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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

In the matter of CGH Engineering Pty Ltd (NSWSC) - corporations - derivative action - leave to bring proceedings in name of company in administration (B C)

Klewer BHNF Klewer v Royal Alexandra Hospital for Children (NSWSC) - medical negligence - removal of tutor without appointment of replacement refused (I)

Kelly v Culakovski (VSCA) - accident compensation - negligence - erroneous assessment of damages - appeal allowed (I)

Steen v WorkSafe Victoria (VSCA) - accident compensation - serious injury - credit - no breach of natural justice - appeal dismissed (I G)

Bolitho v Banksia Securities Ltd (No 4) (VSC) - group proceedings - lawyers with interests in litigation funder prevented from acting for plaintiff (I B)

Sino Iron Pty Ltd v Palmer (No 2) (QSC) - pleadings - claim for equitable relief against strangers to a trust - paragraphs of defence struck out - leave to replead (I B)

Diamond Valley Holdings Pty Ltd v Thompson (WASC) - caveat - extension of caveat subject to condition subsequent (B)

Summaries with links (5 minute read)

In the matter of CGH Engineering Pty Ltd [2014] NSWSC 1132

Supreme Court of New South Wales

Brereton J

Corporations - derivative action - applicant sought leave pursuant to s237 *Corporations Act 2001*(Cth) to bring proceedings in name of company in voluntary administration (CGH Engineering) against company now in liquidation (CGH Mixers) - held: s237 not available where a company was in voluntary administration - Court had power to order that contributory of company in administration be authorised to use company's name as plaintiff - appropriate source of statutory jurisdiction if required was s447E(1) - application granted.

[In the matter of CGH Engineering Pty Ltd](#) (B C)

Klewer BHNF Klewer v Royal Alexandra Hospital for Children [2014] NSWSC 1639

Supreme Court of New South Wales

Button J

Negligence - plaintiff alleged he suffered injury loss and damage as result of negligence by children's hospital - brother appointed as tutor on basis plaintiff incapable of managing own litigation - brother sought removal as tutor - plaintiff sought to represent himself in proceedings - held: Court sympathetic to proposition that person who was tutor and no longer wished to be one should not be forced to remain as one - r7.18(1)(b) *Uniform Civil Procedure Rules 2005* (NSW) did not countenance removal of tutor without appointment of another - not in interests of justice to override rules pursuant to s14 *Civil Procedure Act 2005* (NSW) - real question whether plaintiff's assertion he was capable of running his own litigation was correct - order declined - matter relisted before Registrar.

[Klewer BHNF Klewer](#) (I)

Kelly v Culakovski [2014] VSCA 305

Court of Appeal of Victoria

Neave, Beach & Kyrou JJA

Accident compensation - damages - negligence - appellant injured when marble façade fell on head from wall of premises occupied by respondent - respondent admitted liability - appellant appealed against assessment of damages - reliability of appellant's evidence - held: primary judge erred in assessment of damages for medical and like expenses and in not allowing amount for past loss of earnings - damages reassessed - appeal allowed.

[Kelly](#) (I)

Steen v WorkSafe Victoria [2014] VSCA 299

Court of Appeal of Victoria

Tate, Santamaria & Kyrrou JJA

Accident compensation - serious injury - appellant sought leave to bring proceedings to recover damages for work-related injuries pursuant to s134AB(16)(b) *Accident Compensation Act 1985* (Vic) - appellant alleged he suffered serious injury and identified relevant body function as injury to lower back - primary judge dismissed application - appellant contended trial judge breached requirements of natural justice by failing to give appellant notice of or opportunity to respond to making of adverse credit finding against appellant - held: contention that credit issues had not been raised in evidence or submissions rejected - contention that making of adverse credit findings not advanced by respondent rejected - findings on credit, though justified, played no material part in trial judge's decision and therefore could not have affected the result - appeal dismissed.

[Steen](#) (I G)

Bolitho v Banksia Securities Ltd (No 4) [2014] VSC 582

Supreme Court of Victoria

Ferguson JA

Group proceeding - plaintiff depositor and owner of debentures in company claimed he and group members suffered loss and damage as result of defendants' conduct - lawyers had represented plaintiff in proceeding since inception - defendants sought to restrain plaintiff from continuing to retain lawyers - interests of lawyers in litigation funder - test for restraint - held: fair-minded, reasonably informed member of public would conclude that proper administration of justice required that lawyers should be prevented from acting, in the interests of the protection of the integrity of the judicial process and interests of justice.

[Bolitho](#) (I B)

Sino Iron Pty Ltd v Palmer (No 2) [2014] QSC 287

Supreme Court of Queensland

Jackson J

Pleadings - claim for equitable relief against strangers to a trust under the first and second limbs of *Barnes v Addy*, or against a person who procured, assisted or participated in a breach of trust - plaintiffs sought to strike out paragraphs of defence under r171 *Uniform Civil Procedure Rules 1999* (Qld) on basis they were *doomed to fail* in that they did not disclose a reasonable defence - illegitimate pressure - held: defendants failed to comply with rule that allegation of fraud must be pleaded specifically and with particularity - defendants failed to comply with r150(2) - bare allegations of intention or purpose not enough - paragraph did not give rise to arguable defence of clean hands - certain paragraphs struck out - leave to replead.

[Sino Iron Pty Ltd](#) (I B)

Diamond Valley Holdings Pty Ltd v Thompson [2014] WASC 447

Supreme Court of Western Australia

Edelman J

Caveats - applicant sought extension of caveat over the property in reliance on s138C *Transfer of Land Act 1893* (WA) held: there was a disputed debt and applicant relied upon charge in contract to secure debt - caveator's claim in respect of the estate or interest in land had or may have substance - only issue as to balance of convenience concerned whether applicant would commence proceedings to recover debt and when those proceedings should be commenced - appropriate that orders for extension of caveat be made subject to condition subsequent that proceedings be commenced within 14 days.

[Diamond Valley Holdings Pty Ltd](#) (B)

The Candle

by Katherine Mansfield

By my bed, on a little round table,
The Grandmother placed a candle.
She gave me three kisses telling me they were three dreams
And tucked me in just where I loved being tucked.
Then she went out of the room and the door was shut.
I lay still, waiting for my three dreams to talk;
But they were silent.
Suddenly I remembered giving her three kisses back.
Perhaps, by mistake, I had given my three little dreams.
I sat up in bed.
The room grew big, oh, bigger far than a church.
The wardrobe, quite by itself, as big as a house.
And the jug on the washstand smiled at me:
It was not a friendly smile.
I looked at the basket-chair where my clothes lay folded:
The chair gave a creak as though it were listening for something.
Perhaps it was coming alive and going to dress in my clothes.
But the awful thing was the window:
I could not think what was outside.
No tree to be seen, I was sure,

No nice little plant or friendly pebbly path.
Why did she pull the blind down every night?
It was better to know.
I crunched my teeth and crept out of bed.
I peeped through a slit of blind.
There was nothing at all to be seen
But hundreds of friendly candles all over the sky
In remembrance of frightened children.
I went back to bed ...
The three dreams started singing a little song.

[Katherine Mansfield](#)

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