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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)

Sharpe v W H Bailey & Sons Pty Ltd (FCA) - bankruptcy - *Farm Debt Mediation Act 1994* (NSW) - refusal to extend time to comply with bankruptcy notice - appeal dismissed (B)

Despot v Registrar General of NSW (No 2) (NSWSC) - contract for sale of land - no misapprehension of facts - re-opening of judgment refused - stay refused (B)

Thomas v Panourakis (VSC) - administrative law - no error in VCAT's dismissal of claim under *Fair Trading Act 1999* (Vic) (I B C G)

CMF Projects Pty Ltd v Masic Pty Ltd (QSC) - security of payments - erroneous failure to consider adjudication response - adjudicator's determination void (C)

Eco Steel Homes Pty Ltd v Hippo's Concreting Pty Ltd (QSC) - security of payments - no jurisdictional error - adjudicator's determination not set aside (C G)

J McIntyre Nominees P/L v Tradeworks Transport P/L (SASC) - negligence - breakdown of truck following failure of transmission - diesel mechanic liable (I)



Schult v Petan Pty Ltd (TASSC) - contract for sale - entry of property in Heritage Register was legal restriction on property which may hinder purchaser's use (B)

Summaries with links (5 minute read)

Sharpe v W H Bailey & Sons Pty Ltd [2014] FCA 921

Federal Court of Australia

Gleeson J

Bankruptcy - appellant sought to appeal from Federal Circuit Court's refusal to extend time for compliance with bankruptcy notice because appellant had been unsuccessful in proceedings in Supreme Court of New South Wales to set aside judgment in respect of which notice issued - appellant claimed he should have benefit of *Farm Debt Mediation Act 1994* (NSW) (FDM Act) which provided mechanisms conditioning enforceability of a *farm mortgage* and claimed primary judge's decision had allowed an act of bankruptcy to be committed which was an *enforcement action* contrary to s8(1) FDM Act - held: FDM Act did not take precedence over Bankruptcy Act - bankruptcy notice was not an *enforcement action* prohibited by FDM Act - primary judge made errors in exercising discretion to refuse to extend time for compliance but there were powerful discretionary considerations against granting extension of time in this case - correct order was that time for compliance not be extended - no abuse of process - appeal dismissed.

[Sharpe](#) (B)

Despot v Registrar General of NSW (No 2) [2014] NSWSC 1122

Supreme Court of New South Wales

Ball J

Judgments and orders - contract for sale of land - plaintiff, pursuant to r36.16(3A) *Uniform Civil Procedure Rules 2005* (NSW) (UCPR), sought to reopen judgment on ground it proceeded on misapprehension of facts and to set it aside on ground third defendant had not made payment that ought to be made - third defendant and fourth defendant bank sought that any obligation to make payment be stayed until resolution of any appeal - held: Court did not accept it proceeded on misapprehension of facts - leave to reopen judgment refused - third defendant had not indicated grounds of appeal - bank had undertaken to advance funds to satisfy judgment - bank not relieved of obligation - stay refused.

[Despot](#) (B)

Thomas v Panourakis [2014] VSC 398

Supreme Court of Victoria

Kyrou JA

Administrative law - applicant sought leave to appeal from Victorian Civil and Administrative Tribunal's dismissal of plaintiffs' claim against defendant pursuant to *Fair Trading Act 1999* (Vic) relating to failed investment effected by acquiring units in trust which was purchaser of land -



defendant was director of trustee of trust - plaintiffs' claim based on defendant's conduct at time investment made - claim as conducted by counsel relied on indemnity in a unit-holder's agreement - at VCAT hearing certain evidence was not made referable to any aspect of plaintiffs' claim as pleaded or as conducted before VCAT - natural justice - procedural fairness - adequacy of reasons - ss97, 98, 102, 117 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - held: plaintiffs bound by pleaded case and manner in which counsel conducted it - plaintiffs had failed to adduce evidence and failed to conduct case in a manner that was sufficient to invoke VCAT's jurisdiction to grant them relief under the Fair Trading Act - although VCAT's reasons contained some errors, it correctly dismissed plaintiffs' claim - leave to appeal refused.

[Thomas](#) (I B C G)

CMF Projects Pty Ltd v Masic Pty Ltd [2014] QSC 209

Supreme Court of Queensland

Daubney J

Security of payments - applicant sought declaration that adjudication made under *Building and Construction Industry Payments Act 2004* (Qld) was void - first respondent served payment claim on applicant - first respondent made adjudication application - notice of adjudicator's appointment mailed by express post to applicant on 14/1/14 - letter addressed to post office box not registered office - applicant gave adjudication response on 21/1/14 - adjudicator gave notice of decision on 29/1/14 - in decision adjudicator had determined notice of acceptance was served on 15/1/14 and last day for response was 17/1/14 - applicant claimed adjudicator wrong to conclude adjudication response given out of time and that decision was void for failure to take it into account - held: adjudicator erred in equating deposit of letter into post office box with receipt of notice by applicant - notice of acceptance not actually received in applicant's office until 20/1/14, which was relevant day for calculation of the time limit within which adjudication response had to be given as calculated under s24(1)(b) - adjudication response was within time - adjudicator erred in not considering response - adjudication void.

[CMF Projects Pty Ltd](#) (C)

Eco Steel Homes Pty Ltd v Hippo's Concreting Pty Ltd [2014] QSC 135

Supreme Court of Queensland

Daubney J

Security of payments - applicant sought declaration that adjudicator's decision made under *Building and Construction Industry Payments Act 2004* (Qld) was void - applicant contended payment claims made by first respondent did not comply with s17, that prior proceedings instituted by first respondent prevented it from having recourse to adjudication process under the Act, and that it did not enter contractual agreement with first respondent - held: applicant did not raise any points under s17 to found jurisdictional error by adjudicator - right to access statutory procedures under Act and right to pursue curial remedies were not inconsistent - contractual rights and statutory rights conferred by Act co-existed in dual system expressly contemplated by legislation - findings as to existence of contract open - application dismissed.

Eco Steel Homes Pty Ltd (C G)**J McIntyre Nominees P/L v Tradeworks Transport P/L [2014] SASC 109**

Supreme Court of South Australia

Bampton J

Negligence - appellant was diesel mechanic business that repaired and serviced trucks - respondent operated business transporting trusses on crane truck - appellant brought proceedings for payment of unpaid invoice - respondent denied liability and counterclaimed appellant was negligent in performing truck service and engaged in misleading and deceptive conduct - appellant had told respondent of need to have truck's transmission serviced by specialist mechanic - truck broke down one month after the service performed by appellant - respondent did not have transmission serviced before breakdown - Magistrate found appellant did not convey urgency of need to have transmission serviced and that appellant was negligent and liable to pay damages - held: no basis established by appellant to justify interference with Magistrate's findings - appeal dismissed.

J McIntyre Nominees P/L (I)**Schult v Petan Pty Ltd [2014] TASSC 47**

Supreme Court of Tasmania

Holt AsJ

Contract - sale of land - applicant contracted to purchase residential property from respondent containing three apartments - contract subject to condition precedent that there were no legal restrictions on use of property that may hinder or prevent purchaser from using property for residential use - applicant sought Court's determination under s39 *Conveyancing and Law of Property Act 1884* (Tas) whether heritage restriction under *Historic Cultural Heritage Act 1995* (Tas) gave rise to any legal restriction that may hinder applicant from using it as residential dwelling within meaning of contract - held: registration of property on Heritage Register constituted a legal restriction existing at contract date on property which may hinder purchaser's use of property for residential purposes.

Schult (B)**Rondeau**

by Jessie Redmon Fauset

When April's here and meadows wide
Once more with spring's sweet growths are pied
I close each book, drop each pursuit,
And past the brook, no longer mute,
I joyous roam the countryside.



Look, here the violets shy abide
And there the mating robins hide -
How keen my sense, how acute,
When April's here!

And list! down where the shimmering tide
Hard by that farthest hill doth glide,
Rise faint strains from shepherd's flute,
Pan's pipes and Berecyntian lute.
Each sight, each sound fresh joys provide
When April's here.

[Jessie Redmon Fauset](#)

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