

Monday, 14 August 2017

## Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**CGL Group Limited & Ors v Royal Bank of Scotland plc** (EWCA) - tortious duty of care - sale of interest rate hedging products to businesses - no duty of care arose in respect of reviews conducted under agreement between banks and statutory regulator - appeals dismissed

**South Western Sydney Local Health District v Sorbello** (NSWCA) - damages - negligence - pure mental harm - nervous shock - assessment of damages - appeal dismissed

**LCM Litigation Fund Pty Ltd v Coope** (NSWCA) - contempt - undertakings - direct dealings - respondent did not breach undertakings - contempt not established - appeal dismissed

**NSW Crime Commission v Chen (No 2)** (NSWSC) - costs - refusal of application under s10C *Criminal Assets Recovery Act 1990* (NSW) - no departure from usual order - unsuccessful defendant to pay plaintiff's costs

**Doe v Dowling** (NSWSC) - contempt - sentence - breach of orders to remove names of persons from article and not further publish imputations about them - contemnor sentenced to 4 months imprisonment

**Mineralogy Pty Ltd v BGP Geexplorer Pte Ltd** (QCA) - pleadings - no error in primary judge's refusal to allow amendments to statement of claim - appeal dismissed

# Benchmark

## Summaries With Link (Five Minute Read)

### **CGL Group Limited & Ors v Royal Bank of Scotland plc [2017] EWCA Civ 1073**

Court of Appeal of England and Wales

Lord Justice McFarlane, Lord Justice Lewison & Lord Justice Beatson

Tortious duty of care - interest rate hedging products - loans - financial conduct - appellants contended that banks 'mis-sold' them interest rate hedging products which they were required to buy as condition of loans which respondent banks made to them - reviews conducted under agreement between banks and statutory regulator (Financial Conduct Authority) - reviews considered there were 'serious failings' in way banks sold products - principal issue was whether reviews gave rise to a duty of care by banks to businesses to carry out reviews 'with reasonable care and skill' - appellants contended banks 'voluntarily assumed responsibility to their customers for performing the task they had undertaken (to the FCA) to perform the Review carefully' - held: Court not satisfied that a duty of care arose in respect of reviews as alleged - appeals dismissed.

[CGL Group Limited](#)

### **South Western Sydney Local Health District v Sorbello [2017] NSWCA 201**

Court of Appeal of New South Wales

Macfarlan, Meagher & Simpson JJA

Damages - negligence - 'pure mental harm' - assessment of damages - respondent claimed damages for nervous shock resulting from appellant's negligence - appellant admitted liability - judgment awarded to respondent in sum of \$1,278,459 - appellant appealed - heads of damages arising on appeal were non-economic loss, past economic loss and future economic loss - ss13, 15, 29, 30, 31 & 33 *Civil Liability Act 2002* (NSW) - residual working capacity - onus - vicissitudes - held: no error in relation to preference of evidence, in not applying approach in *Malec v J C Hutton Pty Ltd* (1990) 169 CLR 638, or in casting onus on appellant in relation to residual working capacity - no basis established to reduce damages to settlement reached in proceedings brought by respondent on son's behalf - appeal dismissed.

[South Western Sydney](#)

### **LCM Litigation Fund Pty Ltd v Coope [2017] NSWCA 200**

Court of Appeal of New South Wales

Macfarlan & Simpson JJA; Emmett AJA

Contempt - appellant sought declaration respondent guilty of contempt of court by breaching undertakings - primary judge dismissed Amended Summons and ordered appellant to pay costs - appellant appealed - appellant sought declaration respondent was guilty of contempt of court, costs orders, and remittal of proceedings for determination of penalty - undertakings arising in litigation between parties concerning contract of employment between them - appellant contended respondent had 'direct dealing' with appellant's client - held: grounds of appeal not made out - no basis to conclude respondent had direct dealings with client of appellant, or worked for him within relevant two-year period - appeal dismissed.

## [LCM Litigation Fund](#)

### **NSW Crime Commission v Chen (No 2) [2017] NSWSC 1044**

Supreme Court of New South Wales

Schmidt J

Costs - Court granted further restraining orders sought by plaintiff under s10A *Criminal Assets Recovery Act 1990* (NSW) and refused defendant's application under s10C in respect of earlier orders of Button J - respondent sought departure from usual order that she pay Commission's costs on basis that construction of s10C was not addressed in submissions but arose at hearing and 'comprised close to one third of the reasons given for the orders made' - held: no proper basis to depart from usual order as to costs - defendant to pay plaintiff's costs.

[NSW Crime Commission](#)

### **Doe v Dowling [2017] NSWSC 1037**

Supreme Court of New South Wales

Harrison J

Contempt - Court found defendant contemnor guilty of contempt by breach of orders that he remove names of persons from article and not further publish imputations about them - *Crimes (Sentencing Procedure) Act 1999 - Uniform Civil Procedure Rules 2005* - contemnor maintained orders and injunctions should never have been made - held: contemnor bound to obey orders even if they were liable to be set aside - contemnor aware that offending conduct's continuation carried risk of imprisonment - previous punishment for contempt had not deterred contemnor - imposition of custodial sentence appropriate - contemnor sentenced to four months imprisonment.

[Doe](#)

### **Mineralogy Pty Ltd v BGP Geexplorer Pte Ltd [2017] QCA 162**

Court of Appeal of Queensland

Fraser & Philippides JJ; Douglas J

Pleadings - appellant appealed against primary judge's decision to refuse plaintiff leave to make 'substantial amendments' to statement of claim - adequacy of particularisation - trial's proximity - whether pleading hopeless - adequacy of primary judge's reasons - whether proposed amendment would cure defects which primary judge identified - held: no error in primary judge's refusal to allow amendments - appeal dismissed.

[Mineralogy](#)

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