AR CONOLLY & COMPANY
LAWYERS

Benchmark

Wednesday, 2 December 2015

Daily Insurance

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)

Bob Jane Corporation Pty Ltd v ACN 149 801 141 Pty Ltd (FCA) - bias - contempt - application for contempt orders transferred to another judge on basis of previous findings as to credibility - application granted

Vartuli v Chief Commissioner of State Revenue (NSWCA) - taxes and duties - cattle-farming business - rural lands used for primary production exemption - objections to land tax assessments disallowed - appeal dismissed

Toben v Nationwide News Pty Ltd; Toben v Mathieson (NSWSC) - stay - abuse of process - defamation - proceedings a cynical misuse of Court's process - permanent stay granted

Bassal v Savills (NSW) Pty Ltd (NSWSC) - pleadings - contract - tort - plaintiffs granted leave to amend originating process against leasing broker

McGowan v Hills Ltd (Ruling No 1) (VSC) - conflict of laws - negligence - plaintiff fell from allegedly defective ladder in New South Wales - place of manufacture of ladder was Queensland - cause of action governed by law of Queensland

Kadac Proprietary Ltd v Complete Health Products Pty Ltd (Costs) (VSC) - costs - transfer of proceedings - costs of successful transfer application should be costs in the cause

Summaries With Link (Five Minute Read)

Bob Jane Corporation Pty Ltd v ACN 149 801 141 Pty Ltd [2015] FCA 1343
Federal Court of Australia
Besanko J
Bias - contempt - applicant sought judge's disqualification from hearing application for contempt orders against fourth respondent and order that application be transferred to another judge - held: judge concluded he should disqualify himself on basis that judge had previously made findings in relation to fourth respondent's credibility and there was sufficient prospect credibility would be in issue in proceeding - application to be transferred to another judge - application granted.
Bob Jane Corporation

Vartuli v Chief Commissioner of State Revenue [2015] NSWCA 372
Court of Appeal of New South Wales
Meagher, Ward & Gleeson JJA
Taxes and duties - exemption for rural lands used for primary production - appellants conducted cattle business on land - Chief Commissioner assessed appellant for land tax - appellants' objections to assessments disallowed - appellants sought review - primary judge rejected challenge to assessments - primary judge found that the requirement that primary production use of land have "a significant and substantial commercial purpose or character" pursuant to under s10AA(2)(a) *Land Tax Management Act 1956* (NSW) was not met - appellants appealed - ss*585, 586, 587, 591, 594, 597* Local Government Act 1993 (NSW) - held: complaint misconceived that primary judge misconstrued decision in *Maraya Holdings Pty Ltd v Chief Commissioner of State Revenue* [2013] NSWCA 40 - contention rejected that test for significance or substantiality under s10AA(2)(a) required comparison with competitor farms - contention rejected concerning findings as to significance of minimal profits - finding that appellant's primary motivation was enjoyment of work open on evidence - finding in relation to lack of profitability open on evidence- no error in approach to historical profits - no error in considering alternative test under character limb of s10AA(2)(a) - appeal dismissed.
Vartuli

Toben v Nationwide News Pty Ltd; Toben v Mathieson [2015] NSWSC 1784
Supreme Court of New South Wales
McCallum J
Stay - abuse of process - defamation - action arising out of publication of article in newspaper in which plaintiff was person referred to as a "Holocaust denier" - defendants sought stay of proceedings or dismissal as abuse of process on basis plaintiff's purpose in pursuing proceedings was to use Court's process as forum to create record of his beliefs concerning Holocaust and Jews - plaintiff had been restrained in Federal Court from publishing material which suggested serious doubt Holocaust occurred - s18 *Australian Consumer Law* - s8 *Defamation Act 2005* (NSW) - ss18C; 24E; 25A & 25Z *Racial Discrimination Act 1975* (Cth) -

held: defendants established plaintiff sought by proceedings to manipulate Court's process to create forum to assert views by which he claimed to have been defamed, the expression of which views had been restrained by Federal Court orders - this was cynical misuse of Court's process - proceedings permanently stayed.
Toben

Bassal v Savills (NSW) Pty Ltd [2015] NSWSC 1779
Supreme Court of New South Wales
Button J
Pleadings - contract - tort - plaintiffs and companies with which they were associated sought to develop land as shopping centre - plaintiffs retained defendant leasing broker under agreement to find and introduce potential tenants - plaintiffs filed statement of claim in 2011 - plaintiffs alleged defendant breached duty of care by failure to implement adequate leasing strategy and structure, and failed to provide services under agreement with reasonable care, skill and diligence - whether plaintiffs should be granted leave to file further iteration of originating process many years after first filing statement of claim -prejudice - interests of justice - delay - held: no evidence either plaintiff delayed matter personally - if leave refused plaintiffs prohibited from pursuing asserted claim as they saw fit. - not in interests of justice to refuse leave - matter must move towards resolution promptly - leave to amend statement of claim granted.
Bassal

McGowan v Hills Limited (Ruling No 1) [2015] VSC 674
Supreme Court of Victoria
T Forrest J
Conflict of laws - negligence - plaintiff alleged that he fell from a defective ladder in New South Wales during course of his employment with second defendant company - ladder manufactured by first defendant company in Queensland, and purchased by plaintiff in Victoria - substantive law governing plaintiff's claim for damages against first defendant - held: plaintiff's case was that first defendant had manufactured defective product and plaintiff was injured due to the defects - alleged duty related to safety of manufactured product - alleged breaches concerned aspects of ladder's manufacture - place of manufacture Queensland - Queensland was where substance of cause of action arose - common law referable to Queensland was substantive law governing plaintiff's claim.
McGowan

Kadac Proprietary Ltd v Complete Health Products Pty Ltd (Costs) [2015] VSC 657
Supreme Court of Victoria
Sifris J
Costs - Court transferred proceeding to Supreme Court of Queensland - successful defendants sought indemnity costs on basis they had advised plaintiff proceedings should be commenced in Queensland and also offered to compromise application - plaintiff submitted costs of application should be costs in the cause - plaintiff claimed application was part of ordinary interlocutory steps and costs should be allocated in accordance with final determination - held:

costs of successful transfer application should be costs in the cause unless special circumstances existed - no special circumstances in this case - defendant's communicated position insufficient - plaintiff not unreasonable to reject defendants' argument as to appropriate forum - plaintiff entitled to invoke its 'home' jurisdiction - costs of application should be costs in the cause.
Kadac

Click Here to access our Benchmark Search Engine