

Friday, 31 May 2019

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Healthscope Limited, in the matter of Healthscope Limited (No 2) (FCA) - corporations - application for approval of proposed scheme of arrangement - application granted (I B)

Iskra v MMIR Pty Limited (NSWCA) - security of payments - appeal against decision to quash adjudication determination - no failure by adjudicator to determine construction work's value - appeal allowed (I B C G)

Loulach Developments Pty Ltd v Roads and Maritime Services (NSWSC) - negligence - limitations - defendant breached duty in making of representation concerning lot to plaintiff developer - loss not established - claim statute-barred - judgment for defendant (I B C G)

RW Health Partnership Pty Ltd v Lendlease Building Contractors Pty Ltd (VSC) - arbitration - contract - application for transfer of dispute to arbitration - summons dismissed (B C I G)

Toma v Olcorn (VSCA) - contract - sale of land - respondent purchaser entered contract 'under a serious mistake' - appellant knew of mistake and sought to take advantage of it - contract rescinded - leave to appeal granted - appeal dismissed (I B C G)

Bentleys (Sunshine Coast) Pty Ltd & Ors v Thomson (QCA) - costs - pleadings - appellants succeeded in striking out pleading 'with leave to replead' but not in striking out third party notice

- determination of costs (I B C G)

Sacco v Local Government Association Workers Compensation Scheme (City of Salisbury) (No 2) (SASC) - workers compensation - permission to cross-appeal against decision of Full Bench of South Australian Employment Tribunal granted - cross-appeal to be consolidated with appeal of worker (I B C G)

Summaries With Link (Five Minute Read)

Healthscope Limited, in the matter of Healthscope Limited (No 2) [2019] FCA 759

Federal Court of Australia

Beach J

Corporations - plaintiff sought approval of proposed scheme of arrangement between plaintiff and plaintiff's shareholders 'at relevant record date' ('scheme shareholders') - ASIC had been given 'required notice' - scheme would result in transfer of all shares in plaintiff which scheme shareholders held to company (Brookfield BidCo) - whether to approve proposed scheme - whether 'conditions precedent' met - whether support of shareholders - whether disclosure requirements satisfied - whether scheme 'fair and reasonable' - whether scheme in shareholders' best interests - 'Chapter 6 question' - whether Court satisfied there was 'no proscribed purpose' under s411(17)(a) *Corporations Act 2001* (Cth) (Corporations Act) - whether to grant exemption from s411(Corporations Act) - held: scheme approved.

[Healthscope](#) (I B)

Iskra v MMIR Pty Limited [2019] NSWCA 126

Court of Appeal of New South Wales

Bathurst CJ; Gleeson & Payne JJA

Security of payments - appellant was builder - appeal concerning validity of determination under s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) that first respondent owner owed amount to appellant - primary judge quashed adjudication determination, finding adjudicator 'failed to come to a view as to what was properly payable' with regard to contract's 'true construction' and claim's 'true merits' - whether adjudicator determined value of construction work in payment claim - held: adjudicator determined construction's work's value - appeal allowed.

[View Decision](#) (I B C G)

Loulach Developments Pty Ltd v Roads and Maritime Services [2019] NSWSC 438

Supreme Court of New South Wales

Leeming JA

Negligence - limitations - plaintiff was developer - predecessor of defendant, while plaintiff was seeking development consent for building works on 'lot 11', confirmed 'lot 12' was required for road - plaintiff contended lot 12 was not required for road - plaintiff contended failure by

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defendant to 'take reasonable care' while making representations ('first representation' and 'second representation') concerning lot 12 - plaintiff claimed damages exceeding \$5,000,000 - duty - breach - damage - causation - defences under s43A *Civil Liability Act 2002* (NSW) and *Limitation Act 1969* (NSW) - held :defendant breached duty to take reasonable care in respect of making first representation but plaintiff suffered no loss - defendant did not owe duty to plaintiff to take reasonable care in respect of making second representation - plaintiff's claim statute-barred - judgment for defendant.

[View Decision](#) (I B C G)

RW Health Partnership Pty Ltd v Lendlease Building Contractors Pty Ltd [2019] VSC 353

Supreme Court of Victoria

Riordan J

Arbitration - contract - plaintiff, pursuant to s8(1) *Commercial Arbitration Act 2011* (Vic), sought referral to arbitration of plaintiff's claims against first defendant - plaintiff sought stay of proceeding against first defendant - whether dispute subject of arbitration agreement - whether dispute 'in relation to Compensation' - whether correspondence constituted arbitration agreement - whether first defendant had 'waived right' to dispute's referral for expert's determination - election - abandonment - non-insistence - held: Court not satisfied there was agreement between parties for dispute's arbitration - summons dismissed.

[RW Health](#) (B C I G)

Toma v Olcorn [2019] VSCA 116

Court of Appeal of Victoria

Whelan & McLeish JJA

Contract - parties entered contract for property's sale - appellant was vendor - respondent was purchaser - respondent entered contract 'under a serious mistake about its contents' - respondent 'refused to settle' - appellant sought specific performance - trial judge found appellant aware of mistake of respondent and 'opportunistically sought to take advantage of' mistake - trial judge ordered rescission of contract of sale - appellant sought to appeal - appellant's 'state of mind' - *Taylor v Johnson* 1983] HCA 5 - *Leibler v Air New Zealand Ltd [No 2]* [1999] 1 VR 1 - held: leave to appeal granted - appeal dismissed.

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

Bentleys (Sunshine Coast) Pty Ltd & Ors v Thomson [2019] QCA 104

Court of Appeal of Queensland

Fraser & Morrison JJA; Flanagan J

Costs - pleadings - Court allowed appeal in proceedings - appellants succeeded in striking out pleading 'with leave to replead' but not in striking out third party notice - determination of costs - appellants sought that respondent pay their costs of trial proceeding and appeal on indemnity basis - respondent sought that costs be awarded according to issues' 'different results' - respondent contended costs should be assessed on indemnity basis respondent sought indemnity certificate - s15 *Appeal Costs Fund Act 1973* (Qld) - held: costs orders made.



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

Sacco v Local Government Association Workers Compensation Scheme (City of Salisbury) (No 2) [2019] SASC 80

Supreme Court of South Australia

Nicholson J

Workers compensation - applicant 'compensating authority' sought to cross-appeal against judgment of Full Bench South Australian Employment Tribunal - primary judge set aside determination 'insofar as it' rejected claim of worker that he was injured on certain date and also found worker 'entitled to medical expenses' - primary judge confirmed determination to extent worker 'not entitled to weekly payments of income support' due to worker's breach of mutuality obligation - applicant contended Full Bench failed to give adequate reasons for dismissing its appeal, erroneously imputed an 'approach to and process of reasoning' to Deputy President, and did not adequately address its appeal grounds - whether to grant leave to appeal - adequacy of explanation for delay - prejudice - whether granting leave to appeal would prejudice respondent - held: leave to cross-appeal - cross-appeal to be consolidated with appeal of worker.

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

CRIMINAL

Executive Summary

Summaries With Link



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Before Quiet

By: Hazel Hall

I will think of water-lilies
Growing in a darkened pool,
And my breath shall move like water,
And my hands be limp and cool.

It shall be as though I waited
In a wooden place alone;
I will learn the peace of lilies
And will take it for my own.

If a twinge of thought, if yearning
Come like wind into this place,
I will bear it like the shadow
Of a leaf across my face.

https://en.wikipedia.org/wiki/Hazel_Hall

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