



## Insurance Banking & Construction

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

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#### Executive Summary (1 minute read)

**Canberra Residential Developments Pty Ltd v Brendas** - Directors - fiduciary duties (I, B, C)

**Sydney Harbour Foreshore Authority & Anor v Perrett & Anor** - Personal injuries - occupier's liability - appeal dismissed (I)

**Jefferies v Rio Tinto Ltd & Roche Mining Pty Ltd** - Personal injuries - proceedings in negligence against second defendant - plaintiff employed by labour hire company as casual - damages - judgment for plaintiff (I)

**Lucas Stuart Pty Ltd v Hemmes Hermitage Pty Ltd** - Application to restrain calling up of performance guarantees under contract (I, B, C)

**ASIC v Great Northern Developments Pty Ltd** - *Corporations Act* 2001 (Cth) - winding up issue of promissory notes - contravention of ss283AA & 727 (B, C)

**In the Matter of Windy Dropdown Pty Ltd (subject to Deed of Company Arrangement); Green v Equititrust Ltd (formerly Equitiloan Ltd)** - *Corporations Act* 2001 (Cth) - application by administrators of deed of company arrangement for directions (B)



**Assafiri v The Shell Company of Australia Ltd** - Contracts - construction of lease - 'highest & best use ... then permitted under the zoning of the land' (I)

**Mills v Better Buildings Pty Ltd** - Case management - scope of representative orders (C)

**Blundstone v Johnson & Anor** - Costs - limitation of actions - *Motor Accident Insurance Act 1994* (Qld) (I)

**Park & McIntosh v Lanray Industries Pty Ltd & Ors** - Limitation of actions - proceedings in relation to tourist attraction "The Big Pineapple" (B, C)

**State of Queensland v Dale & Meyers Operations Pty Ltd** - Application for determination of preliminary question (B)

**Stumer Investments Pty Ltd v Azzura Holdings Pty Ltd** - *Trade Practices Act 1974* (Cth) - representation as to future value of unit (I, B, C)

**Edward Brewer Homes Pty Ltd v Home Builders Australia Pty Ltd** - *s9 Defamation Act 2005* (WA) (I)

## Summaries with links (5 minute read)

### Monday 27 September 2010

#### **Canberra Residential Developments Pty Ltd v Brendas [2010] FCAFC 125**

Full Court of the Federal Court of Australia

Finkelstein, Siopis & Katzmann JJ (in Canberra)

Directors - fiduciary duties - for decision appealed from, see 'Benchmark' B, C & IBC Tuesday 3 February 2010 & link below - appeal dismissed.

[Canberra Residential Developments](#) (I, B, C)

[Canberra Residential Developments](#) - decision 30 January 2009 - Joint Venture Deed - fiduciary duties owed by director of a trustee company developing land on behalf of a syndicate of builders who formed a joint venture to do so - held: no breach of fiduciary duty by director.



## **Sydney Harbour Foreshore Authority & Anor v Perrett & Anor [2010] NSWCA 160**

Court of Appeal of New South Wales

Tobias & McColl JJA; Handley AJA

Personal injuries - occupier's liability - fall on steps - appeal by owner & occupier of Darling Harbour Convention Centre - for decision appealed from, see 'Benchmark' I & IBC Tuesday 6 October 2009 & link below - risk not obvious - appeal dismissed.

[Sydney Harbour Foreshore Authority](#) (I)

[Perrett](#) - decision 30 September 2009 - personal injuries - s151Z *Workers Compensation Act* 1987 (NSW) - whether risk obvious risk - voluntary assumption of risk - *Civil Liability Act* 2002 (NSW) Division 4 of Part 1A - plaintiff operating specialised recruitment business in wine industry, conducted through a company ('Wine & Vine') of which he an employee & sole director - plaintiff attended Convention Centre at Darling Harbour during Good Food & Wine Festival to interview potential recruit - after interview & as he was leaving the Centre, plaintiff fell down three steps in the foyer - damages claim against both owner & occupier of the Centre - allegations that stairs not clearly delineated - signage - in separate proceedings, Wine & Vine seeking indemnity from same defendants pursuant to s151Z(1)(d) in respect of compensation payments made by it to plaintiff - whether activity engaged in was a dangerous recreational activity - contributory negligence - whether employer entitled to interest on workers compensation payments made to plaintiff - in proceedings no. 20429/06, verdict for plaintiff in sum of - in proceedings no. 20528/08, judgment for plaintiff Wine & Vine in sum of \$221,545.23.

## **Jefferies v Rio Tinto Ltd & Roche Mining Pty Ltd [2010] NSWSC 1046**

Supreme Court of New South Wales

Hoeben J

Personal injuries - proceedings in negligence against second defendant arising from accident at Wambo Coal Mine (proceedings against first defendant, the owner of the mine, had been discontinued before trial) - plaintiff had fallen approximately 2.5 metres while climbing into Caterpillar 785B dump truck - plaintiff employed by labour hire company as casual - second defendant in charge of running of the mine & owned the plant & equipment used at the mine, which included the Cat 785B - duty of care - notional liability of employer, had it been joined in proceedings assessed at twenty percent - contributory negligence - damages - *Civil Liability Act* 2002 (NSW) - *Workers Compensation Act* 1987 (NSW) s151Z(2) - judgment for plaintiff in sum of \$1,205,601.20.

[Jefferies](#) (I)



**Lucas Stuart Pty Ltd v Hemmes Hermitage Pty Ltd [2010] NSWSC 1101**

Supreme Court of New South Wales

Macready AsJ

Application to restrain calling up of performance guarantees under contract - construction of a multi-storey retail, bar, restaurant & function centre known as "the Ivy" - whether prima facie case established - plaintiff builder seeking to restrain defendant proprietor from converting unconditional performance bonds given by insurance company on behalf of builder - application dismissed.

[Lucas Stuart](#) (I, B, C)

**ASIC v Great Northern Developments Pty Ltd [2010] NSWSC 1087**

Supreme Court of New South Wales

White J

*Corporations Act 2001* (Cth) - winding up - property development business - issue of promissory notes - whether ASIC had established that GND made offers of securities within meaning of s727(1) - whether the issue of debentures did not need disclosure by virtue of s708(1) - finding that GND did not operate managed investment scheme so question not necessary to decide, but His Honour considered whether, if it was a managed investment scheme, it would have been appropriate to make order for winding-up of the scheme - contravention of ss283AA & 727 *Corporations Act 2001* (Cth) - detailed consideration of text & Australian case law.

[ASIC](#) (B, C)

**In the Matter of Windy Dropdown Pty Ltd (subject to Deed of Company Arrangement); Green v Equititrust Ltd (formerly Equitiloan Ltd) [2010] NSWSC 1099**

Supreme Court of New South Wales

White J

*Corporations Act 2001* (Cth) - application by administrators of deed of company arrangement for directions regarding giving effect to costs orders made against company.

[In the Matter of Windy Dropdown](#) (B)





## **Assafiri v The Shell Company of Australia Ltd [2010] NSWSC 1058**

Supreme Court of New South Wales

McDougall J

Contracts - construction of lease - 'highest & best use ... then permitted under the zoning of the land' - former service station site at Cabramatta - plaintiff acquired land by contract for sale completed on 29 March 2006 - two days earlier, the then proprietor of the land had leased it to the defendant for one year - Trade Practices Act 1974 (Cth) - whether damages recoverable for misleading or deceptive conduct - whether damages recoverable for negligent misrepresentation - whether lessor failed to mitigate loss - remoteness of loss - plaintiff entitled to damages for misleading or deceptive conduct & breach of contract.

[Assafiri](#) (I)

## **Mills v Better Buildings Pty Ltd [2010] NSWSC 1093**

Supreme Court of New South Wales

Palmer J

Case management - thirteen plaintiffs with separate cases but common questions of fact & law - *Fair Trading Act* 1987 (NSW) - *Trade Practices Act* 1974 (Cth) - issue as to agency - scope of representative orders.

[Mills](#) (C)

## **Blundstone v Johnson & Anor [2010] QCA 258**

Court of Appeal of Queensland

Holmes & Chesterman JJA; Atkinson J

Costs - for decision 15 June 2010, see 'Benchmark' I & IBC Thursday 17 June 2010 & link below: applicants' application for leave to appeal against a District Court judgment further extending a limitation period under s57(2)(b) *Motor Accident Insurance Act* 1994 (Qld) had been dismissed - applicants to pay respondent's costs of application for leave to appeal on standard basis - respondent to pay applicants' costs of application for indemnity costs.

[Blundstone](#) (I)

[Blundstone](#) - decision Court of Appeal 15 June 2010 - *Motor Accidents Insurance Act* 1994 (Qld) - consent order was made extending limitation period for the bringing of personal injuries action in relation to a motor vehicle accident - respondent failed to proceed with the action within the time allowed under the consent order - whether primary judge erred in granting a further extension of the limitation period - whether the consent order a contract - exercise of discretion - no error - leave to appeal refused;

[Blundstone](#) - District Court - decision 26 November 2009



## **Park & McIntosh v Lanray Industries Pty Ltd & Ors [2010] QCA 257**

Court of Appeal of Queensland

Holmes, Fraser & Chesterman JJA

Limitation of actions - for decision appealed from, see 'Benchmark' B, C & IBC Thursday 25 March 2010 & link below - whether primary judge was right to refuse strike-out application & to permit respondents to amend claim & amended statement of claim to name them as plaintiffs in their capacity as liquidators of the company.

[Park & McIntosh](#) (B, C)

[Park & Anor](#) - decision 18 March 2010 - ss588FF & 588FH *Corporations Act* 2001 (Cth) - plaintiffs liquidators of company which operated the tourist attraction "The Big Pineapple" - defendants seeking that claim be struck out in whole or in part - capacity to sue - claim of unjust enrichment - leave granted for plaintiffs/respondents to file further amended statement of claim.

## **State of Queensland v Dale & Meyers Operations Pty Ltd [2010] QSC 361**

Supreme Court of Queensland

de Jersey CJ

Application by plaintiff for determination of preliminary question as to whether plaintiff & defendant had entered into compromise agreement - sale by plaintiff to defendant of timber business - exercise of discretion - appropriate case in which to order preliminary determination of question advanced.

[State of Queensland](#) (B)

## **Stumer Investments Pty Ltd v Azzura Holdings Pty Ltd [2010] QSC 352**

Supreme Court of Queensland

McMurdo J

*Trade Practices Act* 1974 (Cth) - plaintiff had agreed to purchase from defendant an apartment in a building to be constructed at Surfers Paradise - plaintiff alleging that defendant, through its agent, had made certain representations as to future value of the apartment - whether there were statements made in contravention of s52 - contract between plaintiff & defendant to be terminated - deposit together with any interest which had accrued on deposit to be repaid to plaintiff - bank guarantee provided on behalf of plaintiff to be discharged.

[Stumer Investments](#) (I, B, C)



**Edward Brewer Homes Pty Ltd v Home Builders Australia Pty Ltd [2010] WASC 257**

Supreme Court of Western Australia

Le Miere J

s9 *Defamation Act* 2005 (WA) - application to strike out statement of claim - first plaintiff to plead facts & matters necessary to establish that it is an excluded corporation.

[Edward Brewer Homes](#) (I)

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