

Wednesday, 16 August 2017

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Woolworths Ltd v McQuillan** (NSWCA) - negligence - slip and fall on grape in supermarket operated and occupied by Woolworths - erroneous factual findings - implicit finding of negligence against employees could not stand - Woolworths not liable - appeal allowed

**Seru v the Commonwealth of Australia by the Department of Immigration and Citizenship** (NSWSC) - approval of settlement - negligence - confidentiality - open justice - settlement of parties by confidential deed - draft orders approved except for amendment in respect of one order in relation to confidential documents

**Cunningham v Guardian Royal Financial Services Pty Ltd; Miller v Guardian Royal Financial Services Pty Ltd; Smallwood v Guardian Royal Financial Services Pty Ltd; Smallwood v Guardian Royal Financial Services Pty Ltd; Visini v Guardian Royal Financial Services Pty Ltd** (NSWSC) - costs - indemnity costs - Calderbank offer - plaintiffs unreasonable to accept fifth defendant's offer to settle - indemnity costs order made in fifth defendant's favour

**Kok v Resorts World at Sentosa Pte Ltd** (WASCA) - private international law - dismissal of application to set aside registration of judgment entered by High Court of the Republic of Singapore - appeal dismissed

**DM Drainage & Constructions Pty Ltd v Karara Mining Ltd [No 2]** (WASC) - buildings and construction - preliminary hearing of 'reprice claim' in proceedings refused - application dismissed

**WR Engineering Pty Ltd ATF WR Engineering Trust v Nickola Jancevski (ACTSC)** - negligence - no error in finding that injured worker was appellant's employee, not an independent contractor - no breach of duty by appellant - appeal allowed

## Summaries With Link (Five Minute Read)

### **Woolworths Ltd v McQuillan [2017] NSWCA 202**

Court of Appeal of New South Wales

Basten, Gleeson & Payne JJA

Negligence - respondent slipped and fell on a grape in supermarket operated and occupied by appellant - respondent sued appellant in negligence and succeeded on separate question of liability - respondent awarded agreed sum of damages of \$151,000 - appellant challenged factual findings of primary judge, and contended primary judge erred in finding casual act of negligence by appellant's employee - ss5B(1)(a), (b), (c) & 5D *Civil Liability Act 2002* (NSW) - r42.1 *Uniform Civil Procedure Rules 2005* (NSW) - whether 'a proper lookout' would have resulted in observation of single grape on floor - whether finding of single grape on floor sufficient to establish breach of duty - held: primary judge erred in factual findings - findings set aside - implicit finding of negligence by staff before 10am could not stand due to Court having set aside primary judge's finding that grape was on floor before 10am - appeal allowed.

[Woolworths](#)

### **Seru v the Commonwealth of Australia by the Department of Immigration and Citizenship [2017] NSWSC 1062**

Supreme Court of New South Wales

Adamson J

Approval of settlement - negligence - confidentiality - open justice - proceedings arising from deceased's death in Villawood Detention Centre - deceased was father of infant plaintiff - plaintiffs alleged deceased's death resulted from negligence of one or more defendants - parties agree to settle 'Nervous Shock Proceedings' and 'Compensation to Relatives Act Proceedings' on terms in confidential deed - ss76 & 77 *Civil Procedure Act 2005* (NSW) - *Compensation to Relatives Act 1897* (NSW) - held: Court found it was appropriate to make draft orders with exception of amendment to be made to one order 'to confine the documents to be kept confidential' - Court was of view that the draft order was too broad and would have 'adverse impact on the principles of open justice' - orders made - proceedings dismissed.

[Seru](#)

### **Cunningham v Guardian Royal Financial Services Pty Ltd;; Miller v Guardian Royal Financial Services Pty Ltd;; Smallwood v Guardian Royal Financial Services Pty Ltd;; Smallwood v Guardian Royal Financial Services Pty Ltd;; Visini v Guardian Royal Financial Services Pty Ltd [2017] NSWSC 1057**

Supreme Court of New South Wales

Ward CJ in Eq

Costs - indemnity costs - Calderbank offer - Court made consent orders in related proceeding for judgment in fifth defendant's favour and for plaintiffs to pay fifth defendant's costs - fifth defendant sought indemnity costs on basis of Calderbank offer to settle proceedings which was refused by plaintiffs - held: fifth defendant's offer to forgo cost claim was genuine offer of compromise - plaintiffs were unreasonable to refuse offer - appropriate to make indemnity costs order in defendant's favour.

[Cunningham](#)

## **Kok v Resorts World at Sentosa Pte Ltd [2017] WASCA 150**

Court of Appeal of Western Australia

Martin CJ; Murphy & Beech JJA

Private international law - applicant sought extension of time to appeal against Master's dismissal of application to set aside registration of judgment against him entered by High Court of the Republic of Singapore in respect of money respondent had lent him to gamble at casino - funds had been advanced to applicant in accordance with Singapore law - judgment registered in Supreme Court of Western Australia - applicant sought to set aside registration of judgment on basis it would be contrary to public policy opposed to provision of credit for gambling - held: Master correct to dismiss application - grounds of appeal had no prospect of success - extension of time refused due to lack of merit - appeal dismissed.

[Kok](#)

## **DM Drainage & Constructions Pty Ltd - v - Karara Mining Ltd [No 2] [2017] WASC 231**

Supreme Court of Western Australia

Banks-Smith J

Building and construction - plaintiff sought preliminary hearing of 'reprice claim' in proceedings - plaintiff accepted that preliminary issue's determination would not resolve litigation but contended outcome would advance prospects of resolution by compromise - O1 r4A, O32 r4 *Rules of the Supreme Court 1971 (WA)* - whether possible to assess reprice claim in isolation - whether uncertainty as to preliminary trial's outcome and benefit - held: Court considered potential benefit of resolving preliminary issue was disproportionate to risks - dispute was complex - reprice claim not a 'clear preliminary point that might lead to' dispute's 'quick determination' - application for preliminary hearing refused.

[DM Drainage](#)

## **WR Engineering Pty Ltd ATF WR Engineering Trust v Nickola Jancevski [2017] ACTSC 202**

Supreme Court of the Australian Capital Territory

Ashford AJ

Negligence - respondent injured while rectifying error he made on garage door's installation - respondent claimed damages under *Civil Law (Wrongs) Act 2002 (ACT)* - Magistrate awarded damages to respondent against appellant with deduction of 50% for contributory negligence,



# Benchmark

finding that respondent was appellant's employee, not an independent contractor, and that appellant had failed to ensure respondent 'was trained explicitly in relation to the potential hazard posed by the tensioned springs in a double panel lift door' and to instruct him that his method was 'unacceptable and unsafe' - whether erroneous finding respondent was appellant's employee and not an independent contractor - whether breach of duty of care - held: primary judge correct to find respondent was an employee of appellant - no breach of duty of care by appellant - appeal allowed.

[WR Engineering](#)

[Click Here to access our Benchmark Search Engine](#)