respondents state the source of funds used to purchase certain properties - the respondents served affidavits purportedly in compliance with these orders - the respondents identified the banks and bank accounts from which the funds to purchase the properties came - held that courts have power to make disclosure orders that are ancillary to freezing orders, but these orders should go no further than is necessary to ensure the freezing orders are effective.

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

**Layton v Miller [2009] QSC 377**

Supreme Court of Queensland

Mullins J

The plaintiff and defendant had met through an internet dating service, and had had a sexual relationship - the plaintiff provided purchase moneys for real property registered in the name of the defendant - parties were not in a relationship at time moneys were paid by the plaintiff - there was no agreement between the parties as to the terms on which the plaintiff provided the money - held that the money was not paid as a gift - held that the defendant owned the property subject to an equitable charge in favour of the plaintiff.

[Layton](#) (B)