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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

In the Matter of Auzhair Supplies Pty Ltd (in Liq) - corporations - limitation of actions - whether claim in equity for breach of duty by directors is statute-barred (B, C)

Prime City Investments Pty Ltd v Paul Jones & Associates Pty Ltd & Anor - corporations - winding up in insolvency - security of payments legislation - jurisdictional error - off-setting claim (I, B, C)

In the matter of Springex Pty Ltd; Moshirzadeh v Sajadi & Anor - corporations - valuation of shareholdings - fiduciary duties of director/partners (B)

Weir Services Australia Pty Ltd v Allianz Australia Insurance Ltd - workers compensation - liability of insurer to indemnify employer - state of connection of employment (I)

Place v Powercor Aust Ltd - group proceeding - Black Saturday bushfire - application for approval of settlement agreement (I, B, C, G)



Perpetual Ltd v Buttarelli - loans and mortgages - summary judgment - application to stay property (seizure and delivery) order on grounds of fraud (B)

Guest v West Tamar Council - limitation of actions - extension of time - motor vehicle accident - date of discovery - interests of justice (I)

Pugh v Hanson - damages - motor accident - pre-existing condition - credit (I)

Stojkoski v Belconnen Concrete Pty Ltd, CCB (ACT) Pty Ltd, Rovera Scaffolding Pty Ltd and Ironbat Pty Ltd - workplace injury - negligence - breach of statutory duty - apportionment of damages (I)

Summaries with links (5 minute read)

In the Matter of Auzhair Supplies Pty Ltd (in Liq) [2013] NSWSC 1

Supreme Court of New South Wales

Brereton J

Corporations - limitation of actions - equitable compensation - company in liquidation sought relief in equity against first defendant company and its directors under s185 *Corporations Act 2001* (Cth) (**Act**) for breach of duties owed by directors in respect of plaintiff's transfer of assets to first defendant - plaintiff did not seek statutory compensation under s1317H of the Act because claim was statute-barred by s1317K of the Act - *whether*: fraudulent breach of trust: s47(1)(a) *Limitation Act 1969* (NSW) (**Limitation Act**), *Hicks v Trustees Executors and Agency Company Ltd* (1901) 27 VLR 389, *Armitage v Nurse* [1998] Ch 241, *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* [2007] HCA 22; court could suspend limitation period during interval in which plaintiff was de-registered: s601AH(3) of the Act, *Del Borrello v Australian Securities & Investments Commission* [2008] WASC 48; ss47 or 48 of the Limitation Act applied to claim; directors' breach of fiduciary duties was analogous to breach of statutory duties imposed by the Act and limitation in s1317H of the Act should apply by analogy - consideration of case-law and scholarship on operation of s23 of the Limitation Act - *whether*: equitable claim and corresponding legal right so similar that time limit applicable to the latter applied to the former; despite similarity it would nevertheless be inequitable to apply analogous limitation period - held that *prima facie* limitation applied however it would be inequitable to apply it - directors liable in equity to compensate plaintiff.

[Auzhair Supplies](#) (B, C)



Prime City Investments Pty Ltd v Paul Jones & Associates Pty Ltd & Anor [2013] NSWSC 2

Supreme Court of New South Wales

Brereton J

Corporations - winding up in insolvency - security of payments legislation - plaintiff sought order pursuant to s459G *Corporations Act 2001* (Cth) setting aside creditor's statutory demand for judgment debt arising from registration of an adjudication certificate under the *Building and Construction Industry Security of Payment Act 1999* (NSW) - plaintiff sought order quashing adjudication for alleged jurisdictional error - *whether*: application was served within 21-day period after service of demand; plaintiff had a relevant off-setting claim within scope of dispute defined in s459G affidavit: *BBB Constructions Pty Ltd v Frankipile Australia Pty Ltd* [2008] NSWSC 982, *Ettamogah Pub (Rouse Hill) Pty Ltd v Consolidated Constructions Pty Ltd (In Liq)* [2006] NSWSC 1450; error on part of adjudicator vitiating adjudication - held that application served within time, plaintiff had genuine off-setting claim and statutory demand should be set aside, no error of adjudicator to vitiate adjudication.

[Prime City Investments](#) (I, B, C)

In the matter of Springex Pty Ltd; Moshirzadeh v Sajadi & Anor [2013] NSWSC 3

Supreme Court of New South Wales

Brereton J

Corporations - valuation of shareholdings - fiduciary duties of directors/partners - plaintiff and first defendant were shareholders in second defendant company - court ordered first defendant to buy plaintiff's shares at price fixed by court under s233(1)(d) *Corporations Act 2001* (Cth) - determination of price, claim by plaintiff against second defendant for repayment of a loan account debt, and cross-claim by first and second defendant against plaintiff for breach of fiduciary duty as director of second defendant and/or as partner - plaintiff's fiduciary duty as director of second defendant: *Chan v Zacharia* (1984) 154 CLR 178 - allegations of failure of plaintiff to contribute money for shareholding, secret commissions, depletion of second defendant's assets - missing revenue of second defendant - valuation of shares determined - cross-claim failed, judgment to plaintiff for debt.

[Springex](#) (B)



Weir Services Australia Pty Ltd v Allianz Australia Insurance Ltd [2013] NSWSC 26

Supreme Court of New South Wales

Bergin CJ in Eq

Workers compensation - insurance - first defendant insured first plaintiff for workers compensation liability under *Workers Rehabilitation and Compensation Act 1988* (Tas) (**Act**) - second defendant worker was employed by first plaintiff on short term contract - *whether*: first defendant obliged to indemnify first plaintiff in relation to workers compensation payments made; second defendant was a *worker* within the state of Tasmania; employment was *connected* with Tasmania; ss31A(1) & (3) of the Act. *Klemke v Grenfell Commodities Pty Ltd* [2011] NSWCCPD 27; worker's only base of employment with plaintiff was in Tasmania; employment was a *temporary arrangement*: s36A(6)(b) of the Act - meaning of *casual assignment* in contract - held that Tasmania was *state of connection* as term used in s31A(1) of the Act - first defendant obliged to indemnify plaintiff.

[Weir Services Australia](#) (I)

Place v Powercor Aust Ltd [2013] VSC 6

Supreme Court of Victoria

Beach J

Group proceeding - Black Saturday bushfire - application for approval of settlement agreement - plaintiff commenced class action pursuant to Pt4A *Supreme Court Act 1986* (Vic) (**Act**) on behalf of those who suffered loss or damage to property near a high voltage power line in Black Saturday bushfire - parties executed terms of settlement - group proceeding cannot be settled without court's approval: s33V of the Act - principles applicable to whether court should approve settlement of proceeding: *Wheelahon v City of Casey* [2011] VSC 215, *Pathway Investments Pty Ltd & Anor v National Australia Bank Ltd* (No 3) [2012] VSC 625 - *whether*: settlement fair and reasonable between parties and between plaintiff and group members - settlement approved.

[Place](#) (I, B, C, G)

Perpetual Ltd v Buttarelli [2012] WASC 512

Supreme Court of Western Australia

Corboy J

Loans and mortgages - plaintiff obtained summary judgment in respect of amount owing under loan contract - application by defendant for stay of execution of property (seizure and delivery) order made pursuant to the *Civil Judgments Enforcement Act 2004* (WA) (**Act**) on grounds of fraud -



whether: to exercise discretion to grant suspension order under s15 of the Act; defendant had discharged onus to show she would have reasonable prospect of setting aside judgment in fresh action for fraud, or successfully appealing from judgment if suspension order or stay granted - principles relevant to application: *Ladang Jalong (Australia) Pty Ltd v Callander* [2005] WASCA 203 - elements of action to set aside judgment for fraud: *Ridout v O'Brien* [2004] WASC 137, *Wentworth v Rogers (No 5)* (1986) 6 NSWLR 534, *Owens Bank Ltd v Bracco* [1992] 2 AC 443 - held that plaintiff had not discharged requisite onus - application refused.

[Perpetual](#) (B)

Guest v West Tamar Council [2013] TASSC 1

Supreme Court of Tasmania

Holt AsJ

Limitation period - extension of time - motor accident - plaintiff issued writ against council claiming damages in negligence for personal injuries suffered in car accident - writ issued out of time: s5(1) *Limitation Act 1974* (Tas) (Act) - application for extension of time under s38A(1) of the Act - *whether*: to exercise discretion to extend time; date of discoverability was earlier than three years prior to date of issue of writ - factors relevant to decision to exercise discretion: s38A(2) of the Act - factors to be considered in assessing justice of the case: *Brisbane South Regional Health Authority v Taylor* [1996] HCA 25 - consideration of circumstances in which plaintiff failed to bring action - definition of *date of discoverability*: s2 of the Act, *State of New South Wales v Gillett* [2012] NSWCA 83, *Kaye v Hoffman* [2007] TASSC 31, ss50D(1) & (2) *Limitation Act 1969* (NSW) - whether plaintiff had arguable case - explanation for delay - nature and extent of plaintiff's loss - nature of defendant's conduct - held plaintiff failed to establish that date of discoverability was within three years of issue of writ, in any event, plaintiff had not established that interests of justice required exercise of discretion - application dismissed.

[Guest](#) (I)

Pugh v Hanson [2013] ACTSC 12

Supreme Court of the Australian Capital Territory

Master Harper

Damages - motor accident - pre-existing condition - whiplash injury - liability not in issue - plaintiff had pre-existing neck symptoms - credibility - medical evidence - *whether*: accident aggravated pre-existing degenerative changes which had been asymptomatic for the previous 14 months; accident caused a significant acceleration of degenerative process and development of a



chronic pain syndrome; plaintiff had been substantially incapacitated for work and was likely to remain so for the foreseeable future - calculation of damages.

[Pugh \(I\)](#)

Stojkoski v Belconnen Concrete Pty Ltd, CCB (ACT) Pty Ltd, Rovera Scaffolding Pty Ltd and Ironbat Pty Ltd [2013] ACTSC 13

Supreme Court of the Australian Capital Territory

Refshauge J

Workplace injury - negligence - breach of statutory duty - apportionment of damages - plaintiff claimed damages from defendants in negligence and for breaches of the *Scaffolding and Lift Regulation 1950 (ACT) (Act)* - *Jaensch v Coffey* (1984) 155 CLR 549 - scope of duties of defendants - whether clear liability for breach of statutory duties - subcontracting and delegating of responsibility - contributory negligence not a defence to claim for breach of statutory duty: s102(2) *Civil Law (Wrongs) Act 2002 (ACT) (Wrongs Act)* - whether contributory negligence was an available defence to breach of statutory duty at common law: *Piro v W Foster & Co Ltd* (1943) 68 CLR 313, *Booksan Pty Ltd v Wehbe* (2006) Aust Torts Reports ¶¶81-830, 68,279 - apportionment of liability: s21(2) of the Wrongs Act - held that all four defendants breached statutory duty and that second and fourth defendants were negligent - apportionment of damages - relevance of negligent conduct determining just and equitable apportionment.

[Stojkoski \(I\)](#)

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