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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

BGC (Australia) Pty Ltd v Minister for Infrastructure & Transport (No 2) (FCA) – administrative law – declarations refused where they would have no real consequence to the parties (I, G)

Volunteer Eco Students Abroad Pty Limited v Reach Out Volunteers Pty Limited (FCA) – employment – employee left employer and started competing business – contract, fiduciary duty and confidential information claims dismissed – some copyright and misleading and deceptive conduct claims upheld (I, B)



Baron Corporation Pty Ltd v Owners of Strata Plan 69567 (NSWCA) – building contracts – entitlement to rights under s18D *Home Building Act 1989* (NSW) did not make landowner a developer for the purposes of s18C (I, B, C)

Black v Black (NSWSC) – limitation periods – beneficiary given time to serve proposed amended pleadings under which time would not have run due to fraud or deceit (I, B)

Stanton v Fell (NSWSC) – defamation – email referring to plaintiff impliedly rather than by name did not convey the pleaded imputations – defence of qualified privilege would also have succeeded (I)

Verhagen v Millard (QCA) – costs – indemnity costs not routinely ordered in appeals – special circumstances present – indemnity costs ordered (I)

Best v Bardsley and Insurance Australia Ltd (ACTSC) – statutory requirement for parties to provide relevant documents did not abrogate legal professional privilege (I)

Summaries with links (5 minute read)

BGC (Australia) Pty Ltd v Minister for Infrastructure & Transport (No 2) [2013] FCA 733

Federal Court of Australia

McKerracher J

Administrative law – BGC held a sub-lease at Perth Airport – the Minister approved a master plan under the *Airports Act 1996* (Cth) requiring high intensity approach lighting to be constructed on BGC's tenancy - BCG sued Perth Airport and the Minister, seeking declarations that the Minister did not have power to approve a master plan that required work to be undertaken that would breach its sub-lease – BCG's case failed against the Minister but substantially succeeded against Perth Airport – Perth Airport submitted the Court should make declarations that the master plan was within power and valid – held: the declarations sought would have no real consequence to the parties – declarations refused.

[BGC \(Australia\) Pty Ltd](#) (I, G)



Volunteer Eco Students Abroad Pty Limited v Reach Out Volunteers Pty Limited

[2013] FCA 731

Federal Court of Australia

Griffiths J

Employment – an employee of VESA left and set up ROV, a competing eco-tourism business – VESA alleged breach of contract, breach of fiduciary duty, copyright infringement, and misuse of confidential information – held: VESA had failed to prove the employee had accepted a particular written offer of terms of employment – the employee had not breached an implied term to give reasonable notice – the employee had not breached an implied term of good faith, or a fiduciary duty – the employee had not misused confidential information – ROC had infringed VESA's copyright by using an application form, an online FAQ, and an email to university professors that had been substantially copied – ROC had engaged in some of the alleged instances of misleading and deceptive conduct, but not others – parties to attempt to agree on appropriate orders.

[Volunteer Eco Students Abroad Pty Limited](#) (I, B)

Baron Corporation Pty Ltd v Owners of Strata Plan 69567 [2013] NSWCA 238

Court of Appeal of New South Wales

McColl & Barrett JJA, Young AJA

Building contracts – Baron developed land that it owned in common with a related party, and later registered a strata plan – a different related party engaged contractors to undertake the development – the primary judge held that Baron was therefore not a party on whose behalf the development work had been done – however, s18D *Home Building Act 1989* (NSW) provided that Baron was entitled to the same rights as if it had been a party to the development contract – therefore, Baron was a developer for the purposes of s18C of the Act, and was liable to the Owners of the Strata Plan, as its successors in title – held: the mere fact that s18D gave Baron the same rights as if it were party to the development contract did not mean there was a contractual relationship between Baron and the contractor – Baron was therefore not a party on whose behalf the development was done – Baron was therefore not a developer for the purposes of s18C – appeal allowed.

[Baron Corporation Pty Ltd](#) (I, B, C)

**Black v Black [2013] NSWSC 954**

Supreme Court of New South Wales

Robb J

Limitation periods – the plaintiff was the sole beneficiary of a trust – the defendant was the plaintiff's father and the trustee of the trust, was alleged to have effectively appointed himself as solicitor for the trust, acted on a transaction under which the trust loaned money and that he was negligent in implementing this loan – the borrower defaulted – the plaintiff sought to sue the defendant after the limitation period had expired – the plaintiff sought to amend its pleadings to attract the operation of s55 *Limitation Act 1969* (NSW) so that the limitation period was suspended during the time a fraud or deceit was concealed – held: there was enough in the proposed amended pleadings to suggest that the plaintiff may have an arguable case that the limitation period was suspended under s55(1)(b) – however, the proposed amended pleadings in their current form were embarrassing – plaintiff given time to serve a proposed further amended draft statement of claim.

[Black](#) (I, B)**Stanton v Fell [2013] NSWSC 1001**

Supreme Court of New South Wales

Simpson J

Defamation – the plaintiff was a vascular surgeon at Wollongong Hospital – the defendant was a member of a board dealing with accreditation of the vascular surgery unit as a training facility – defendant wrote an email to a single recipient that did not mention the plaintiff but requested that other surgeons be involved in training – held: plaintiff's real complaint was the decision to approve accreditation subject to his implied exclusion from training duties – email did not convey imputations that plaintiff was not competent to supervise trainees, or that the plaintiff had conducted himself so as to warrant the removal of his right to supervise trainees – if imputations had been conveyed, defence of contextual truth would have failed, but defence of qualified privilege at common law and under the *Defamation Act 2005* (NSW) would have succeeded – the imputations, if conveyed, were substantially true.

[Stanton](#) (I)

**Verhagen v Millard [2013] QCA 202**

Court of Appeal of Queensland

McMurdo P, Atkinon, & Martin JJ

Costs – the primary judge had found in favour of Millard and the Court of Appeal had ordered that the Verhagens' application for leave to appeal be dismissed with costs – Millard sought that the Verhagens pay his costs on an indemnity basis, pursuant to an offer under Ch 9 pt 5 *Uniform Civil Procedure Rules 1999* (Qld) – held: Ch 9 pt 5 does not apply to appeals and only special or unusual features will warrant a departure from the usual order as to costs – if indemnity costs were routinely ordered in appeals, this might discourage appeals that may incrementally develop the law – there were special features here – the Verhagens had relied on a compromise agreement that was an attempt to circumvent a court order that they had made a forensic decision not to challenge – Millard was unreasonably put to further expense – indemnity costs ordered.

[Verhagen](#) (I)**Best v Bardsley and Insurance Australia Ltd [2013] ACTSC 141**

Supreme Court of the Australian Capital Territory

Burns J

Legal professional privilege – the plaintiff claimed damages for personal injury arising from defendant's allegedly negligent driving – a medical report was prepared as part of the plaintiff's case – a redacted copy of the report was provided to the defendants – the defendants applied for an order that the plaintiff provide an unredacted copy – a Master dismissed this application – the defendants appealed – held: s139 of the *Road Transport (Third-Party Insurance) Act 2008* (ACT), which requires parties to give each other copies of relevant documents, did not abrogate legal professional privilege – s171 of the *Legislation Act 2001* (ACT) provided that all Acts must be interpreted to preserve common law legal professional privilege – there was no express displacement of s171, or anything to suggest a manifest contrary intention – appeal dismissed.

[Best](#) (I)

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