

Monday, 28 September 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Hudson v Sigalla (FCAFC) - bankruptcy - leave not required under s58(3)(b) *Bankruptcy Act 1966* (Cth) for creditor to sue person who was previously the bankrupt, after creditors had accepted proposal for composition in satisfaction of bankrupt's debts thereby bringing about annulment of bankruptcy - appeal dismissed (B)

Vata-Meyer v Commonwealth of Australia (FCAFC) - human rights - racial discrimination - administrative law - errors in decision of primary judge cause trial to miscarry - appeal allowed - matter remitted (I G)

Harbour Radio Pty Ltd v Ahmed (NSWCA) - defamation - defences - honest opinion - damages - reasonableness as to jury's findings - appeal allowed in part - retrial (I)

Burge v Burge (NSWCA) - Wills and estates - informal testamentary document - deceased did not intend later document to form his Will - appeal dismissed (B)

The New South Wales Netball Association Ltd v Probuild Construction (Aust) Pty Ltd (NSWSC) - costs - first defendant did not obtain relief originally sought - both parties' conduct opportunistic but no 'misconduct' - costs to follow event (I C)

Carolan v Fairfax Media Publications Pty Ltd (No 4) (NSWSC) - pleadings - defamation - leave to amend defence to plead contextual truth defence refused (I)

Isacson v Riad Tayeh & David Solomons as liquidators of Isacson Pty Ltd (In

Liq (NSWSC) - corporations - deed of settlement - winding up of company terminated (B)

Rohowskyj v S Tomyne & Co (VSC) - solicitors' costs - extension of time for review of legal costs granted (I)

Rodda Pty Ltd v Rodda (SASC) - stay - stay of orders pending appeal refused (I B)

Ethnic Interpreters & Translators Pty Ltd v Sabri-Matanagh (WASCA) - workers compensation - New South Wales was State with which respondent's employment with appellant was connected - appeal allowed (I)

Summaries With Link (Five Minute Read)

Hudson v Sigalla [2015] FCAFC 140

Full Court of the Federal Court of Australia

Allsop CJ; Jagot & Katzmann JJ

Bankruptcy - effect of bankruptcy on property and proceedings - appeal concerning proper construction and reach of s58(3) *Bankruptcy Act 1966* (Cth) - whether leave was required under s 58(3)(b) for creditor to sue person who was previously the bankrupt, after creditors had accepted by special resolution proposal for composition in satisfaction of bankrupt's debts thereby bringing about annulment of bankruptcy - ss5, 43, 57A, 58, 73, 74, 75, 82 & 149 *Bankruptcy Act 1966* (Cth) - ss471B & 500(2) *Corporations Act 2000* (Cth) - held: primary judge correct to conclude leave under s58(3) unnecessary - leave was not required under s58(3) - appeal dismissed.

[Hudson](#) (B)

Vata-Meyer v Commonwealth of Australia [2015] FCAFC 139

Full Court of the Federal Court of Australia

North, Collier & Katzmann JJ

Human rights - racial discrimination - administrative law - appellant was indigenous woman employed by Commonwealth - appellant lodged complaint with Australian Human Rights Commission alleging discrimination by respondents contrary to *Racial Discrimination Act 1975* (Cth) - appellant alleged Commonwealth vicariously liable for acts of discrimination of its employees under s18A - delegate of President of Commission terminated complaint under s46PH(1)(i) *Australian Human Rights Commission Act 1986* (Cth) on basis there was no reasonable prospect of matter being resolved by conciliation - appellant applied to Federal Magistrates Court seeking declaratory relief and orders including order for her redeployment, compensation and costs - primary judge dismissed application - appellant appealed - correct test to be applied under s9(1) *Racial Discrimination Act* - whether lower Court applied correct test - drawing of inferences - held: errors by primary judge caused trial to miscarry - appeal allowed - matter remitted to Federal Circuit Court for retrial limited to matters agitated on appeal.

[Vata-Meyer](#) (I G)

Harbour Radio Pty Ltd v Ahmed [2015] NSWCA 290

Court of Appeal of New South Wales

McColl, Basten & Meagher JJ

Defamation - respondent and husband ran seafood shop - husband convicted and sentenced for aggravated sexual assault of employee - respondent sought apprehended violence order against assault victim's father (Mr Y) - AVO was topic of broadcasts on radio - presenter interviewed Mr Y and made derogatory statements about plaintiff - plaintiff sued Harbour Radio Pty Ltd - Federal Court struck out certain claims but ordered transfer of defamation claims to Supreme Court - second broadcast by presenter attacking plaintiff took place - jury found some imputations conveyed by broadcasts defamatory and rejected defence of honest opinion - trial judge entered judgment for respondent - Harbour Radio and presenter (appellants) contended jury's findings unreasonable and challenged quantum of damages - s15A *Children (Criminal Proceedings) Act 1987* (NSW) - ss2, 6, 25, 26, 28, 29, 31 & 35 *Defamation Act 2005* (NSW) - held: in relation to certain imputations Court found jury acted unreasonably in failing to consider that they were expressions of opinion - retrial ordered - damages arguably excessive requiring reconsideration after determination of unresolved issues as to liability - appeal allowed in part.

[HarbourRadio](#) (I)

Burge v Burge [2015] NSWCA 289

Court of Appeal of New South Wales

Macfarlan, Meagher & Leeming JJA

Wills and estates - informal testamentary document - respondent was widow of deceased - respondent sought order that probate in solemn form be granted in respect of Will made by deceased in 1983 - Will named respondent sole executrix and respondent was sole beneficiary - appellant was son of respondent and deceased - appellant asserted his late father prepared an informal will in 2007 that purported to state his testamentary intentions and was intended to form his Will - document purported to revoke all former testamentary dispositions and named appellant as sole beneficiary - appellant sought order that letters of administration with Will annexed be granted in respect of 2007 document in reliance on s8 *Succession Act 2006* (NSW) - primary judge not persuaded deceased intended 2007 document would form his Will and operate as his Will revoking any previous Will - probate of 1983 Will was granted to respondent in solemn form - held: primary judge did not err in failing to be satisfied deceased intended the later document to form his Will in accordance with s8(2)(a) - it was a borderline case - Court concluded no error in primary judge failing to be satisfied that deceased had requisite intention - appeal dismissed.

[Burge](#) (B)

The New South Wales Netball Association Ltd v Probuild Construction (Aust) Pty Ltd [2015] NSWSC 1401

Supreme Court of New South Wales

Stevenson J

Costs - Court concluded first defendant's service of payment claim contravened s13(5) *Building and Construction Industry Security of Payment Act 1999* (NSW) and was invalid - despite first defendant's volte face and conclusion first defendant opportunistically approbated and reprobated, Court ultimately concluded it should grant first defendant relief sought - Court also rejected plaintiff's case for damages - determination of costs - held: first defendant had not obtained relief it originally sought - first defendant's conduct constituted reason that costs should not necessarily follow the event - both parties had correctly accused the other of opportunism - Court not persuaded that either party's conduct was 'misconduct' - Court concluded that costs should follow event.

[Probuild](#) (I C)

Carolan v Fairfax Media Publications Pty Ltd (No 4) [2015] NSWSC 1399

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - action arising out of publication of series of articles in newspaper - defendants sought leave to amend defence to add defence of contextual truth - ss56, 57, 58 & 64 *Civil Procedure Act 2005* (NSW) - ss3, 26 & 30 *Defamation Act 2005* (NSW) - held: defendants were seeking to mount broad attack on plaintiff by reference to people he was said to associate with - inimical to dictates of justice to allow amendment - defence not unarguable but unlikely to succeed and threatened to infringe principle of proportionality - leave to plead contextual truth defence refused.

[Carolan](#) (I)

Isacson v Riad Tayeh & David Solomons as liquidators of Isacson Pty Ltd (In Liq) [2015] NSWSC 1394

Supreme Court of New South Wales

Robb J

Corporations - winding up - applicant shareholder in company, who was not party to proceedings, sought order under s482 *Corporations Act 2001* (Cth) that winding up of company be terminated - applicant was party to deed of settlement that related to proceedings - settlement contingent on Court making orders sought - held: informality of applicant excused - application relatively uncontentious - no issue of 'commercial morality' - no breach of statutory or general law duties concerning company's management - liquidators content for order to be made - interests of creditors not an impediment to order - public interest weighed in favour of termination of winding up - no reason Court should thwart parties' aspirations to deed of settlement or applicant's capacity to enjoy the fruits of settlement - winding up of company terminated.

[Isacson](#) (B)

Rohowskyj v S Tomy & Co [2015] VSC 511

Supreme Court of Victoria

John Dixon J

Solicitors' costs - plaintiff sought that determination that application for costs review by Costs

Court be dealt with after 12 month period in which application could be made pursuant to s3.4.38(5) *Legal Profession Act 2004* (Vic) - period of delay - reasons for delay - whether just and fair to permit application to be dealt with after expiry of limitation period - s3.4.38(6) - held: Court satisfied as to explanation for delay - defendant did not contend it would be prejudiced - Court satisfied application for review not futile - plaintiff not provided with disclosure statement - no costs agreement between plaintiff and defendant - plaintiff was vulnerable litigant - application to be heard even though it was not issued within time.

[Rohowskyj](#) (I)

Rodda Pty Ltd v Rodda [2015] SASC 149

Supreme Court of South Australia

Kelly J

Stay - appellants sought stay of execution of orders pending appeal - orders required appellants to pay equitable compensation and pre-judgment interest to respondents and to transfer estate and interest in farming land to them - serious issue for determination - risk of prejudice - balance of convenience - held: grounds of appeal not completely without merit - appellants failed to establish they were at real risk of suffering prejudice of damage that could not be redressed if successful on appeal - balance of convenience did not favour stay - stay refused.

[Rodda](#) (I B)

Ethnic Interpreters & Translators Pty Ltd v Sabri-Matanagh [2015] WASCA 186

Court of Appeal of Western Australia

Buss & Newnes JJA; Mitchell J

Workers compensation - respondent claimed to have been injured while working for appellant on Christmas Island when assaulted by fellow interpreter at immigration detention centre - respondent made claim for workers' compensation under *Workers' Compensation and Injury Management Act 1981* (WA)(CI) - appellant disputed compensation payable because respondent's employment not connected to Territory of Christmas Island for purposes of Act - District Court determined Christmas Island was 'State' with which respondent's employment with appellant was connected - appellant contended primary judge erred in not concluding respondent's employment connected with New South Wales on basis appellant's 'principal place of business in Australia' was located there - whether reference to employer's 'principal place of business in Australia' in s20(4)(c) was to principal place in Australia from which employer's business activities were managed or controlled, or State or Territory in which employer's business activities principally carried out - held: reference was to principal place in Australia from which employer's business activities managed or controlled - New South Wales was State in which principal place from which appellant's business activities managed - appeal allowed - order made determining that New South Wales was State with which respondent's employment with appellant connected.

[Ethnic-Interpreters](#) (I)



Benchmark

[Click Here to access our Benchmark Search Engine](#)