



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; application by Walker (No. 10) - s477(2B) Corporations Act 2001 (Cth) - funding agreement (B)

RJL Investments Pty Ltd v Oceania Healthcare Technology Investments Pty Ltd - s411 Corporations Act 2001 (Cth) - whether or not the right of pre-emption activated (B)

Young v Annis-Brown t/as Lincoln Smith & Company - Joinder - assessor - application refused (I, B)

Fairworld Holdings Pty Ltd v Burrup Fertilisers Pty Ltd (Receivers & Managers App'd) [No 2] - Pleadings - agency - express & implied agency - ratification (I, B, C)

Finlay Stonemasonry Pty Ltd v JD & Sons Nominees Pty Ltd - Planning Act (NT) - statutory interpretation - leases - *cujus est solum maxim* (I, B, C)

Brian v Burders Lane Enterprises Proprietary Ltd - Personal injuries - s50C Limitation Act 1969 (NSW) - statement of claim dismissed (I)



Re: Pope & Talbot Ltd - Canadian case - application by insurance company to be added as party (I)

Irwin v Alderman & Ors (No 2) - Subpoenas (I, B)

Summaries with links (5 minute read)

Thursday 26 May 2011

ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; application by Walker (No. 10) [2011] FCA 517

Federal Court of Australia

Emmett J (in Sydney)

s477(2B) *Corporations Act* 2001 (Cth) - liquidators' interlocutory application - proposed funding agreement - public examinations.

[ABC Learning Centres](#) (B)

[ABC Learning Centres](#) - decision 22 October 2009 - administrators justified in entering into litigation funding agreement with IMF (Australia) Ltd in relation to proposed public examinations to be conducted - access to documents - confidentiality.

RJL Investments Pty Ltd v Oceania Healthcare Technology Investments Pty Ltd [2011] NSWSC 483

Supreme Court of New South Wales

Windeyer AJ

s411 *Corporations Act* 2001 (Cth) - plaintiff seeking an order by way of specific performance against defendant requiring defendant to comply with the terms of a pre-emption clause in pre-emptive rights agreement to which plaintiff & defendant are parties - whether or not right of pre-emption activated - plaintiff's application refused.

[RJL Investments](#) (B)

**Young v Annis-Brown t/as Lincoln Smith & Company [2011] NSWSC 475**

Supreme Court of New South Wales

Bergin CJ in Eq.

Joinder - appeal against decision of costs assessor - plaintiff had not established any proper reason for Costs Assessor to be joined as second defendant to these proceedings - Part 50.5(2) *Uniform Civil Procedure Rules* 2005 did not apply.

[Young](#) (I, B)

Fairworld Holdings Pty Ltd v Burrup Fertilisers Pty Ltd (Receivers & Managers App'd) [No 2] [2011] WASC 136

Supreme Court of Western Australia

Allanson J

Pleadings - agency - express agency - implied authority of an agent - ratification - challenge to amended statement of claim - plaintiff alleging defendants entered oral contract to settle 2009 proceedings; in the 2009 proceedings plaintiff had alleged an agreement for lease of office premises - third defendant's application for summary judgment dismissed as out of time - on the second defendant's application, amendments in two paragraphs of the statement of claim struck out; second defendant's application otherwise dismissed - Australian and United Kingdom case law reviewed.

[Fairworld Holdings](#) (I, B, C)

Finlay Stonemasonry Pty Ltd v JD & Sons Nominees Pty Ltd [2011] NTSC 37

Supreme Court of the Northern Territory

Blokland J

Planning Act (NT) - statutory interpretation - leases - horizontal boundaries - *cujus est solum maxim* - plaintiff owner seeking declaration that registered lease void - defendant runs café in the leased premises - plaintiff contending lease void because a purported subdivision of the subject land in contravention of Part 5 of the Act; if that be so, it was argued the lease rendered void by the operation of s63(2) - plaintiff contending lease not "only" for "part of a building" but covers the land beneath - whether the earth below included in the lease - "land" - interpretation of the lease - lease fell within the exception s5(3)(b) & had not affected subdivision - plaintiff's application dismissed - an interesting & thorough analysis of text & United Kingdom & Australian case law.

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

[Html](#)



In the District Court of New South Wales...

Brian v Burders Lane Enterprises Proprietary Ltd [2011] NSWDC 27

District Court of New South Wales

Neilson DCJ

Personal injuries - allegation of injury while using woodsplitter - application for striking out/dismissal of statement of claim - s50C *Limitation Act* 1969 (NSW) - company in liquidation; business transferred to present defendant - question of plaintiff's actual or constructive knowledge - question of insurance not relevant - Victorian WorkSafe alert - statement of claim dismissed.

[Brian](#) (I)

From Canada...

Re: Pope & Talbot Ltd, 2011 BCSC 548

Supreme Court of British Columbia

Walker J

Insurance - when, & on what basis, if at all, a liability insurer should be permitted to participate in underlying litigation, either as an intervener, a party, or through its own counsel, when it is affording coverage to its bankrupt insured on a reservation of rights basis - application by XL Specialty Insurance Company to be added as party in action by former employees against former directors and officers of its bankrupt insured & to permit XL to defend itself and P&T by XL's coverage counsel dismissed.

[Pope & Talbot](#) (I)

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