

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Banking – whether bank cheques legal tender. See *Deputy Commissioner of Taxation v BK Ganter Holdings* (I, B, C)

Construction – whether Court should adopt referee's report in its entirety or with variations. See *Corbett Court v Quasar Constructions (NSW)* ©

Security of Payment (Vic) – summary judgment granted in respect of payment claim – whether stay appropriate on terms for part of payment claim – whether security ought to be ordered. See *1-5 Grantham Street & Anor v Glenrich Builders* (C)

Foreign Judgments – Singapore Judgment registered in Australian Court – whether Judgment should be set aside – whether enforcement of Judgment contrary to public policy. See *Jenton Overseas Investment v Townsing* (I, B)

Application for Summary Judgment – whether relief by way of summary judgment available in case where fraud is alleged. Held no. See *Visy Board D'Souza & Ors* (I, B)

Estate Administration – whether administrator of deceased's estate entitled to postpone realisation of matrimonial home pending child of deceased attaining majority. See *In the Estate of Marden Deceased* (B)

From the USA

Motor Accident – motor cycle rider hit by car driven by intoxicated employee of Casino following work function – whether Casino owners liable – whether owners entitled to tribal corporation immunity. See *Cook v Avi Casino* (I)



Insurance – whether insurer liable to indemnify and defend insured under home owners' policy of insurance for personal injuries caused by insured to third party at a nightclub. See *Sarkis v Cincinnati Ins Co* (I)

Insurance Premium – whether insurance premium payable by insured under property insurance policy for mining risks. See *Certain Underwriters at Lloyd's v Pinnoak Resources* (I, C)

From Canada

Damages – personal injuries from motor accident – whether full extent of dental work compensable – whether claim for housekeeping expenses upheld. See *Wallace v Thibodeau* (I)



Thursday 20 November 2008

Deputy Commissioner of Taxation v BK Ganter Holdings Pty Ltd [2008] FCA 1730

Federal Court of Australia

Logan J (in Brisbane)

Bank cheques - winding up – neglect to pay debt after statutory demand – NAB bank cheque delivered to ATO – Bank policy in relation to its bank cheques - date for determination of standing to apply for winding up of a company : case law considered & as to when cheque given in payment of debt - at par 15 of an interesting decision:

“Strictly speaking, a cheque, even a bank cheque, is not a form of legal tender. Subject to some particular contractual or statutory provision, the only forms of legal tender remain Australian notes or, subject to the limits specified, Australian coins – see s36 of the Reserve Bank Act 1959 & s16 of the Currency Act 1965 respectively. However, in general trade and commerce, as Mason J observed in George v Cluning (1979) 53 ALJR 767 (note) by reference to Canadian authority, a payment by cheque can amount to sufficient payment if not objected to on that account.....”

[Deputy Commissioner of Taxation](#) (I, B, C)

Corbett Court Pty Limited v Quasar Constructions (NSW) Pty Ltd [2008] NSWSC 1163

Supreme Court of New South Wales

Hammerschlag J

Building & construction – construction of shopping mall at Picton - both parties contending report of referee should be accepted but each party contending for variations – report adopted without variation except those agreed or not contested.

[Corbett Court](#) (C)

1-5 Grantham Street Pty Ltd & Anor v Glenrich Builders Pty Ltd [2008] VSCA 228

Court of Appeal of Victoria

Redlich JA & Hargrave AJA

Stay – security for costs - *Building & Construction Industry Security of Payment Act 2002* (Vic) - *Domestic Building Contracts Act 1995* (Vic) – appellant companies controlled by property developer, incorporated for the purposes of acquiring & developing properties in Brunswick, Victoria – respondent a builder – by building contract between the parties, respondent agreed to build ninety-six apartments at the properties - disputes arose towards end of project, but certificate of practical completion was issued by the contract superintendent - respondent made claims for payment – primary judge had granted respondent summary judgment – appellant seeking stay in relation to that part of judgment sum concerning payment claim for delay costs - stay granted on terms – security ordered.

[1-5 Grantham Street](#) (C)



Jenton Overseas Investment Pte Ltd v v Townsing [2008] VSC 470

Supreme Court of Victoria

Whelan J

Foreign Judgments Act 1991 (Cth) – judgment of Singapore High Court & judgment of Singapore Court of Appeal – investment by group of companies known as Normandy Group in business in New Zealand owned by NQF Limited of which Jenton was parent company - application to set aside registered Singaporean judgments – whether enforcement contrary to public policy – texts & case law considered - application to set aside dismissed – review of texts & United States of America & Australian case law. (I, B)

[Jenton Overseas Investment](#), and

[Jenton Overseas Investment](#) - decision Singapore High Court 24 February 2008 – Newmans Group – Normandy UK – Convertible Share Agreement – Deed of Rectification – Deed of Subordination & Priority - plaintiff alleging defendant had breached various duties which he owed to company as its director - judgment for plaintiff

[Townsing Henry George v Jenton Overseas Investment](#) – decision Singapore Court of Appeal 12 March 2007 – appeal on liability & quantum – NZ\$2,677,300 - appeal dismissed.

Visy Board v D'Souza & Ors [2008] VSC 476

Supreme Court of Victoria

Byrne J

Summary judgment – claims which cannot be subject of application for summary judgment - contract – fiduciary duties – allegations against employees in Visy Board organisation - shipping department - appeal from a Master's decision to dismiss application for summary judgment - preliminary point taken by defendants, that relief sought in the application not available having regard to Rule 22.02(2), failed – if fraud an element of claim, then it must be alleged & no summary judgment is available - an interesting review of UK & Australian case law.

[Visy Board](#) (I, B)

Bossichix Pty Ltd v Martinek Holdings Pty Ltd [2008] QSC 278

Supreme Court of Queensland

Mackenzie J

Body Corporate & Community Management Act 1997 (Qld) – settlement date - whether contract for sale of unit in a building called “Rivage” between applicant purchaser & respondent developer complied with s212 of the Act - registration of Building Format Plan & Certificate of Classification for the building – held that applicant had validly cancelled contract pursuant to s212.

[Bossichix](#) (C)



In the Estate of Marden Deceased [2008] SASC 312

Supreme Court of South Australia

Gray J

Succession - application by administrator of intestate estate for permission to postpone realisation of an asset of estate, pursuant to s64 *Administration & Probate Act* 1919 (SA) – deceased survived by widow & child now seven years old – most substantial asset the former matrimonial home – administrator applied for an order postponing the realisation of matrimonial home until child turns eighteen - application granted.

[Marden](#) (B)

From the United States of America...

Cook v Avi Casino Enterprises Inc & Ors, No. 07-15088

Federal Court of Appeals for the Ninth Circuit

Fernandez (partly dissenting), Gould & Bea JJ

Tribal sovereign immunity from suit – personal injuries – motor cycle rider hit by car driven by person who became intoxicated at work function at casino owned by tribal corporation – whether tribal corporation enjoyed tribal sovereign immunity – answer ‘yes’ - immunity extended to two of Corporation’s employees.

[Cook](#) (I)

Sarkis v Cincinnati Ins Co No. 280860

Court of Appeals State of Michigan

Beckerling PJ; Borrello & Davis JJ

Insurer’s duty to defend – insurer’s duty to indemnify - personal injuries - incident on dance floor at Blue Martini nightclub involving two married couples & a smashed martini glass – the couple who were defendants in personal injury action by other couple had sought declaratory judgment that defendant, their insurer under a homeowner’s insurance policy, was required to defend them in that claim – trial court had held defendant had no duty to defend because incident was not an ‘occurrence’ within the policy, defined as “an accident” that results in bodily injury, property damage, or personal injury – intentional act exclusion - defendant wife had testified at her deposition that she had no idea what happened to her martini glass, except that it “obviously flew” out of her hand – held that at this stage of proceedings, doubt as to whether coverage arguable – in penultimate paragraph of judgment: “ That doubt, slim though it might be, must be resolved in the insured’s favor....”

[Louis Lahood Sarkis](#) (I)



Certain Underwriters at Lloyd's, London v Pinnoak Resources, No. 33898

Court of Appeals West Virginia

Opinion of the Court delivered per curiam, with Senior Status Justice McHugh sitting by temporary assignment & Justice Albright not participating.

Property insurance – mining risks – methane ignitions – Settlement Agreement & Release – “payback” – “loss” defined in settlement agreement - Lloyd's seeking payment of premium allegedly due by PinnOak under insurance contract - appeal from circuit court's order granting summary judgment in favor of PinnOak – orders of court below reversed - held that PinnOak required to pay the premium.

[Certain Underwriters at Lloyd's, London](#) (I, C)

And from Canada...

Wallace v Thibodeau, 2008 NBCA 78

Court of Appeal of New Brunswick

Drapeau CJ; Larlee & Richard JJ

Assessment of damages – personal injuries – motor accident – appellant owner & commercial operator of lobster fishing boat - respondent taking issue with quantum allowed by primary judge for past & future loss of housekeeping capacity - appellant appealing against rejection of his claim for cost of dental care required to resolve temporomandibular joint problems & dismissal of his claim for loss of future business income arising from what he says is the accident-induced necessity of hiring additional boat helper - pre-existing temporomandibular misalignment - classic “thin skull” case – respondent entitled to full compensation for recommended remedial dental work – appeal & cross-appeal allowed in part.

[Wallace](#) (I)

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