



## Insurance Banking & Construction

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

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#### Executive Summary (1 minute read)

**Sartori v BM2008 Pty Ltd (No 2)** - Joinder - *Limitation Act 1935* (WA) - costs (I, B, C)

**Bevillesta Pty Ltd v D Tannous No 2 Pty Ltd** - Costs - whether appropriate to order that costs should be payable forthwith (I, B, C)

**New Cap Reinsurance Corporation Ltd (in liq'n) v Daya** - Directors' & officers' liability insurance - agency - pleading foreign law - application by plaintiffs to strike out parts of amended defence filed by fifth to eleventh defendants - *s28 Insurance Contracts Act 1984* (Cth) (I)

**Galovac Pty Limited v Australian Capital Territory** - Application for summary judgment or striking out - contracts - torts - duty of care - concurrent liability (I)

**Hall bhnf Hall v Armellin** - Application by plaintiff's next friend for a payment from settlement sum retained by Public Trustee (I)

**Jajieh v Woolworths Ltd** - Personal injuries - occupier's liability - slip & fall on wet floor in retail premises - damages (I)



## Summaries with links (5 minute read)

**Friday 29 October 2010**

**Sartori v BM2008 Pty Ltd (No 2) [2010] FCA 1160**

Federal Court of Australia

McKerracher J (in Perth)

Joinder - proceedings in relation to share issue - three applications by applicant - first, to join certain parties as applicants to proceeding; second, to join various respondents to the proceeding; & third, leave sought to file and serve amended application & amended statement of claim - second, third & fourth proposed applicants said to be assignees as a result of deed of assignment under which applicant assigned all causes of action he had against first respondent company (now in liquidation) including the present claim - share sale agreement - *Limitation Act 1935 (WA)* - costs - an interesting review of United Kingdom & Australian case law including on maintenance & champerty - consideration of *Trendtex Trading Corporation v Credit Suisse* [1982] AC 679 & *Campbells Cash & Carry Pty Ltd v Fostif Pty Ltd* (2006) 229 CLR 386.

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

**Bevillesta Pty Ltd v D Tannous No 2 Pty Ltd [2010] NSWCA 277**

Court of Appeal of New South Wales

Allsop P; McColl JA & Handley AJA

Costs - whether appropriate to order that costs should be payable forthwith - appeal from decision Supreme Court 7 May 2010: *D Tannous (No 2) Pty Ltd v Bevillesta Pty Ltd* in which primary judge had granted respondents leave to file a further amended statement of claim, had refused applicant's application for security for costs & had refused its application that the costs orders the primary judge had made against respondents consequent upon the amendments be payable forthwith - at para 39 of McColl JA's judgment: appellant was entitled to a costs forthwith order against the corporate respondents.

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

[Tannous](#) - decision 12 August 2009 referred to at para 3 of judgment of McColl J in Court of Appeal above - shopping centre at Gosford - leases - application by defendant company for dismissal of certain claims made by plaintiff company in its statement of claim

**New Cap Reinsurance Corporation Ltd (in liq'n) v Daya [2010] NSWSC 1226**

Supreme Court of New South Wales

White J

*Insurance Contracts Act 1984 (Cth)* - directors' & officers' liability insurance -agency - pleading foreign law - application by plaintiffs to strike out parts of amended defence filed by fifth to eleventh defendants ("the insurers") - plaintiffs alleging the insurers liable to indemnify first & fourth defendants in respect of those defendants' liability to plaintiffs - plaintiffs alleging that by reason of s6 *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)* the liquidator is entitled to recover from the insurers the amounts which he is entitled to recover from first & fourth defendants - plaintiff also seeking discovery of documents from the defendant insurers - application by fourth defendant for orders for discovery against plaintiffs & against fifth to eleventh defendants - issue of whether remedies under s28 *Insurance Contracts Act 1984 (Cth)* available where allegation of non-disclosure by insured to insurer's agent not to be decided on interlocutory application for strike out.

[New Cap Reinsurance Corporation \(I\)](#)**Galovac Pty Ltd v Australian Capital Territory [2010] ACTSC 132**

Supreme Court of the Australian Capital Territory

Jagot J

Application for summary judgment or striking out - contracts - torts - duty of care - concurrent liability - claim for damages for economic loss as a result of ACT's alleged negligence - sewerage & stormwater services - application refused - at para 11 of judgment, consideration of *NRMA Insurance Ltd v A W Edwards Pty Ltd (1995) 11 BCL 200*.

[Galovac \(I\)](#)**Hall bhnf Hall v Armellin [2010] ACTSC 135**

Supreme Court of the Australian Capital Territory

Refshauge J

Application by plaintiff's next friend for a payment from settlement sum retained by Public Trustee, of sum of \$300,000 to her & her husband in respect of gratuitous services of care they have provided to plaintiff - application adjourned so that Public Trustee has an opportunity to be given due notice of application & to attend.

[Hall bhnf Hall \(I\)](#)[Singh \(bhnf Singh\)](#) - decision Supreme Court of the Australian Capital Territory 3 November 2008



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

### **Jajieh v Woolworths Ltd [2010] NSWDC 239**

District Court of New South Wales

Levy SC DCJ

Personal injuries - occupier's liability - slip & fall on wet floor in retail premises - damages - past & future childcare - plaintiff's entitlement to damages assessed at \$766,793 - jurisdictional limit of the Court \$750,000.

[Jajieh](#) (I)

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