

Tuesday 31 July 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Australian Mud Company Pty Ltd v Coretell Pty Ltd (No 3) - practice and procedure - discovery - confidentiality regime - *Federal Court of Australia Act 1976 (Cth)* - *Federal Court Rules 2011 (Cth)* (I, B, C, G)

Cook v Thales Australia Ltd - administrative law - statutory interpretation - *Safety Rehabilitation and Compensation Act 1988 (Cth)* (I, G)

Barry v Borlas Pty Ltd & Ors - trusts - application to vary trust deed - *Trustee Act 1925 (NSW)* (B)

GBRH Holdings Pty Ltd v Helicopter Services Cairns Pty Ltd - contracts - insurance - entitlements to net insurance proceeds (I, B)

Trinh Optical Yllusion Pty Ltd v Van - corporations law - trusts - application to set aside statutory demand - *Corporations Act 2001 (Cth)* (B)



Summaries with links (5 minute read)

Australian Mud Company Pty Ltd v Coretell Pty Ltd (No 3) [2012] FCA 778

Federal Court of Australia

Barker J

Practice and procedure - discovery - confidentiality regime - application for discovery regarding first respondent's claim for loss and damage in accordance with certain categories - application for seeking orders for respondent to give further and better particulars of claimed loss and damage - applicants also seeking further programming orders and order that respondents file and serve affidavits in support of first respondent's claim - consideration of limitations and conditions of access to confidential document - whether need for order for discovery other than standard discovery - basic principle set out in r20.1 *Federal Court Rules* 2011 (Cth) that party must not apply for discovery unless order will facilitate just resolution of proceedings quickly, inexpensively and efficiently - overarching purpose of civil practice and procedure as set out in s37M *Federal Court of Australia Act* 1976 (Cth) - whether order for discovery other than standard discovery would add unnecessary complexity, delay or expense - whether standard discovery will achieve sufficient disclosure.

[Australian Mud Company](#) (I, B, C, G)

Cook v Thales Australia Ltd [2012] FCA 777

Federal Court of Australia

Gordon J

Administrative law - statutory interpretation - application for order to set aside decision of the Administrative Appeals Tribunal (AAT) that applicant not entitled to compensation under the *Safety Rehabilitation and Compensation Act* 1988 (Cth) (Act) - applicant's father employed by Thales Australia Limited - applicant's father collapsed at work and died two days later - AAT found that applicant could not be paid compensation under s17(3) of the Act because applicant was partly, not wholly, dependent on father - issue of correct statutory construction of s17(3) of the Act - whether *all of those dependants* includes persons wholly dependent and persons partly dependent.

[Cook](#) (I, G)

Barry v Borlas Pty Ltd & Ors [2012] NSWSC 831

Supreme Court of New South Wales

White J

Trusts - application for order pursuant to s81 *Trustee Act* 1925 (NSW) (Act) that first defendant is empowered and authorised to amend vesting day of trust deed - trust deed confers power on trustee with consent of principal (plaintiff) to amend provisions of the trust deed with the



exception of vesting day - plaintiff seeks order to permit extension of vesting day notwithstanding that trustee does not have power to vary the vesting day - consideration of plaintiff's reasons for seeking order - whether primary and residuary beneficiaries support application - whether proposed amendment can be effected in absence of power - whether power to amend may be found in s81(1) of the Act - whether amendment to trust deed may be characterised as a transaction within meaning of s81(1) of the Act - whether issue arises in management or administration of trust property - whether expedient for transaction to take place - whether to exercise discretion to grant power to applicant.

[Barry](#) (B)

GBRH Holdings Pty Ltd v Helicopter Services Cairns Pty Ltd [2012] QCA 198

Court of Appeal of Queensland

Muir JA; M Wilson & Mullins JJ

Contracts - insurance contracts - respondent's helicopter destroyed in accident while being operated by appellant under hire agreement - agreement also covered granting of put and call options for sale and purchase of helicopter (**agreement**) - options not exercised at time of accident - appellant had purchased insurance for benefit of both parties in accordance with agreement to cover risk of operation of helicopter (**policy**) - primary judge made declaration that respondent entitled to indemnity under policy and gave orders for payment of net proceeds of insurance to respondent - appellant appealed and seeks orders in lieu recognising its entitlement to part of net proceeds due to pecuniary or economic loss arising from destruction of helicopter - relevance of un-exercised put and call options - whether policy insured interests of operator of helicopter - whether appellant suffered loss or damage arising out of the accident during the policy period - whether insurer obliged to indemnify both appellant and respondent - whether agreement addresses any apportionment of insurance proceeds - whether necessary to consider s17 *Insurance Contracts Act* 1984 (Cth).

[GBRH Holdings](#) (I, B)

Trinh Optical Yllusion Pty Ltd v Van [2012] SASC 125

Supreme Court of South Australia

Master Burley

Corporations law - application for order that statutory demand be set aside - plaintiff a trustee company and trustee for the Trinh Family Trust (**trust**) - eight year old defendant a discretionary beneficiary under the trust - director of plaintiff company says plaintiff has already paid money demanded in statutory demand to defendant - plaintiff also contends that debt referred to in statutory demand not a debt for purposes of s459E *Corporations Act* 2001 (Cth) (**Act**) - whether assertion that amount has been paid by way of drawings a plausible basis for contention that debt is disputed - consideration of case law concerning beneficiaries' entitlement to recover money from trustees - whether debt referred to in statutory demand is one which may be the subject of a statutory demand - whether a parent can serve a statutory demand on behalf of a minor - whether



the Act confers upon a parent or other guardian of a creditor who is a minor power to undertake statutory demand procedures.

[Trinh Optical Yllusion](#) (B)

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