



Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Personal injuries – Occupiers liability – See *Skoric v Meriton Apartments* (I, B, C)

Motor vehicle insurance policy – Exclusion clause – See *King v CGU-VACC* (I)

Deceptive & misleading conduct – Double compensation – Sale of business – See *Veranda Café Northbridge v Morgan* (I)

Public utility easements – Insurance against liability for accidents on the easements – Application to extinguish easements refused – See *Oldfield v Gold Coast City Council* (I, C)

Disclosure & production of documents – Repayment of unfair preferences – Pre-trial disclosure – See *Clifton v CSR Building Products* (I, B, C)

Bailment – Guarantee – All monies clause – See *GE Commercial Corporation v ACN 089 812 813* (I, B)

Succession – probate – Grant of probate revoked – See *Baird v Logan* (B)

Trusts – Presumption of resulting trust – How entitlements to be determined – See *Sivritas v Sivritas* (B)

Costs – Order in favour of public entity notwithstanding that it was discontinuing its claim for relief – See *ASIC v Jorgensen* (B)



Thursday 2 October 2008

King v CGU-VACC Insurance Limited [2008] NSWCA 236

Court of Appeal of New South Wales

Beazley & McColl JJA

Application for leave to appeal – motor vehicle insurance policy – claim on insurance policy after vehicle written off - for decision 9 April 2008 see link below & 'Benchmark' Insurance & IBC Monday 14 April 2008 - circumstances of damage to vehicle clearly within exclusion provisions of insurance policy – leave to appeal refused. (I)

[King](#), and

[King](#) - decision 9 April, 2008 - exclusion clause stated ""We will not pay for loss or damage or for legal liability for damage to other peoples property or for death or bodily injury when the driver of your vehicle."- Detailed consideration of case law - appeal from magistrate's decision - three uncontested findings of fact made by magistrate: that driver of vehicle was not licensed or legally authorised to drive vehicle as he was not licensed ; that driver affected by intoxicating liquor & that driver had unreasonably left scene following accident – appeal dismissed.

Skoric v Meriton Apartments Pty Ltd [2008] NSWCA 239

Court of Appeal of New South Wales

Young CJ in Eq, Campbell JA & Handley AJA

Personal injuries - occupiers liability – respondents occupiers of building site – World Square building in Goulburn Street - appellants worker injured injuries walking down a stairwell carrying heavy trolley – appeal dismissed.

[Skoric](#) (I, C)

Lawrence Waterhouse Pty Ltd v Port Stephens Council [2008] NSWCA 235

Court of Appeal of New South Wales

McColl JA

Appellants' failure to comply with security for costs order - whether appeal should be dismissed – answer 'yes.' (C)

[Lawrence Waterhouse](#), and

[Lawrence Waterhouse](#) – Land & Environment Court decision 30 May 2007 – applicant sought declaration that a development consent, granted by the Council had not lapsed on ground that there had been substantial commencement of the development – consent granted 1973 ie: Local Government Act 1919 (NSW) applied, & not Environmental Planning & Assessment Act 1979 (NSW) – principles & case law as to whether or not there has been substantial commencement of the work that was the subject of a consent – claim for declaratory relief refused.



Veranda Cafe Northbridge Pty Ltd v Morgan [2008] NSWSC 1032

Supreme Court of New South Wales

Debelle AJ

Fair Trading Act 1987 (NSW) – misleading & deceptive conduct – reliance – double compensation - sale of business - whether misrepresentations made - whether plaintiff relied on misrepresentations - turnover of business not as represented – other litigation involving landlord of the Plaza (see par 86 & cont.) : principles & case law considered relating to double compensation, where parties have compromised legal proceedings by settlement - defendant liable - damages assessed - judgment for plaintiff in sum of \$542,102.68 plus interest in a total amount of \$193,900 - declaration made that plaintiff not liable to pay sum of \$200,000 outstanding on contract for purchase of business – a detailed judgment.

[Verdana Cafe Northbridge](#) (I, B)

Baird v Logan – Middleton Estate [2008] NSWSC 1029

Supreme Court of New South Wales

Palmer J

Succession - probate – plaintiff & defendant co-executrices of the estate of their mother – defendant refusing to execute a discharge of mortgage - Court may revoke grant of probate to recalcitrant executor - grant of probate revoked; probate granted to plaintiff alone – indemnity costs.

[Baird](#) (B)

Avrocorp Pty Limited v Woollahra Council [2008] NSWLEC 1369

Land & Environment Court of New South Wales

Bly C

Development Application - alterations to Grand National Hotel at Paddington - car parking, amenity, noise, smoking terrace – appeal upheld - conditional development consent granted.

[Avrocorp](#) (B, C)

Sivritas v Sivritas & Anor [2008] VSC 374

Supreme Court of Victoria

Kyrou J

Trusts – presumption of resulting trust - whether presumption rebutted – case law considered as to different categories of constructive trusts – common intention – parents & adult son contribute to mortgage payments & outgoings – improvements to property – how entitlements to be determined – thorough examination of case law including [Calverley v Green](#).

[Sivritas](#) (B)



Australian Securities & Investments Commission v Jorgensen & Ors [2008] QSC 233

Supreme Court of Queensland
de Jersey CJ

Applicant granted leave to discontinue claim for relief - first respondent seeking an order that applicant pay his costs of the proceeding, to be assessed on indemnity basis - applicant seeking an order that first respondent pay its costs - at par 12 of judgment:

“While it is unusual to contemplate ordering a respondent to pay an applicant’s costs, where the applicant chooses not to proceed with the application, such an order may be warranted where the application was reasonably brought and prosecuted, the further prosecution becoming unnecessary because of intervening events. This is such a case. Further, having regard to the issue of public protection, which the applicant is obliged to address, and its being publicly funded, the public should not be penalized, but rather assisted with a costs order, where the applicant has acted reasonably in the matter.”

[Australian Securities & Investments Commission](#) (I, B, C)

Oldfield & Anor v Gold Coast City Council [2008] QSC 226

Supreme Court of Queensland
Mullins J

Public utility easements – Property Law Act 1974 (Qld) - easements granted in favour of local government by developer of residential estate for pedestrian access over walkway between houses & lake – owners of servient tenements seeking extinguishment of easements - insurance against liability for accidents on the easements – valuation evidence - owners of servient tenements unable to show that extinguishment would not substantially injure persons entitled to the easement – application refused – an interesting judgment.

[Oldfield & Anor](#) (I, C)

Clifton & Anor v CSR Buildings Products Ltd [2008] SASC 254

Supreme Court of South Australia
Judge Lunn a Master of the Supreme Court

Disclosure & production of documents - Supreme Court Rules 2006 subrule 32 ('6R 32') - action by liquidators for disclosure before bringing substantive action for repayment of unfair preferences - held that where plaintiffs had multiple alternative causes of action they could obtain disclosure under 6R 32 in respect of one of them even though not for balance of them - order made.

[Clifton & Anor](#) (I, B, C)



GE Commercial Corporation (Australia) Pty Ltd v ACN 089 812 813 Pty Ltd [2008] WASC 205

Supreme Court of Western Australia

Templeman J

Bailment – guarantee – motorcycles - plaintiff company financier provided credit facility to first defendant, to enable the company to carry on business as a retailer of Kawasaki motorcycles – essence of arrangement, commonly known as a floor plan, was a Retail Bailment Agreement - under that agreement, first defendant could request plaintiff to purchase motorcycles, which would then be bailed to first defendant for purpose of re-sale - as a condition of entering into floor plan arrangement, plaintiff required some of first defendant's directors to guarantee first defendant's obligations – further bailment agreement – first agreement contained all monies clause – held that first bailment agreement was either discharged by second, or varied - if the latter, plaintiff had not demonstrated that variation was 'unsubstantial' - fourth defendant's guarantee discharged – plaintiff not pursuing claim against third defendant, now bankrupt – His Honour considered quantum of plaintiff's claim in case of error as to finding on liability – claim against first & second defendants also dismissed.

[GE Commercial Corporation \(Australia\)](#) (I, B)

Allianz Australia Insurance Ltd v Territory Insurance Office [2008] NTCA 08

Court of Appeal of the Northern Territory

Mildren J

Insurance – workers compensation - application for extension of time to serve notice of appeal – for decision 15 May 2008 see 'Benchmark' Insurance & IBC Monday 19 May 2008 & link below – notice not served due to solicitor's administrative error – s126A Work Health Act 1986 (NT): liability as between approved insurers – worker had suffered successive injuries as diesel fitter in mining industry - injuries occurring in periods during which employer insured with separate insurers – 'special reasons' - respondent not opposing application for extension of time - application granted. (I)

[Allianz](#), and

[Allianz](#) – decision 15 May 2008 - claim for contribution between insurers – principles of double insurance did not apply - consideration of case law.

ey: (I) Insurance, (B) Banking, (C) Construction