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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)

Arnott v Glissan (NSWCA) - stay - procedural fairness - stay refused of execution of judgment pending hearing of summons (I)

In the matter of the Official Trustee in Bankruptcy as Trustee of Estate of Pavez (NSWSC) - bankruptcy - contract - builder not party to contract, so not a secured creditor of bankrupt estate - application by Trustee for payment out granted (B, C)

Echin v Southern Tablelands Gliding Club (NSWSC) - negligence – dangerous recreational activity - member of gliding club injured – club not negligent (I)

Fire & Rescue NSW v Clinen (NSWSC) - administrative law - workers compensation - permanent impairment - no error in decision of medical panel - proceedings dismissed (I, G)

In the matter of Owston Nominees No 2 Pty Ltd (in liq) (rec & man app'td) (NSWSC) - corporations - order to restrain liquidator from engaging law firm refused - orders for production and examination summons set aside for material non-disclosure (I, B)



C&P Syndicate Pty Ltd v Reddy (NSWSC) – conveyancing – put option validly exercised – damages awarded to landowner against prospective purchaser for loss of contractual bargain (I, B)

McBride v ASK Funding Ltd (QCA) – summary judgment – loan agreement - appeal dismissed (I, B)

Summaries with links (5 minute read)

Arnott v Glissan [2013] NSWCA 138

Court of Appeal of New South Wales

Beazley P

Stay - applicant sought stay of judgment pending hearing of summons filed pursuant to s69 *Supreme Court Act 1970* (NSW) - summons sought judicial review of decision upholding respondent's challenge to decision of costs assessor under s384 *Legal Profession Act 2004* (NSW) - held: applicant did not satisfy court she had an arguable case of denial of procedural fairness warranting grant of stay - motion dismissed.

[Arnott](#) (I)

In the matter of the Official Trustee in Bankruptcy as Trustee of the Estate of Pavez [2013] NSWSC 655

Supreme Court of New South Wales

Bergin CJ in Eq

Contract – bankruptcy - application by Trustee for payment out of amount paid into court on sale of bankrupt's property – building contract charged land with payment of money payable to builder - builder made claim as creditor – Trustee claimed debt due to builder under contract was due from a company rather than the bankrupt - whether bankrupt was real party to building contract - construction of contract - evidence - held: bankrupt not party to contract - builder not a secured creditor of bankrupt estate - order made for payment out to Trustee.

[In the matter of the Official Trustee in Bankruptcy as Trustee of the Estate of Pavez](#) (B, C)



Echin v Southern Tablelands Gliding Club [2013] NSWSC 516

Supreme Court of New South Wales

Davies J

Negligence - plaintiff was member of gliding club injured when glider he was flying collided with power lines - plaintiff sued gliding club - quantum of damages agreed - liability in issue - plaintiff's training and experience - expert evidence - *community work and volunteers* defence: ss61 & 3C *Civil Liability Act 2002* (NSW) - *dangerous recreational activity* defence: s5L of the Act - held: particulars of negligence not made out - plaintiff given appropriate instructions - plaintiff sufficiently experienced to perform landing - not necessarily unsafe to use runway - no indication plaintiff not fit to fly solo - verdict for club.

[Echin](#) (I)

Fire & Rescue NSW v Clinen [2013] NSWSC 629

Supreme Court of New South Wales

Campbell J

Administrative law - workers compensation - worker exposed to sunlight during course of employment with plaintiff - worker made claim for permanent impairment after developing skin cancer - employer sought to have medical panel's decision that there was no basis to make deduction for pre-existing impairment under s323 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - employer argued panel erred in applying law correctly stated to facts found - alternatively, employer relied on inadequacy of panel's reasons - held: no jurisdictional error or error on face of record - panel's reasons more than adequate to discharge duty - proceedings dismissed.

[Fire & Rescue NSW](#) (I, G)

In the matter of Owston Nominees No 2 Pty Limited (in liquidation) (receivers and managers appointed) [2013] NSWSC 538

Supreme Court of New South Wales

Black J

Corporations - winding up - defendants sought orders that liquidator be restrained from engaging solicitors to act in summons for examination under ss596A & 596B *Corporations Act 2001* (Cth) and that law firm be restrained from acting - whether conflict of interest arose from those solicitors acting in other proceedings for director and shareholder of company in liquidation - defendants also applied for orders setting aside orders for production and summons for examination - whether summons issued for improper purpose or material non-disclosure in evidence - held: not



necessary or appropriate to express view that liquidator could not retain law firm to apply for orders for production and examination summons once appropriate steps were taken in relation to issues identified by court - injunctive relief not granted - orders for production and examination summons set aside on basis of material non-disclosures.

[In the matter of Owston Nominees No 2 Pty Limited](#) (I, B)

C&P Syndicate Pty Ltd v Reddy [2013] NSWSC 643

Supreme Court of New South Wales

Lindsay J

Conveyancing – equity – construction and operation of commercial conveyancing documents – whether plaintiff landowner, acting through second defendant solicitor, validly exercised put option requiring first defendant prospective purchaser to acquire land - plaintiff sued purchaser for damages for breach of contract, and sought, if necessary, an order for specific performance in aid of damages claim - alternatively, if option not validly exercised, plaintiff sued solicitor for damages for professional negligence – held: put option validly exercised – plaintiff established case against purchaser – claim against solicitor dismissed – plaintiff entitled to award of common law damages - order for specific performance not necessary or appropriate.

[C&P Syndicate](#) (I, B)

McBride v ASK Funding Ltd [2013] QCA 130

Court of Appeal of Queensland

Jackson J; Muir & Gotterson JJA

Summary judgment – loan agreement - applicant sought to appeal grant of summary judgment under r292 *Uniform Civil Procedure Rules 1999* (Qld) – applicant also sought extension of time to file notice of appeal – held: primary judge erred in failing to adequately refer to evidence in reasons – appropriate for court to state reasons why, on evidence before primary judge, respondent entitled to summary judgment – no substance to other grounds of appeal except that primary judge erred in ordering appellant to pay respondent’s costs on indemnity basis - extension of time to file notice of appeal allowed – costs order set aside - appellant to pay respondent’s costs on standard basis – appeal otherwise dismissed.

[McBride](#) (I, B)

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