



## Insurance, Banking & Construction

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

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#### Monday 28 July 2008

##### **Perpetual Trustees WA Limited v Elderslie Finance Corporation Limited [2008] FCA 1068**

Federal Court of Australia

Lindgren J (in Sydney)

Corporations Act 2001 (Cth) – Debenture Trust Deed - application by trustee for debenture holders under s283HB of the Act for an order that security (floating charge) for debentures be enforceable immediately – borrower corporation insolvent – some doubt or question as to whether trustee entitled under terms of debenture trust deed to appoint receiver or receiver & manager immediately – consideration of circumstances relevant to exercise of Court's discretion - order made as sought. (B)

[Perpetual Trustees WA](#), and

[In the matter of Elderslie Finance Corporation, Perpetual Trustees WA](#) – decision Lindgren J 1 July 2008 – adjournment application declined.

##### **BP Australia Ltd v Amann Aviation Pty Ltd [2008] FCA 1002**

Federal Court of Australia

Emmett J (in Sydney)

s473(1) Corporations Act 2001 (Cth) – resignation of liquidator – appointment of new liquidator.

[BP Australia](#) (B)

##### **Sims, in the matter of Pubboy II Pty Limited [2008] FCA 1000**

Federal Court of Australia

Emmett J (in Sydney)

s503 Corporations Act 2001 (Cth) - liquidator of seven companies seeking to be removed as liquidator & for another liquidator to be appointed – various hotel premises – orders made as sought.

[Sims, in the matter of Pubboy II](#) (B)

**Bell IXL Investments Ltd v Life Therapeutics Ltd [2008] FCA 1081**

Federal Court of Australia

Finkelstein J (in Melbourne)

Shares – allotment – powers of directors – share placement for ulterior purpose - until further order, Bell Potter Nominees Limited restrained from exercising (whether by proxy or otherwise) the right to vote that attaches to its shares in Life Therapeutics Limited – matter adjourned to 31 July 2008.

[Bell IXL Investments](#) (B)

**Coombes v Registrar of Aboriginal Corporations (No 2) [2008] FCA 1078**

Federal Court of Australia

Mansfield J (in Adelaide)

Costs – case law considered as to circumstances in which there may be no order for costs against an unsuccessful applicant.

[Coombes](#) (I)

**Vaughan v Dawson [2008] NSWCA 169**

Court of Appeal of New South Wales

Campbell J

Application for stay of judgment pending appeal – principles for grant of stay – whether serious question to be tried – where no legal error alleged in judgment below – where proceedings below involved significant credit issues – whether respondents would be unable to repay the judgment if appeal were to proceed and succeed – whether denial of stay would stifle appeal – where respondents have served applicant with bankruptcy notice - investment in development project at Balmain - allegations of misrepresentation alleged misleading & deceptive conduct in contravention of s52 of the Trade Practices Act 1974 (Cth) & Fair Trading Act 1987 (NSW) – claim in tort of negligent misrepresentation. (I, B, C)

[Vaughan](#), and

[Dawson v LNG Holdings \[2008\] NSWSC 137](#) – see ‘Benchmark’ Tuesday 4 March 2008.

**G and M v Armellin [2008] ACTSC 68**

Supreme Court of the Australian Capital Territory

Bennett J

Negligence – wrongful birth – IVF procedure – claim that defendant breached duty of care in transferring two embryos when one embryo requested – parents wanted one child – birth of twins from two embryos – extensive consideration of case law – application dismissed.

[G and M](#) (I, B, C)



## From the District Court of New South Wales

### **Al-Atabi v Zaidi [2008] NSWDC 128**

District Court of New South Wales

Johnstone DCJ

Building contract - Cost Plus Quotation - Cost Plus Contract - Lump Sum Contract - plaintiff constructed two-storey residential townhouses for defendants on their property at Mount Druitt – plaintiff contended all three documents constituted the construction contract – defendants contended the last of the three documents, the Lump Sum Contract for \$1.1m, constituted the construction contract, & that it superseded the previous documents, and that the full contract sum had been paid – common intention of parties – detailed consideration of case law.

[Al-Atabi](#) (I, B, C)

### **Wilson v State of New South Wales [2008] NSWDC 130**

District Court of New South Wales

Johnstone DCJ

Privilege - whether plaintiff should be allowed to inspect certain documents discovered by defendant but as to which it claimed privilege – plaintiff seeking orders for inspection - plaintiff alleging wrongful acts by sheriff's officers & police officers – claim against defendant as entity vicariously liable - claims for damages – allegations of trespass, assault, wrongful arrest, false imprisonment, malicious prosecution, trespass to goods & detainee - defendant claiming privilege in respect of material brought into existence for purpose of disciplinary proceedings - s170 of the Police Act 1990 - inadmissibility of documents at trial does not preclude their production for inspection at an interlocutory stage for legitimate forensic purposes - orders made as sought.

[Wilson](#) (I)

### **Ontrac v BHCF (No 2) [2008] NSWDC 132**

District Court of New South Wales

Sidis DCJ

Building & construction - application by defendant to set aside judgment – garnishee order – judgment set aside – costs of application to be paid by plaintiff - refund of monies paid under judgment.

[Ontrac](#) (C)



## And from the United Kingdom...

### **Mosley v News Group Newspapers Ltd. [2008] EWHC 1777 (QB)**

High Court of Justice, Queen's Bench Division

Eady J

Action in breach of confidence &/or unauthorised disclosure of personal information – alleged infringement of claimant's rights of privacy as protected by Article 8 European Convention on Human Rights & Fundamental Freedoms – detailed consideration of principles & case law - award of damages of sixty thousand pounds.

[Mosley](#) (I)

**Key: (I) Insurance, (B) Banking, (C) Construction**