

## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**North East Equity Pty Ltd v Proud Nominees Pty Ltd (No 4)** - s51A *Trade Practices Act 1974* (Cth) - contracts - plant and equipment - claim unsuccessful (I, B, C)

**Freudenstein v Marhop Pty Ltd & Ors** - Personal injuries - occupier's liability - hotel patron fell from roof - hotel being renovated - duty of care of hotel & builder - contributory negligence of fifty percent - verdict for plaintiff in sum of \$127,703 plus interest (I)

**Ashton v Monteleone (No 2)** - Costs - contract for sale of premises - issue as to GST - defendants ordered to pay eighty percent of plaintiffs' costs (B, C)

**In the matter of Fortescue Metals Group Limited** - *Trade Practices Act 1974* (Cth) - (Summary not Reasons for Decision) - access to services s44H(2) criteria (B, C)

**Bernard v Seltsam Pty Ltd** - Personal injuries - plaintiff contending cancer caused by exposure to asbestos - jury - verdict for defendant by direction (I)

**Hannigan v Ragh & Anor** - *Misconduct Tribunals Act 1997* (Qld) - disciplinary proceedings - sanctions (I)

**R J Baker Nominees Pty Ltd v Parsons Management Group Pty Ltd** - Building contracts - quantum meruit claim - appeal & cross-appeal dismissed (C)

**Caldwell v Coles Supermarkets Pty Ltd** - Personal injuries - slip & fall at loading dock - 151Z(2) *Workers Compensation Act 1987* (NSW) verdict for plaintiff in sum of \$396,644 (I)

**Lappan v Seetoo** - Personal injuries - whether defendant's car collided with plaintiff pedestrian - judgment for defendant (I)

**Wang v Zheng** - Professional negligence - causation - claim in contract & tort against solicitor - judgment for defendant (I)

**Paddison v Downer EDI Engineering Power Pty Ltd** - Employment law - *Trade Practices Act 1974* (Cth) - termination of employment - mining site - whether representation "in trade or commerce" - verdict for defendant (I, C)

## Summaries with links (5 minute read)

### Friday 9 July 2010

#### **North East Equity Pty Ltd v Proud Nominees Pty Ltd (No 4) [2010] FCA 700**

Federal Court of Australia

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

*Trade Practices Act 1974* (Cth) - contracts - plant & equipment for carrot processing factory at Wattleup - on remitter from Full Court of the Federal Court: see link below - claim failed.

[North East Equity](#) (I, B, C)

[North East Equity](#) - decision Full Court of the Federal Court 8 June 2010; see 'Benchmark' Thursday 10 June 2010 - ss51A & 52 *Trade Practices Act 1974* (Cth) - misleading and deceptive conduct - contract for supply & installation of plant & equipment - pre-contractual representations - identification of representations - construction of s51A - evidential burden - damages - causation - appeal allowed - matter remitted to primary judge for formulation of reasons for his conclusion that s51A did not assist appellant, & for further consideration of question of damages in light of reasons of Full Court of the Federal Court;

[North East Equity](#) - decision Federal Court 12 August 2008 - contract for supply & installation of plant & equipment to improve carrot processing plant at Wattleup - torts - implied promise that seller would exercise reasonable care & skill in performance of its services - implied promise was concurrent with co-extensive duty in tort on seller's part to exercise reasonable care & skill - *Trade Practices Act 1974* (Cth) - "in relation to"

**Freudenstein v Marhop Pty Ltd & Ors [2010] NSWSC 724**

Supreme Court of New South Wales

Kirby J

Personal injuries - occupier's liability - plaintiff patron fell from roof of Mona Vale Hotel - intoxication - hotel being renovated - duty of care of hotel & builder - breach of duty - dangerous premises - causation - contributory negligence of fifty percent - damages - verdict for plaintiff in sum of \$127,703 plus interest.

[Freudenstein](#) (I)

**Ashton v Monteleone (No 2) [2010] NSWSC 745**

Supreme Court of New South Wales

Gzell J

Costs - plaintiffs successful in having contract for sale of premises partly commercial & partly residential rectified by adding to the purchase price "+ GST" - defendants ordered to pay eighty percent of plaintiffs' costs.

[Ashton](#) (B, C)

[Ashton](#) - decision 8 April 2010: see 'Benchmark' B, C & IBC Thursday 15 April 2010 - contracts - property sold at auction - contract for sale to be rectified by addition of "+GST" to price - purchasers' claim to payment of 1/11th of price to be dismissed - vendor to be ordered to apply for a private indirect tax ruling from Commissioner of Taxation.

**In the matter of Fortescue Metals Group Ltd [2010] ACompT 2**

Australian Competition Tribunal

Finkelstein J (President), Mr Grant Latta & Professor David Round -Melbourne

*Trade Practices Act 1974* (Cth) - four applications under under Part IIIA - link below is to Summary only: Reasons for Determination to be published in due course - access to services provided by "essential facilities" - mining company operating in the Pilbara - service applied for was use of railway track & associated infrastructure - s44H(2) criteria.

[Fortescue Metals Group](#) (B, C)

**Bernard v Seltsam Pty Ltd [2010] VSC 305**

Supreme Court of Victoria

Bell J

Personal injuries - plaintiff contending cancer caused by exposure to asbestos while working in building industry - jury trial - at close of his case, defendant had made submission of no case to answer - His Honour had ruled in favour of that submission & had directed the jury to bring in a verdict for the defendant - case law & principles considered as to procedure for verdict by direction.

[Bernard](#) (I)

**Hannigan v Ragh & Anor [2010] QSC 242**

Supreme Court of Queensland

Mullins J

*Misconduct Tribunals Act 1997* (Qld) - disciplinary proceedings - sanctions - reduction in salary - applicant the relevant decision-maker for deciding disciplinary charges of misconduct against second respondent under *Police Service Administration Act 1990* (Qld) - application for statutory order of review and application for review - whether Tribunal had jurisdiction to increase sanctions imposed by applicant - application dismissed.

[Hannigan](#) (I)

**R J Baker Nominees Pty Ltd v Parsons Management Group Pty Ltd [2010] WASCA 128**

Court of Appeal of Western Australia

Owen & Newnes JJA; Murphy J

Building contracts - road construction on sub-division - quantum meruit claim - appeal & cross-appeal dismissed.

[R J Baker](#) (C)

[R J Baker](#) - *R J Baker Nominees Pty Ltd v Parsons Management Group Pty Ltd* [2009] WASC 206 - decision 27 July 2009 - quantum meruit - plaintiff claiming for alleged agreed price of work it performed for defendant on subdivision - plaintiff's primary claim was that defendant contracted to transfer two pieces of land to plaintiff in partial satisfaction of the price of the work. - plaintiff's claim for payment for work done upheld - plaintiff's claim for part payment by transfer of lots dismissed

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

### **Caldwell v Coles Supermarkets Pty Ltd [2010] NSWDC 136**

District Court of New South Wales

Johnstone DCJ

Personal injuries - slip & fall on defendant's premises when plaintiff making delivery at loading dock - whether plaintiff's damages should be reduced pursuant to s151Z(2) *Workers Compensation Act* 1987 (NSW) - damages - verdict for plaintiff in sum of \$396,644.

[Caldwell](#) (I)

### **Lappan v Seetoo [2010] NSWDC 134**

District Court of New South Wales

Johnstone J

Personal injuries - motor accident - whether defendant's car collided with plaintiff pedestrian causing him to fall - judgment for defendant, but issue of contributory negligence considered, also assessment of damages made.

[Lappan](#) (I)

### **Wang v Zheng [2010] NSWDC 135**

District Court of New South Wales

Johnstone J

Professional negligence - causation - claim in contract & tort against solicitor by client alleging failure to properly advise in connection with contract for purchase of apartment - breach of duty admitted by defendant, but defendant contending plaintiff had suffered no loss - valuation evidence - whether plaintiff had suffered any loss & if so, whether that loss was caused by defendant's negligence or breach of contract - judgment for defendant.

[Wang](#) (I)

### **Paddison v Downer EDI Engineering Power Pty Ltd [2010] NSWDC 131**

District Court of New South Wales

Hungerford ADCJ

Employment law - *Trade Practices Act* 1974 (Cth) - termination of employment - plaintiff employed by contractor at mining site - alleged misbehaviour by employee at accommodation facility - representation by employer to mine operator resulting in employee's termination - whether



representation "in trade or commerce": answer 'no' - verdict for defendant but assessment of damages made.

[Paddison](#) (I, C)

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