

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Watts v Adelaide Bank Ltd - ss459G & 459H(1)(b) *Corporations Act* 2001 (Cth) - appeals from two decisions - application to set aside statutory demand - application to set aside bankruptcy notice - appeals dismissed (B)

Sydney Water Corporation v Caruso & Ors - *Land Acquisition (Just Terms Compensation) Act* 1991 (NSW) - determination of market value (B, C)

Waugh Hotel Management Pty Ltd v Marrickville Council - Development applications - principles of statutory interpretation - s209 *Gaming Machines Act* 2001 (NSW) (C)

Ying v Song - Application for certificate under s128 *Evidence Act* 1995 (NSW) - precedents (I, B, C)

Perth Freightlines Pty Ltd & Ors v BM2008 Pty Ltd & Ors - s38(4)(b) *Commercial Arbitration Act* 1984 (Vic) (B)

AED Oil Ltd v Puffin FPSO Ltd (No 2) - *International Arbitration Act* 1974 (Cth) - application for stay - construction of arbitration agreement (B)

Rise Home Loans Pty Ltd v Dickinson & Anor - Joinder - standard form contract for sale of residential land - claims in tort & contract - effect of nomination clause - novation (I, B, C)

Mango Boulevard P/L v Spencer & Ors - Estoppel - issue estoppel - res judicata - judgment before entry - abuse of process (I, B, C)

Westina Corporation Pty Ltd v. BGC Contracting Pty Ltd - Negligence - hire agreement - indemnity - s11(2) *Property Law Act* 1969 (WA) - collision between two road trains (I)

Major v Woodside Energy Ltd [No 5] - Application for security for costs - defamation proceedings - delay (I)

Gentner v Barnes, State Coroner of Queensland - Costs - *Coroner's Act* 2003 (Qld) - fatal car accident (I)

Summaries with links (5 minute read)

Monday 7 December 2009

Watts v Adelaide Bank Ltd [2009] FCAFC 169

Full Federal Court of Australia

Lindgren, Gilmour & Jagot JJ (in Sydney)

s459G & s459H(1)(b) *Corporations Act* 2001 (Cth) - appeals from two decisions - for Federal Court decision 24 April 2009, see 'Benchmark' Wednesday 29 April 2009 & link below - for Federal Court decision 29 April 2009, see link below - appeals dismissed.

[Watts](#) (B)

[BMG Poseidon Corp](#) - decision 24 April 2009 - s459G & s 459H(1)(a)&(b) *Corporations Act* 2001 (Cth) - application to set aside statutory demand - "genuine dispute" - "offsetting claim" - application refused;

[Watts](#) - decision 29 April, 2009 - application to set aside bankruptcy notice dismissed.

Sydney Water Corporation v Caruso & Ors [2009] NSWCA 391

Court of Appeal of New South Wales

Allsop P; Tobias JA; Sackville AJA

Land Acquisition (Just Terms Compensation) Act 1991 (NSW) - determination of market value - injurious affection or betterment of adjoining property - highest and best use - appeal & cross-appeal dismissed - comprehensive analysis of Australian case law.

[Sydney Water](#) (B, C)

[Caruso](#) - Land & Environment Court decision 12 December 2008

[Caruso](#) - Land & Environment Court decision 23 December 2008

Waugh Hotel Management Pty Ltd v Marrickville Council [2009] NSWCA 390

Court of Appeal of New South Wales

Hodgson, Campbell & Young JJA

Development applications - principles of statutory interpretation - powers, functions & duties of Councils - s209 *Gaming Machines Act* 2001 - whether reasons for refusal of development application were reasons relating to installation, keeping or operation of approved gaming machines - "relates to" - "relating to" - "in relation to" - "in respect of" - "in connection with" - "refuse to grant ... development consent ... for any reason that relates to ..." - appeal dismissed

[Waugh Hotel Management](#) (C)

[Waugh Hotel Management](#) - 27 November 2007 decision of Land & Environment Court

Ying v Song [2009] NSWSC 1344

Supreme Court of New South Wales

Ward J

Application made on behalf of defendants for certificate under s128 *Evidence Act* 1995 (NSW) in respect of the giving of particular evidence - proceedings concerning an alleged agreement for sale of shares & alleged loan agreement - privilege in respect of self-incrimination - precedents - conflict between ratio of Full Family Court judgment & dicta of High Court majority judgment - "seriously considered dicta" - consideration of proper approach to conflicting non-binding authorities - application for s128 certificate refused - comprehensive consideration of case law from the United Kingdom & Australia.

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

Perth Freightlines Pty Ltd & Ors v BM2008 Pty Ltd & Ors [2009] VSC 542

Supreme Court of Victoria

Hargrave J

s38(4)(b) *Commercial Arbitration Act* 1984 (Vic) - business acquisition agreement - leave sought to appeal from interim & final decisions of arbitrator - leave refused.

[Perth Freightlines](#) (B)

AED Oil Ltd v Puffin FPSO Ltd (No 2) [2009] VSC 534

Supreme Court of Victoria

Judd J

International Arbitration Act 1974 (Cth) - application for stay - construction of arbitration agreement - "inoperative" - whether dispute "not capable of settlement by arbitration" - person claiming "through or under" a party - urgent declaratory relief - detailed analysis of case law.

[AED Oil](#) (B)**Rise Home Loans Pty Ltd v Dickinson & Anor [2009] VSC 555**

Supreme Court of Victoria

Mukhtar AsJ

Application for summary judgment or striking out by defendant vendors - plaintiff purchaser's application to join an individual as additional plaintiff - standard form contract for sale of residential land - claims in tort & contract - plaintiff alleging deceit & negligent misstatement - construction & effect of nomination clause - novation - judgment for defendants.

[Rise Home Loans](#) (I, B, C)**Mango Boulevard P/L v Spencer & Ors [2009] QSC 389**

Supreme Court of Queensland

McMurdo J

Estoppel - issue estoppel - res judicata - judgment before entry - abuse of process - joint venture - construction & effect of Shareholders Deed - "defaulting party" - "non-defaulting party" - extensive consideration of case law including Court of Appeal decision in same case 12 September 2008, for which refer 'Benchmark' Tuesday 16 September, 2008 & link below.

[Mango Boulevard](#) (I, B, C)

[Mango Boulevard](#) - decision Court of Appeal 12 September, 2008 - power of Court to stay or dismiss proceedings on basis of abuse of process - estoppel - application of doctrine of res judicata - deficiencies in documentary disclosure - plaintiff owner of half of issued shares in third defendant Kinsella - Kinsella in business of developing land at Mango Hill on outskirts of Brisbane - Shareholders' Deed whereby parties agreed upon ownership of shares in Kinsella & way Kinsella should carry on development - finding by primary judge of abuse of process - appeal dismissed - detailed consideration of case law from the United Kingdom & Australia.

Westina Corporation Pty Ltd v. BGC Contracting Pty Ltd [2009] WASCA 213

Court of Appeal of Western Australia

Wheeler, Buss & Newnes JJA

Negligence - hire agreement - indemnity - s11(2) *Property Law Act 1969* (WA) - appellant owner of prime mover & three trailers that were towed by the truck ("the Jamieson Truck") - appellant hired truck, trailers and a licensed operator to first respondent for use in transporting ore & materials - collision with truck owned by first respondent & being driven by its employee, second respondent - Jamieson Truck disintegrated on impact & its driver was killed - appellant had commenced claim for damages in District Court, primarily, loss of Jamieson Truck & associated equipment - primary judge had dismissed appellant's claim - whether indemnity clause in hire contract expressly in its terms purported to confer a benefit directly on non-party - appeal allowed - cross-appeal dismissed.

[Westina](#) (I)

[Westina](#) - District Court decision 22 December 2008

Major v Woodside Energy Ltd [No 5] [2009] WASC 357

Supreme Court of Western Australia

Le Miere J

Application for security for costs - defamation proceedings - whether defendant has adequate explanation for delay in seeking security for costs - prejudice to plaintiff - application dismissed.

[Major](#) (I)

In the District Court of Queensland...**Gentner v Barnes, State Coroner of Queensland [2009] QDC 377**

District Court of Queensland

Robertson DCJ

Costs - *Coroner's Act 2003* (Qld) - fatal car accident - decision by State Coroner not to hold inquest - District Court decision that inquest be held - applicant seeking costs - application for costs refused.

[Gentner](#) (I)