

Friday, 12 February 2016

Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Huatiang (Asia) Pte Ltd v Lonpac Insurance Bhd (SGHC) - insurance contract - Work Injury Compensation Insurance Policy - insurer entitled to recover sum it paid to estate of deceased employee

Plaintiff M68-2015 v Minister for Immigration and Border Protection (HCA) - migration - Commonwealth authorised by 198AHA of the Migration Act to participate in plaintiff's detention at Regional Processing Centre - declaration refused

Consolidated Lawyers Ltd v Abu-Mahmoud; Abu-Mahmoud v Consolidated Lawyers Ltd (NSWCA) - professional negligence - solicitors' duties - negligent restructure advice caused client's loss - appeal dismissed

Ehrenfeld v Zeng (NSWCA) - trusts - corporations - contract - respondents entitled to recover from appellant amount paid out of trust account - appeal dismissed

Pittaway v Noosa Cat Australia Pty Ltd (QCA) - contract - construction contract - erroneous dismissal of proceedings for want of prosecution - appeal allowed

Allianz Australia Insurance Ltd v Inglis (WASCA) - insurance - preliminary question - legal liability cover - exclusion clause for injury to person who was normally living with insured - appeal allowed

Cauldron Energy Ltd v Beijing Joseph Investment Co Ltd (WASC) - contract - share placement agreements - plaintiff entitled to recover contractual debts and to damages for

wasted expenditure - claim for interference with contractual relations failed

Motor Accidents Insurance Board v Lester (TASSC) - negligence - driver injured in collision with steer or steers which had escaped from farming property and onto road - non-indemnifiable defendants liable for scheduled benefits paid or to be paid by Motor Accidents Insurance Board

R Developments Pty Ltd v Forth (ACTSC) - building contract - builder not entitled to insist that owners provide evidence of capacity to pay amount required under contract

Summaries With Link (Five Minute Read)

Huatiang (Asia) Pte Ltd v Lonpac Insurance Bhd [2015] SGHC 326

High Court of Singapore

George Wei J

Insurance contract - appeal against decision in which District Judge allowed insurer's appeal against employer for sum paid pursuant to Work Injury Compensation Insurance Policy - construction of 'Motorcycling Exception' in 'Travelling Extension' - construction of 'Avoidance and Recovery' clause - whether insurer entitled to recover what it had paid to estate of deceased employee - public interest - statutory allocation of risk - Red hand rule - *Work Injury Compensation Act* - held: Court affirmed decision of District Judge that insurer was entitled to recover sum it paid - appeal dismissed.

[Huatiang](#)

[From Benchmark Tuesday, 9 February 2016]

Plaintiff M68-2015 v Minister for Immigration and Border Protection [2016] HCA 1

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Migration - plaintiff Bangladeshi national was "unauthorised maritime arrival" pursuant to s5AA *Migration Act 1958* (Cth) - plaintiff taken to Nauru - plaintiff sought declaration Commonwealth's conduct in relation to detention, was unlawful - ss198AB, 198AD & 198AHA. - ss51(xix) & 61 *Constitution* - non-statutory executive power - authorisation for participation in detention at Regional Processing Centre - Nauru Constitution - held (by majority): Commonwealth authorised by 198AHA of the Migration Act to participate in plaintiff's detention - declaration refused.

[Plaintiff-M68-2015](#)

[From Benchmark Friday, 5 February 2016]

Consolidated Lawyers Ltd v Abu-Mahmoud; Abu-Mahmoud v Consolidated Lawyers Ltd [2016] NSWCA 4

Court of Appeal of New South Wales

Bathurst CJ, Macfarlan JA & Tobias AJA

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Professional negligence - solicitors' duties - respondent property developer sued appellant lawyers for allegedly negligent advice ("restructure advice") in relation to purchase of property - primary judge found in favour of respondent - causation - post-caveat advice - "independent unreasonable conduct" - held: no error in primary judge's finding that restructure advice was negligent and that negligence caused respondent's loss - appellants precluded from raising argument as to unreasonable conduct and causation for first time on appeal - no error established by primary judge in relation to costs - appeal dismissed.

[Consolidated Lawyers Ltd](#)

[From Benchmark Monday, 8 February 2016]

Ehrenfeld v Zeng [2016] NSWCA 6

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Emmett AJA

Trusts - corporations - contract - dispute arising from project which failed to reach fruition - project involved acquisition of company which was to acquire quarry and publish prospectus for proposed issue of shares to recapitalise it - respondent and associates contended that payments made out of an account controlled by fourth respondent in accordance with appellant's instructions were made in breach of trust - respondent and associates claimed reimbursement from fourth and fifth respondent and from appellant and associated entities - primary judge found in favour of respondents - whether breach of contract and breach of trust - procedural fairness - natural justice - validity of prospectuses - Sch 2 *Competition and Consumer Act 2010* (Cth) - s719 *Corporations Act 2001* (Cth) - held: appellant failed to make out any grounds of appeal - appeal dismissed.

[Ehrenfeld](#)

[From Benchmark Wednesday, 10 February 2016]

Pittaway v Noosa Cat Australia Pty Ltd [2016] QCA 4

Court of Appeal of Queensland

Morrison JA; Douglas & North JJA

Contract - construction contract - linked agreements - applicant and respondent entered two linked agreements by which applicant would build shed for respondent and respondent would build boat for applicant - applicant contended he built shed but respondent's company did not pay full amount as required - applicant also contended respondent did not build boat as required - applicant sued respondent and company for damages for breach of contract - proceedings dismissed for want of prosecution - applicant sought leave to appeal - whether appeal necessary to correct substantial injustice - whether reasonable argument there was error - delay - prejudice - s118(3) *District Court of Queensland Act 1967* (Qld) - rr5, 214(2)(e), 280, 389 & 444 *Uniform Civil Procedure Rules 1999* (Qld) - held: primary judge erred in finding circumstances warranted dismissal - dismissal of claim amounted to substantial injustice - leave to appeal granted - appeal allowed.

[Pittaway](#)

[From Benchmark Thursday, 4 February 2016]

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Allianz Australia Insurance Ltd v Inglis [2016] WASCA 25

Court of Appeal of Western Australia

McLure P, Buss JA & Mitchell J

Insurance - Mr and Mrs Inglis were parents of James and Georgia Inglis - Georgia Inglis, while present at home of Daniel Sweeney, Elaine Sweeney and their son Stephen Sweeney, was injured when run over by ride-on lawnmower driven by Stephen Sweeney - lawnmower owned by Stuart Inglis - lawnmower was allegedly driven by James Inglis from home to Sweeneys' home - preliminary question whether Allianz liable to indemnify Stuart and James Inglis under policy which insured Inglis' home and contents, and also provided legal liability cover, for any liability to Sweeneys in third party proceedings - primary judge found Allianz not entitled to refuse claim - s54 *Insurance Contracts Act 1984* (Cth) - s7 *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) - construction of policy - exclusion of liability for injury to a person who was normally living with insured - whether fact Georgia Inglis was normally living with insured was an act under s 54 rather than state of affairs pertaining to or characteristic of life as 10 year old - held: Court not satisfied that the fact that a person normally lives with an insured does not constitute an 'act' within s 54(1) - appeal allowed.

[Allianz](#)

[From Benchmark Friday, 5 February 2016]

Cauldron Energy Ltd v Beijing Joseph Investment Co Ltd [2016] WASC 22

Supreme Court of Western Australia

Mitchell J

Contract - inducement of breach of contract - Cauldron Energy was plaintiff by counter-claim (plaintiff) - Cauldron Energy entered agreements with defendants by counterclaim (defendants) and company 'Guangzhou Joseph' for placement of shares in plaintiff - plaintiff sought to recover subscription sums payable by defendants under agreements and to recover wasted expenditure for obtaining shareholder approval - plaintiff also claimed defendants induced or procured defendant and Guangzhou Joseph to breach agreements - ss606, 607, 611 & 1041 *Corporations Act 2001* (Cth) - O 20, r14, O 34, r4 *Rules of the Supreme Court 1971* (WA) - held: subscription sums payable under agreements - plaintiff entitled to recover contractual debts and damages for wasted expenditure - tortious claim for interference with contractual relations failed.

[Cauldron](#)

[From Benchmark Wednesday, 10 February 2016]

Motor Accidents Insurance Board v Lester [2016] TASSC 2

Supreme Court of Tasmania

Tennent J

Negligence - driver catastrophically injured in motor vehicle collision with steer or steers wandering on highway, which had escaped farming property - Motor Accidents Insurance Board entitled under of *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) to recover from certain people scheduled benefits it had to pay for driver's benefit - Board sued owners of farming property (first and second defendants) and third defendant, contracted by first and second defendant to replace portion of fencing - defendants were non-indemnifiable persons for



purposes of Act - held: Court satisfied defendants owed and breached duty of care to driver by negligent acts - as result of defendants' negligence steers escaped from property and wandered onto highway - clearly foreseeable that if steers escaped they would wander onto roads posing significant risk to road users - risk resulted in injury to driver - defendants are liable to pay scheduled benefits payable or to be paid by Board.

[Motor Accidents Insurance Board](#)

[From Benchmark Friday, 5 February 2016]

R Developments Pty Ltd v Forth [2016] ACTSC 8

Supreme Court of the Australian Capital Territory

Mossop AsJ

Building contract - action arising out of written contract for construction of residence - plaintiff was builder and defendants were owners - builder terminated for alleged failure to comply with contractual requirement to supply evidence of owners' capacity to pay required amount - whether builder's termination valid - held: builder not entitled to insist that Owners provide evidence of capacity to pay amount or to rely on alternative provision to support validity of termination of the contract - owners entitled only to nominal damages in relation to claim for damages for repudiation.

[R Developments](#)

[From Benchmark Tuesday, 9 February 2016]



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Interim

Lola Ridge, 1873

The earth is motionless
And poised in space ...
A great bird resting in its flight
Between the alleys of the stars.
It is the wind's hour off
The wind has nestled down among the corn
The two speak privately together,
Awaiting the whirr of wings.

[Lola Ridge](#)

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