



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

CEMEX Australia Pty Ltd v Takeovers Panel - Takeover bids - Takeovers Panel's - bid by appellant for whole of issued shares in Rinker Group Ltd – appeal dismissed (B)

APC Marine Pty Ltd v T-D Joint Venture Pty Ltd - Admiralty & maritime - towline broke while barge being redelivered to Singapore – barge owner seeking that charterer & associated company, the second defendant, redeliver barge to owners at Singapore - dispute as to whether the barge was truly in class (I)

Rutter v Brookland Valley Estate Pty Ltd - Copyright – musical work – infringement – assessment of damages - rates of interest (I, B)

Avzur Hotels Pty Ltd v Ivanhoe Entertainment Pty Ltd, Mario Nicholas Scerri, John William Weekley & Joseph Scerri - Contract for sale of business – effect of nomination clause – determination of separate question (B)

Lahoud v Lahoud; Lahoud v Lahoud - Damages – contracts – two proceedings - damages inquiry - audit proceedings – property developments (I, B, C)

Permanent Custodians Limited & Anor v King & Ors - Professional negligence – solicitors retainer - alleged breaches of duty established (I, B, C)

ACN 002 804 702 (formerly Brooks Building) v McDonald - Equitable remedies - application for specific enforcement of defendant's promise to consent to filing of consent order for setting aside of judgment (B, C)

Young v Rothin - Personal injuries – damages - motor vehicle accident – rear-end collision – liability admitted - judgment for plaintiff for \$1,294,759.46 (I)



Elliott v Kotsopoulos - Intentional torts – assault & battery – judgment for plaintiff in sum of \$324,549 (I)

Abdiaziz Abdulle v QBE Insurance (Australia) Limited & Anor – s151(Z) *Workers Compensation Act 1987* (NSW) – statutory interpretation - verdict for defendants (I)

Jurong Port Pte Ltd v Huatong Inland Transport Service Pte Ltd - Singapore - contracts – indemnity clauses - exemption clauses – public policy - death at plaintiff's port facility of a prime-mover driver, an employee of defendant/respondent (I)



Summaries with links (5 minute read)

Monday 6 July 2009

CEMEX Australia Pty Ltd v Takeovers Panel [2009] FCAFC 78

Full Federal Court of Australia

Ryan, Jacobson & Foster JJ (in Sydney)

Takeover bids - for Federal Court decision appealed from, see 'Benchmark' Tuesday 28 October 2008 & link below - declaration of unacceptable circumstances made by Takeovers Panel – takeover bid by appellant for whole of issued shares in Rinker Group Ltd – appeal dismissed.

[Cemex Australia](#)

[CEMEX Australia](#) – Federal Court decision 23 October 2008 - Takeovers Panel – 2006 off-market takeover offer for Rinker Group Limited - judicial review of Panel's declaration that applicant's announcement of final dividend payment departed from its best & final offer – whether "unacceptable circumstances" – whether contravention of *Corporations Act 2001* (Cth) is mandatory consideration in deciding to make a declaration of unacceptable circumstances - whether orders authorised by s657(D) *Corporations Act 2001* (Cth) – whether Panel had power to make order for payment to affected shareholders in absence of evidence as to individual loss by shareholders – whether orders involved an impermissible delegation of power to Australian Securities & Investments Commission – whether orders protected rights or interests that no longer exist - *Corporations Amendment (Takeovers) Act 2007* (Cth) - *Financial Services Reform Act 2001* (Cth) – thorough consideration of Panel's role, powers, constitution & procedures – no error by Panel – application dismissed – an interesting decision;

[Rinker Group](#)- decision Takeovers Panel dated 12 August, 2007

APC Marine Pty Ltd v T-D Joint Venture Pty Ltd [2009] FCA 713

Federal Court of Australia

Rares J (in Sydney) (via video link to Melbourne)

Admiralty & maritime - application to vacate orders made on 25 June 2009 & to order stay of orders - insurance survey certificate – interim class certificate – trial at present fixed for 7 July 2009 - towline broke while barge being redelivered to Singapore – currently barge lying at Newcastle – barge owner seeking that charterer & associated company, the second defendant, redeliver barge to owners at Singapore - dispute as to whether the barge was truly in class, notwithstanding she had a certificate, issued by American Bureau of Shipping as the classification society, saying that she met the requirements of her class - question as to whether or not there was a misrepresentation or breach of the charter party by delivering barge with a certificate that said it was in class – *Trade Practices Act 1974*(Cth) – applications refused.

[APC Marine](#)

Rutter v Brookland Valley Estate Pty Ltd [2009] FCA 702

Federal Court of Australia

Buchanan J (in Sydney)

Copyright – musical work – infringement – assessment of damages - licence granted for limited period – reproduction of substantial part of the work outside licence period – rates of interest - interest awarded on compensatory damages - interest not awarded on exemplary or punitive damages.

[Rutter](#)**Avzur Hotels Pty Ltd v Ivanhoe Entertainment Pty Ltd, Mario Nicholas Scerri, John William Weekley & Joseph Scerri [2009] FCA 701**

Federal Court of Australia

Finkelstein J (in Melbourne)

Contract for sale of business – effect of nomination clause – joint & several liability – applicant not original party to agreement - determination of separate question – business of hotelier conducted at Ivanhoe – original contracting parties Ivanhoe Entertainment as vendor, Taylor McKay Pty Ltd as purchaser, second & third respondents as warrantors – by the agreement Ivanhoe Entertainment sold business to Taylor McKay for approximately \$15 million – whether applicant had standing to bring action against Ivanhoe Entertainment & second & third respondents for alleged breach of agreement made between Ivanhoe Entertainment, Taylor McKay Pty Ltd, & second respondent & third respondent – answer ‘yes.’

[Avzur Hotels](#)**Lahoud v Lahoud; Lahoud v Lahoud [2009] NSWSC 623**

Supreme Court of New South Wales

Ward J

Damages – contracts – two proceedings - damages inquiry - audit proceedings – property developments at Sailors Bay Rd., Northbridge & at Cammeray – Castle Constructions - *Wenham v Ella* - *Hadley v Baxendale* – order made in previous hearing that parties execute Deed of Settlement in performance of obligation in Terms of Settlement – Deed substantially similar to Terms – right to audit - project profits – comprehensive review of text & case law from U.K., Hong Kong & Australia.

[Lahoud](#)**Permanent Custodians Limited & Anor v King & Ors [2009] NSWSC 600**

Supreme Court of New South Wales

Schmidt AJ

Professional negligence – solicitor’s retainer - *Civil Liability Act* 2002 (NSW) - for determination: cross claim brought by registered proprietor of bulk of land at Blakehurst against former solicitor/s - solicitors advising on loan or security documents - conflict of interest - lack of informed consent - failure to advise - solicitor’s common practice - foreseeability - causation - damages - alleged breaches of duty established.

[Permanent Custodians](#)

ACN 002 804 702 (formerly Brooks Building) v McDonald [2009] NSWSC 610

Supreme Court of New South Wales

White J

Equitable remedies - specific performance – s73 *Civil Procedure Act* 2005 (NSW): power of Court to determine questions about compromises & settlements - building of shed on land at Lake Illawarra - application for specific enforcement of defendant’s promise to consent to filing of consent order for setting aside of judgment – terms of settlement required remedial building work to be carried out - whether terms of settlement had been performed by plaintiffs - whether engineer’s certificate conclusive evidence that works had been performed in accordance with settlement - construction of contract to determine what effect to be given to certificate - defence of unclean hands failed - plaintiffs entitled to order for specific enforcement of defendant’s promise to consent to filing of the consent order.

[ACN 002 804 702 \(formerly Brooks Building\)](#)

Young v Rothin [2009] ACTSC 71

Supreme Court of the Australian Capital Territory

Refshauge J

Personal injuries – damages - motor vehicle accident – rear-end collision – liability admitted – head struck steering wheel - when buffer appropriate – loss of earning capacity – loss of earnings – judgment for plaintiff for \$1,294,759.46 - comprehensive review of text & case law from U.K & Australia.

[Young](#)

From the District Court of New South Wales...

Elliott v Kotsopoulos [2009] NSWDC 164

District Court of New South Wales

Levy SC DCJ

Intentional torts – assault & battery – assessment of damages - limiting provisions of *Civil Liability Act*



2002 do not apply – common law principles - judgment for plaintiff in sum of \$324,549.

[Elliott](#)

Abdiaziz Abdulle v QBE Insurance (Australia) Limited & Anor [2009] NSWDC 153

District Court of New South Wales

Armitage DCJ

s151(Z) *Workers Compensation Act* 1987 (NSW) – statutory interpretation - verdict for defendants – detailed analysis of legislation & case law.

[Abdiaziz Abdulle](#)

From Hong Kong...

Jurong Port Pte Ltd v Huatong Inland Transport Service Pte Ltd [2009] SGHC 145

High Court of Singapore

Woo Bih Li J

Contracts – indemnity clauses - exemption clauses – contractual interpretation - *Canada Steamship Lines Ltd v the King* [1952] AC 192 - death at plaintiff's port facility of a prime-mover driver, an employee of defendant/respondent – agreed that death had been caused by or was the result of negligence of employee of plaintiff – whether clauses in contract between parties which plaintiff relied on were clear enough to require defendant to indemnify plaintiff for liability resulting from negligence by plaintiff's own employee – the 'inherently improbable' principle – public policy – at para. 18 of judgment:

“At present, the common law allows a party to include a contractual term to exempt itself from liability for its own negligence. It even allows a party to go one step further, that is, to claim an indemnity from the other contracting party for the claiming party's own negligence provided that the contractual term is clear in imposing such an indemnity.”

[Jurong Port](#)

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