



Tuesday, 29 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)

Sino Dragon Trading Ltd v Noble Resources International Pte Ltd (No 2) (FCA) - costs - arbitration - dismissal of application challenging appointment of arbitrators - indemnity costs refused (B)

Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd (NSWCA) - security of payments - existence of reference date to support payment claim not a jurisdictional fact - appeal allowed (I B C)

Lahoud v Hooper (No. 2) (NSWSC) - discovery - order for preliminary discovery to obtain name of source of communication to defendant elected Councillor refused (I)

Insurance Aust v Milton (NSWSC) - administrative law - first defendant injured in motorcycle accident not eligible for scheme established by *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) - insurer's summons dismissed (I G)

Fewin Pty Ltd v John Christopher Burke (NSWSC) - bankruptcy - Court did not have jurisdiction to hear claim - jurisdiction conferred on Federal Court under s27 *Bankruptcy Act 1966* (Cth) - statement of claim dismissed (B)

LMCS SA Pty Ltd ACN 060 102 847 v Westpac Banking Corporation ABN 33 007 457 141 (SASC) - corporations - statutory demand - genuine dispute not established - statutory demand not set aside - appeal dismissed (B)

Best Tech & Engineering Ltd v Samsung C&T Corporation (WASC) - interlocutory injunction - interim injunction granted restraining defendant from requesting calling or demanding payment on guarantee given pursuant to contract (I B C)

Summaries With Link (Five Minute Read)

Sino Dragon Trading Ltd v Noble Resources International Pte Ltd (No 2) [2015] FCA 1046

Federal Court of Australia

Edelman J

Costs - indemnity costs - arbitration - Court dismissed application in which applicant challenged appointment of arbitrators on basis there was no power for orders sought to be made and any power should not be exercised - first respondent sought indemnity costs - held: Court rejected submission that where there was challenge to arbitrator, or procedural challenge, in breach of an arbitration agreement, then indemnity costs should be awarded unless there were exceptional circumstances - different considerations arose where an sought to resist recognition or enforcement of an arbitral award, however applicant's application did not do so - circumstances of case did not justify award of indemnity costs based on usual principles - indemnity costs refused - applicant to pay first respondent's costs of application.

[Sino](#) (B)

Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd [2015] NSWCA 288

Court of Appeal of New South Wales

Ward & Emmett JJA; Sackville AJA

Security of payments - first respondent sought declaration that adjudication determination made by adjudicator under s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) in respect of payment claim made by appellant was void - first respondent submitted adjudicator wrongly determined that reference date within meaning of s8 had arisen in respect of work subject of payment claim - first respondent also submitted adjudicator denied it natural justice - primary judge found there was no reference date supporting payment claim and no denial of natural justice - primary judge found first respondent entitled to declaration sought - appellant appealed - construction of ss8 & 13 - held: appellant was person who claimed entitlement under construction contract to progress payments in general sense contemplated by Act - appellant satisfied description in s8(1)(a) & (b) - existence of reference date to support payment claim was not a jurisdictional fact and not an essential pre-condition for making valid payment claim - appeal allowed.

[Lewence](#) (I B C)

Lahoud v Hooper (No. 2) [2015] NSWSC 1405

Supreme Court of New South Wales

Adamson J

Discovery - defamation - plaintiff sought order for preliminary discovery to obtain name of

source of communication to defendant elected Councillor - second set of proceedings in which plaintiff had sought order - Court had dismissed first proceeding on basis plaintiff had not shown reasonable enquiries to ascertain source's name - held: there may be good forensic reasons for plaintiff's desire to bring proceedings against source - plaintiff's claim against source was relatively weak - public interest in free flow of information from residents to local Council weighed against order - availability of defence of qualified privilege did little to ameliorate potentially detrimental effect of making order - Court not persuaded it was in interests of justice to make orders sought - summons dismissed.

[Lahoud](#) (I)

Insurance Aust v Milton [2015] NSWSC 1392

Supreme Court of New South Wales

Beech-Jones J

Administrative law - motor accidents compensation - first defendant injured in motor cycle accident - plaintiff was insurer of at fault vehicle and admitted liability for claim for damages - plaintiff sought to have first defendant included in scheme established by *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) - NRMA sought review of determination of Review Panel that first defendant not eligible - NRMA contended Review Panel erred by requiring first defendant's brain injury to be sole or main cause of impaired functioning before he was eligible for scheme - NRMA also contended Review Panel's reasons were inadequate - held: any error by Review Panel in stating or applying test for connection between brain injury and impaired functioning immaterial to its decision - Review Panel set out "actual path of reasoning" - path adopted by Review Panel revealed approach consistent with its obligations - summons dismissed.

[Insurance](#) (I G)

Fewin Pty Ltd v John Christopher Burke [2015] NSWSC 1411

Supreme Court of New South Wales

Wilson J

Bankruptcy - jurisdiction - dismissal - defendant sought that proceedings be dismissed for want of prosecution and lack of jurisdiction - defendant contended Court did not have jurisdiction in proceedings because s27 *Bankruptcy Act 1966* (Cth) conferred exclusive jurisdiction on Federal Court and Federal Circuit Court - defendant contended proceedings should be characterised as a "special federal matter" and Court unable to assume jurisdiction via cross-vesting legislation - held: plaintiffs' claim founded on fulfilment of duties by defendant while acting as trustee under Act - s27 provided Federal Court of Australia and/or the Federal Circuit Court of Australia had exclusive jurisdiction, save for some exceptions which were not relevant - even if Court had concluded it was vested with jurisdiction, Court would have dismissed claim as frivolous or vexatious or for want of prosecution - leave to file amended statement of claim refused - statement of claim dismissed.

[Fewin](#) (B)

LMCS SA Pty Ltd ACN 060 102 847 v Westpac Banking Corporation ABN 33 007 457

141 [2015] SASC 147

Supreme Court of South Australia

Stanley J

Corporations - statutory demand - respondent served statutory demand on appellant as guarantor of obligations of respondent's customer - respondent required appellant to pay total sum within 21 days of service - debt was outstanding - Master dismissed appellant's application to set aside statutory demand on basis there was no evidence of conduct by respondent discharging appellant's obligations - whether there was genuine dispute under s459H(1)(a) *Corporations Act 2001* (Cth) - held: appellant failed to establish genuine dispute - appeal dismissed.

[LMCS](#) (B)

Best Tech & Engineering Ltd v Samsung C&T Corporation [2015] WASC 355

Supreme Court of Western Australia

Pritchard J

Interlocutory injunction - contract - plaintiff provided modular steel to defendant under contract - contract required plaintiff to provide security in form of bank guarantee - plaintiff sought interlocutory injunction restraining defendant from requesting calling or demanding payment on guarantee given pursuant to contract - serious question to be tried - balance of convenience - adequacy of damages - held: Court granted interim injunction to permit the defendant to be served with relevant material and to be heard on whether operation of interlocutory injunction should be extended.

[Best Tech](#) (I B C)

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