

Monday, 25 April 2016

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)

Grant-Taylor v Babcock & Brown Ltd (in liq) (FCAFC) - corporations - dismissal of application against company and liquidator for breach of continuous disclosure obligations - appeal dismissed

Manno v Manno (NSWSC) - equity - estoppel - claim by son against parents for entitlement to subdivided lot or compensation - further amended statement of claim dismissed

DHR International Inc v Challis (No 3) (NSWSC) - contempt - letters sent to third party were not improper attempt to cause third party to pressure applicant to concede to defendants' demands in substantive proceedings - acquittal

Stanley Rural Community Inc v Stanley Pastoral Pty Ltd (VSC) - security for costs - dispute arising from permission to extract water from land - applicant seeking leave to appeal from decision of Victorian Civil and Administrative Tribunal - respondent granted security for costs

Swindells v Victoria (No 2) (VSCA) - costs - successful respondents not responsible for unsuccessful applicant's circumstances - respondents to have cost of proceeding

Whittington v Smeaton (ACTSC) - negligence - boating accident - plaintiff observer on jet-ski towing water-skier fell into water - foot amputated by tow-rope - defendants were owner and driver of jet-ski - judgment for plaintiff against defendants - judgment for defendants against third party insurer

Summaries With Link (Five Minute Read)

Grant-Taylor v Babcock & Brown Ltd (in liq) [2016] FCAFC 60

Full Court of the Federal Court of Australia

Allsop CJ; Gilmour & Beach JJ

Corporations - continuous disclosure obligations - appellants purchased shares in company (BBL) - appellants lost value of investment when BBL placed in voluntary administration - appellants appealed against dismissal of application for damages against BBL and liquidator for breaches of continuous disclosure obligations in 674(2) *Corporations Act 2001* (Cth) - ss254T, 256B, 256D, 296, 297, 674, 676 & 677 - “final dividend information” - “final report information” - “insolvency information” - materiality of information - “commonly invest in securities” - general availability of material - “aware” in Listing Rule - held: appellants established primary judge construed phrase “commonly invest in securities” differently from preferred construction, however difference did not entail disclosure was required - other grounds of appeal not made out - appeal dismissed.

[Grant-Taylor](#)

Manno v Manno [2016] NSWSC 493

Supreme Court of New South Wales

Stevenson J

Equity - estoppel - plaintiff son claimed defendants, who were his mother and father, represented to him they would subdivide their land give him, and his siblings, a lot from subdivision - parents sold the land without subdividing - plaintiff contended parents estopped from denying that he was entitled to “a subdivided lot” or should be compensated - *Family Law Act 1975* (Cth) - *Uniform Civil Procedure Rules 2005* (NSW) - held: there was no unconscionability on parents’ part - Court not satisfied any statement which may have been made by parents induced plaintiff to join business established by father - even if plaintiff induced no evidence any detriment suffered - evidence did not establish that any reliance by plaintiff was reasonable - further amended statement of claim dismissed.

[Manno](#)

B & B Enterprise (Aust) Pty Ltd v Sur Holdings Pty Ltd [2016] NSWSC 490

Supreme Court of New South Wales

Button J

Default judgment - appeal against Magistrate’s refusal to set aside default judgment entered against appellant in respondent’s favour - appellant contended Magistrate had “focused too precisely upon the factors that inform whether it is in the interests of justice for a default judgment to be set aside, rather than upon the interests of justice” - held: Court satisfied Magistrate’s discretion had miscarried in relation to adequacy of explanation for delay and whether defence arguable - Magistrate had made “sub-assessments” which were not open to her “evaluative judgment” - leave to appeal granted - appeal upheld.

[B & B Enterprise](#)

Benchmark

Stanley Rural Community Inc v Stanley Pastoral Pty Ltd [2016] VSC 173

Supreme Court of Victoria
Ginnane J

Security for costs - dispute arising from grant of permission to respondent to extract water from its land - applicant sought leave to appeal against decision of Victorian Civil and Administrative Tribunal (VCAT) - applicant was non-profit incorporated association which had been an objector in VCAT proceedings - respondent sought security for costs of proceeding under r62.02(b) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* or Court's inherent jurisdiction - balance of respondent's interest in protection from prejudice in recovering costs arising from applicant's limited liability, with risk of applicant being shut out from seeking relief - held: on consideration of case overall, Court considered it appropriate applicant to provide some security for costs - security for costs ordered.

[Stanley](#)

Swindells v Victoria (No 2) [2016] VSCA 77

Court of Appeal of Victoria
Warren CJ; Tate & Santamaria JJA

Costs - Court made judgment in proceedings and refused - leave to appeal - respondents sought costs on standard basis - unsuccessful applicant sought that parties should bear own costs on basis of effect of adverse costs order - applicant claimed removal from office of mining warden had affected him mentally and physically, that he could not meet costs order and that respondents should have settled - held: Court not satisfied respondents responsible for applicant's difficulties - applicant's submissions were in effect seeking compensatory relief - respondent had initiated trial and application for leave to appeal - applicant had been unsuccessful - respondents should have their costs.

[Swindells](#)

Whittington v Smeaton [2016] ACTSC 76

Supreme Court of the Australian Capital Territory
Mossop AsJ

Negligence - boating accident - plaintiff was observer on jet ski driven by second defendant - jet ski was towing first defendant waterskier - first defendant owned jet-ski - first defendant fell - jet ski was turning around when it struck another boat's wake - plaintiff fell into water - plaintiff's leg became somehow entangled in tow rope and plaintiff's foot was amputated - plaintiff sued defendants - defendants joined third party insurer which denied liability to first defendant because second defendant was not licensed to drive jet ski - s45 *Civil Laws (Wrongs) Act 2003 (ACT)* - s5L *Civil Liability Act 2002 (NSW)* - ss9, 11, 13, 18 & 19 *Civil Liability Act 2003 (Qld)* - s54 *Insurance Contracts Act 1984 (Cth)* - s95(3) *Transport Operations (Marine Safety) Regulations 2004 (Qld)* - held: plaintiff established defendants were liable - plaintiff not engaging in dangerous recreational activity - no obvious risk - loss giving rise to claim not caused by unlicensed driving - insurer not entitled to refuse to pay claim for that reason -

Benchmark



AR CONOLLY & COMPANY
L A W Y E R S

judgment for plaintiff against defendants - judgment for defendants against third party insurer.

[Whittington](#)

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