

## Insurance Banking & Construction

# A Daily Bulletin listing Decisions of Superior Courts of Australia

### Executive Summary (1 minute read)

**Motor Trades Association of Australia Superannuation Fund Pty Ltd v Rickus (No 5)** – s53A *Federal Court of Australia Act 1976* (Cth) – dispute in relation to costs – mediation (B)

**Drummond & Rosen Pty Ltd v Easey & Ors. [No 2]** – Costs – personal injuries – interest on costs prior to assessment - s101(4) *Civil Procedure Act 2005* (NSW) (I, C)

**Jovica Trazivuk v Motor Accidents Authority of NSW & Ors** – *Motor Accidents Compensation Act 1999* (NSW) – plaintiff seeking relief in respect of two decisions of CARS Assessor – application dismissed (I)

**Buzrio Pty Limited v Consumer, Trader & Tenancy Tribunal [No 3]** – Costs – right of successful party to obtain costs against defendant who filed submitting appearance (I, B, C)

**Mantoufeh v Enterprise Finance Solutions Pty Ltd** – Contracts – distinction between debt & damages (I, B, C)

**St Vincent de Paul Society Qld v Ozcare Ltd & Ors** – Joinder – trusts – *Corporations Act 2001* (Cth) – statutory interpretation (B)

**Headway Support Services v Wickham** – *Workers Rehabilitation & Compensation Act 1988* (TAS) – compensation claim on basis incapacitated for work due to acute stress reaction – employer's appeal allowed (I)

**Radford v State of New South Wales** – *Limitation Act 1969* (NSW) – whether claim limited to aggravated & exemplary damages which excludes a claim for damages for personal injury is caught by three year limitation period as provided by s18A – strike out application dismissed – leave to amend plaintiff's pleadings granted (I)



## Summaries with links (5 minute read)

### Monday 2 November 2009

#### **Motor Trades Association of Australia Superannuation Fund Pty Ltd v Rickus [No 5] [2009] FCA 1221**

Federal Court of Australia

Flick J in Sydney

s53A *Federal Court of Australia Act 1976* (Cth) - dispute in relation to costs – review of Registrar’s decision – potential to fragment process of taxation of costs – mediation ordered.

[Motor Trades Association of Australia Superannuation Fund](#) (B)

#### **Drummond & Rosen Pty Ltd v Easey & Ors. [No 2] [2009] NSWCA 331**

Court of Appeal of New South Wales

Tobias & Macfarlan JJA; Handley AJA

Costs – personal injuries - for decision Court of Appeal 16 April 2009, see ‘Benchmark’ I, C & IBC Monday 20 April 2009 & link below - indemnity costs – Sanderson Order – interest on costs prior to assessment - s101(4) *Civil Procedure Act 2005* (NSW)

[Drummond and Rosen](#) (I, C)

[Drummond and Rosen](#) – decision 16 April 2009 - negligence - architects – first respondent (plaintiff in District Court proceedings), had slipped on tiled ramp at shopping centre – it was raining lightly & he had fallen on exposed area where tiles were wet – first respondent had sued owners & occupiers of the shopping centre - the owners joined the builder Grosvenor Constructions Pty Ltd, as a cross defendant on a claim for contribution or indemnity – first respondent had then joined builder as an additional defendant - builder filed a cross claim seeking contribution or indemnity from Drummond & Rosen, the architects who had prepared the plans & specifications for the refurbishment of shopping centre - work included re-tiling of the level public areas & four means of entry to the centre including ramp in question - plaintiff then joined architects as an additional defendant, & the owners also brought a cross claim against them for contribution or indemnity- architect’s engagement in construction phase limited to selection of finishes & colours – delivery of tile samples for approval – no duty to ensure compliance with technical standards in specification – architects not liable - builder responsible – appeal allowed – various verdicts & judgments in the District Court proceedings set aside.

#### **Jovica Trazivuk v Motor Accidents Authority of NSW & Ors [2009] NSWSC 1074**

Supreme Court of New South Wales

Patten AJ

*Motor Accidents Compensation Act 1999* (NSW) - plaintiff seeking relief in respect of two decisions of CARS Assessor - plaintiff contending jurisdictional error – third defendant Australia Insurance Ltd



(Zurich) – first & second defendants filed submitting appearances except as to costs & took no part in the hearing – no error by assessor demonstrated - plaintiff's application for relief dismissed.

[Iovica Trazivuk](#) (I)

## **Buzrio Pty Limited v Consumer, Trader & Tenancy Tribunal [No 3] [2009] NSWSC 1132**

Supreme Court of New South Wales

Davies J

Costs - right of successful party to obtain costs against defendant who filed submitting appearance – where submitting party brought about the need for the litigation – delinquent conduct – third defendant to pay plaintiff's costs on indemnity basis – detailed analysis of case law including two decisions of NSW Court of Appeal in Mahenthirarasa v State Rail Authority of NSW.

[Buzrio Pty Limited](#) (I, B, C)

[Buzrio Pty Limited](#) – decision 9 September 2009 Davies J – plaintiff developer of block of strata units at Parramatta - plaintiff entitled to order in nature of certiorari - s 65(3) Consumer Trader & Tenancy Tribunal Act 2001 (NSW) - order in nature of prohibition sought by plaintiff justified - interim order of CTTT quashed ;

[Buzrio Pty Limited](#) – decision 31 August 2009 Rothman J - see 'Benchmark' B & IBC Wednesday 26 August 2009 - Strata Schemes Management Act 1996 (NSW) – appointment of second defendant as compulsory strata manager for Owners Corporation at property in Parramatta - plaintiff developer challenging three decision of Consumer, Trader & Tenancy Tribunal - denial of procedural fairness in first Tribunal decision – interim orders made in second & third Tribunal decisions quashed – matter remitted – detailed consideration of legislation.

## **Mantoufeh v Enterprise Finance Solutions Pty Ltd [2009] NSWSC 1144**

Supreme Court of New South Wales

Rothman J

Contracts - distinction between debt & damages – appeal from magistrate's decision - defendant provided plaintiff with equipment under a lease or hiring contract for which plaintiff was to pay a hiring fee - finding that Local Court had erred in law - error involved wrongly categorising amount claimed as a debt, as distinct from a claim for liquidated damages – however, that error did not affect the result - judgment for defendant – an interesting decision with detailed consideration of text & case law from the United Kingdom & Australia.

[Mantoufeh](#) (I, B, C)

## **St Vincent de Paul Society Qld v Ozcare Ltd & Ors [2009] QCA 335**

Court of Appeal of Queensland

McMurdo P; Muir & Chesterman JJA

Joinder – trusts – appeal against primary judge's decision refusing leave to join members first respondent as second defendants in the action & against primary judge's refusal to give leave to amend Claim & Statement of Claim to give effect to the proposed joinder – *Corporations Act 2001*





(Cth) – statutory interpretation – whether interests of Members of respondent capable of constituting "property" & thus being held on trust for appellant – reasonably arguable – appeal allowed – joinder permitted – detailed examination of U.K. & Australian case law by Muir JA in an interesting judgment.

[St Vincent de Paul Society Qld](#) (B)

## **Headway Support Services v Wickham [2009] TASSC 99**

Supreme Court of Tasmania

Blow J

*Workers Rehabilitation & Compensation Act 1988 (TAS)* – compensation claim on basis incapacitated for work due to acute stress reaction - appeal from Workers Rehabilitation & Compensation Tribunal where employer had contended worker's medical condition did not arise out of or in the course of her employment – employer had also contended medical condition arose substantially from reasonable administrative action taken in reasonable manner by it in connection with worker's employment – commissioner had held employer did not have a reasonably arguable case, & ordered payment of compensation – employer contending it had reasonably arguable case, & that commissioner erred in law in holding that it did not – employer's appeal allowed.

[Headway Support Services](#) (I)

## **In the District Court of New South Wales...**

### **Radford v State of New South Wales [2009] NSWDC 278**

District Court of New South Wales

Levy SC DCJ

*Limitation Act 1969 (NSW)* - whether a claim for exemplary & aggravated damages is a claim for personal injury - plaintiff seeking to abandon claim for damages for personal injury & to rely only on claims for aggravated & exemplary damages – police officers had attended at plaintiff's premises to execute search warrant - whether a claim limited to aggravated & exemplary damages which excludes a claim for damages for personal injury is caught by three year limitation period as provided by s 18A – amendment of pleadings – s65(2)(c) *Civil Procedure Act 2005 (NSW)* – prejudice – whether defendant has established prejudice by reason of unavailability of witnesses to give evidence in defence of claim by plaintiff – strike out application dismissed – leave to amend plaintiff's pleadings granted.

[Radford](#) (I)