



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Suncorp Metway Insurance Ltd v Owners Corporation SP 64487 - Home warranty insurance policy - *Home Building Act 1989* (NSW) - claim made by successors in title to developer of townhouse units at Epping in respect of defects - appeal dismissed (I, C)

State of NSW (NSW Police) v Nominal Defendant - Personal injuries – Police Service’s Pursuit Guidelines - causation – police officer injured in the course of police pursuit which he had initiated - appeal allowed – verdict for respondent set aside & verdict for appellant entered (I)

Botany Bay City Council v Premier Customs Services Pty Ltd - s79C *Environmental Planning & Assessment Act 1979* (NSW) – appeal allowed (C)

Jambrecina v Blacktown City Council - *Environmental Planning & Assessment Act 1979* (NSW) - “building”, “manufactured home”, “moveable dwelling” or “associated structure” – costs – appeal dismissed (C)

Trad v Harbour Radio Pty Ltd - *Defamation Act 1974* (NSW) – defences of truth & contextual truth – defence of qualified privilege – plaintiff’s claim dismissed (I)

Specialty Fashion Group Limited v Muirhead Nominees Pty Ltd & Ors - Privilege against self-incrimination – disclosure orders - s128A *Evidence Act 1995* (NSW) which commenced on 1 January 2009 - s87 *Civil Procedure Act 2005* (NSW) (B)

Locklier v State of New South Wales - *Limitation Act 1969* (NSW) - application dismissed (I)

Venz v Moreton Bay Regional Council (formerly Caboolture Shire Council) - *Personal Injuries Proceedings Act 2002* (Qld) – limitation of actions - primary judge, dismissing the application, considered granting of leave would deprive respondent of contractual rights –



appeal allowed (I)

L. F. Bell as litigation guardian for D C Bell v Pfeffer & Allianz Insurance Ltd - Personal injury settlement – motor accident - calculation of damages for administration fees & fund management fees of primary settlement sum (I, B)

Western Areas Exploration Pty Ltd v Streeter [No 3] - Corporations –consideration of nature & extent of fiduciary duties applying to company director, & in particular the no conflict or no profit rules (I, B, C)

Choice Constructions Pty Ltd v Janceski [No 2] - *Real Estate & Business Agents Act 1978* (WA) - subpoena to produce documents - secrecy provisions in s138 of the Act - objection to production by Registrar of Real Estate & Business Agents Supervisory Board dismissed (B, C)

Summaries with links (5 minute read)

Wednesday 5 August 2009

Suncorp Metway Insurance Ltd v Owners Corporation SP 64487 [2009] NSWCA 223

Court of Appeal of New South Wales

Campbell & Macfarlan JJA; Sackville AJA

Home warranty insurance policy - *Home Building Act* 1989 (NSW) - claim made by successors in title to developer of townhouse units at Epping in respect of defects – seventeen respondents – for decision appealed from, see 'Benchmark' I, C & IBC Thursday 1 November 2007 & link below - appellant appealing against that part of primary judge's decision which answered a number of separate questions favourably to respondents as well as consequential orders made - policy defined "Contractor" as person who entered into building contract – whether individuals named in Policy were the "contractor" or whether a company controlled by them had entered into the building contract - inferences to be drawn from contemporaneous documentation – appeal dismissed – at paras. 83-84 of judgment of Sackville AJA:

"I draw attention to the possibility that an amendment may be required to the Home Building Act in order to overcome the possible gap in the protection afforded to purchasers who rely on certificates of insurance. This case has been fought on the basis that the Policy did not protect Kent Street's successors in title if the building contract of September 1999 had been entered into between Kent Street and the Company, rather than between Kent Street and Clive and Andrew Head. [84] As this case demonstrates, a purchaser of a defective building from a developer might have considerable difficulty in ascertaining with certainty the identity of the parties to the original building contract, particularly if the contract is not in writing and the developer and the builder are related parties. In such a case, the purchaser may be at risk of having an otherwise sound claim under the insurance policy rejected solely because the building contract was entered into by a party related to the developer but not mentioned in the policy. In the circumstances, the likelihood that the related party contracting to perform the work had contravened the legislation would be cold comfort to the unprotected purchaser."

[Suncorp Metway Insurance](#) (I, C)

[Owners Corporation Strata Plan 64487](#) - decision 31 October 2007 - whether definition of "residential building work" in Act applicable to insurance policy provided by defendant under that Act – held that Insurance Policy responded to plaintiffs' claims.

State of NSW (NSW Police) v Nominal Defendant [2009] NSWCA 225

Court of Appeal of New South Wales

Allsop P; Beazley & Macfarlan JJA

Personal injuries – Police Service's Pursuit Guidelines - causation – police officer was injured in the

course of police pursuit which he had initiated - absence of registration plate on car - primary judge had found it was not reasonable for police officer to initiate & continue the pursuit & that his actions had broken chain of causation - contributory negligence - whether police officer's decision to initiate & continue pursuit was reasonable - whether police officer had exercised reasonable care for his own safety - damages - future economic loss - parties agreed on approach to s26 *Motor Accidents Compensation Act 1999* (NSW) - appeal allowed - verdict for respondent set aside & verdict for appellant entered - detailed analysis of text & case law from UK & Australia in judgment of Beazley JA.

[State of NSW \(NSW Police\)](#) (I)

Botany Bay City Council v Premier Customs Services Pty Ltd [2009] NSWCA 226

Court of Appeal of New South Wales

Ipp & Macfarlan JJA; Hoeben J

s79C *Environmental Planning & Assessment Act 1979* (NSW) - development application for consent to erection of two-storey industrial building not far from Sydney Airport - appeal allowed.

[Botany Bay City Council](#) (I, C)

[Premier Customs Services](#) - decision Land & Environment Court 25 September 2008

Jambrecina v Blacktown City Council [2009] NSWCA 228

Court of Appeal of New South Wales

Giles & Ipp JJA; Sackville AJA

Environmental Planning & Assessment Act 1979 (NSW) - Land & Environment Court had made declaration that development carried out without consent in contravention of s76A(1) - whether sheds fell within definition of "building" or of "manufactured home", "moveable dwelling" or "associated structure" - costs - appeal dismissed.

[Jambrecina](#) (C)

[Blacktown City Council](#) - decision Land & Environment Court 5 May 2008

Trad v Harbour Radio Pty Ltd [2009] NSWSC 750

Supreme Court of New South Wales

McClellan CJ at CL

Defamation Act 1974 (NSW) - defences of truth & contextual truth - defence of qualified privilege - plaintiff's claim dismissed.

[Trad](#) (I)

Specialty Fashion Group Limited v Muirhead Nominees Pty Ltd & Ors [2009] NSWSC 754

Supreme Court of New South Wales

Bergin CJ in Equity

Privilege against self-incrimination - disclosure orders - s128A *Evidence Act 1995* (NSW) which commenced on 1 January 2009 - s87 *Civil Procedure Act 2005* (NSW): protection against self-



incrimination in relation to interlocutory matters – ex parte orders - consent orders had been made as between plaintiff & fourth, eighth & ninth defendants – order for disclosure as against third defendant made ex-parte - whether defendants could be found guilty of contempt on grounds of non-compliance with orders; assessment of whether an order is ambiguous ; case law considered - plaintiff could proceed with its contempt motion against fourth, eighth & ninth defendants – the right under s128A was not notified to third defendant – application against third defendant dismissed.

[Specialty Fashion Group](#) (B)

Locklier v State of New South Wales [2009] NSWSC 746

Supreme Court of New South Wales

Davies J

Limitation Act 1969 (NSW) - extension of time sought to bring proceedings for personal injury against State of New South Wales in relation to plaintiff's treatment whilst at various state run homes from 1970 to 1972 – application dismissed.

[Locklier](#) (I)

Venz v Moreton Bay Regional Council (formerly Caboolture Shire Council) [2009] QCA 224

Court of Appeal of Queensland

Muir JA; Mullins & Philippides JJ

Personal Injuries Proceedings Act 2002 (Qld) – limitation of actions - applicant applied to District Court for leave to commence proceedings pursuant to s43 or, alternatively, s59(2)(b) of the Act – primary judge, dismissing the application, considered granting of leave would deprive respondent of contractual rights – whether primary judge erred in exercise of his discretion by attributing undue weight to respondent's contractual rights & insufficient weight to other considerations – appeal allowed.

[Venz](#) (I)

L. F. Bell as litigation guardian for D C Bell v Pfeffer & Allianz Insurance Ltd [2009] QSC 209

Supreme Court of Queensland

Dutney J

Calculation of damages – personal injuries – motor accident - dispute as to method of calculation of damages for administration fees & fund management fees of primary settlement sum - claim for damages for personal injury had settled & terms of the compromise had been sanctioned by the Court – *Trustee Companies Act 1968* (Qld) - commission chargeable by a trustee company.

[L. F. Bell](#) (I, B)

Western Areas Exploration Pty Ltd v Streeter [No 3] [2009] WASC 213

Supreme Court of Western Australia

E M Heenan J

Corporations – directors - consideration of nature & extent of fiduciary duties applying to company director, & in particular the no conflict or no profit rules - diversion of corporate opportunities – constructive trusts - joint & several liability of defaulting fiduciaries – measure of relief - at para 50: core of plaintiff's claim against defendants was for disgorgement of alleged improper gains arising from breach of fiduciary duties by first & second defendants, & for disgorgement of alleged improper gains made by third defendant as knowing participant & beneficiary of breaches of alleged fiduciary duties - status of a change of position defence – a very lengthy judgment with extensive consideration of case law from UK, Australia, Canada & New Zealand. (I, B, C)

[Western Areas Exploration](#) – part one of judgment

[Western Areas Exploration](#) - part two of judgment

[Western Areas Exploration](#) – part three of judgment

Choice Constructions Pty Ltd v Janceski [No 2] [2009] WASC 215

Supreme Court of Western Australia

Simmonds J

Real Estate & Business Agents Act 1978 (WA) - subpoena to produce documents - whether Real Estate & Business Agents Supervisory Board required to produce documents in compliance with subpoena - whether secrecy provisions in s138 of the Act prohibit compliance – objection to production by Registrar of Board dismissed – case law as to similar provisions considered.

[Choice Constructions](#) (B, C)

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