



A Daily Bulletin listing Decisions of Superior Courts of Australia Compiled for those in Banking

Tuesday 29 July 2008

Sui Mei Huen v Official Receiver for & on behalf of the Official Trustee in Bankruptcy [2008] FCAFC 117

Full Federal Court of Australia

Ryan, Moore & Tamberlin JJ (in Melbourne, heard in Perth)

Constructive trust – appeal from judgment of Federal Magistrate – marital breakdown – matrimonial home – mortgage – husband bankrupt – extensive consideration of case law including Calverley v Green – declaration made that respondent trustee holds legal estate as to one half-share in property upon trust for appellant wife subject to conditions.

[Sui Mei Huen](#)

New Cap Reinsurance Corporation Ltd (in liq) v Daya [2008] NSWSC 763

Supreme Court of New South Wales

Austin J

Application to set aside Notices to Produce - second plaintiff Mr Gibbons the liquidator of first plaintiff New Cap - plaintiffs have commenced insolvent trading proceedings against first, second & fourth defendants under ss588G & 588M Corporations Act 2001 (Cth), seeking to recover from them an aggregate amount in excess of USD55 million - plaintiffs presently considering whether to make application under s6(4) Law Reform (Miscellaneous Provisions) Act 1946 (NSW) for leave to join directors' & officers' insurers of first plaintiff & first, second & fourth defendants ("the D & O Insurers") as a party to proceedings - Mr Gibbons seeking orders that each of the first, second & fourth defendants file & serve affidavit setting out details of their assets & liabilities; & produce to Court their communications with the D & O Insurers relating to the liability of the Insurers under the D & O policy or the avoidance of the policy by the Insurers – case law considered – at par 44 of judgment:

"In my view the authorities strongly point to the conclusion that if an affidavit merely says that legal advice has been obtained, without any "direct allusion" that the advice was in written form, the affidavit does not refer to a document for the purposes of rule 21.10(1)(a). Nor does it refer to a "thing", because in its context the word "thing" appears to mean a physical thing, and legal advice is not necessarily a physical thing, just as it is not necessarily a document."

[New Cap Reinsurance Corporation](#)

**Buzzle Operations Pty Ltd (In Liquidation) v Breirl [2008] NSWSC 746**

Supreme Court of New South Wales

Rothman J

Extension of time for service of statement of claim previously granted ex parte - "English Procedure," a reference to procedure which permits defendants to be heard on question of extension of time for service - comprehensive consideration of case law as to exercise of Court's discretion - claim based on allegations by plaintiff Buzzle that Arthur Andersen, chartered accountants, is liable in damages for certain losses incurred by Buzzle arising from conduct associated with "merger" of a number of Apple computer resellers - defendants' applications dismissed - extension of time confirmed.

[Buzzle Operations](#)**Orica Australia Pty Ltd v Limit (No2) Limited [2008] VSC 247**

Supreme Court of Victoria

Evans J

Subpoena - objection to inspection - legal professional privilege - advice privilege - communications with third parties - litigation privilege - whether litigation reasonably anticipated or contemplated - waiver if reference to contents of privileged document for sole purpose of maintaining privilege in other documents - Charterers' Liability Insurance Policy - plaintiff Orica seeking damages & a declaration that it is entitled to indemnity from defendant & underwriters - cargo of a ship chartered by it shifted during voyage - Master of ship considered ship & its crew in danger and put into the nearest port - ship was detained there until cargo could be safely stowed - Orica incurred liabilities to owner of the vessel & costs of disposing of part of cargo - Marsh Pty Ltd had retainer from Orica to act as its agent in relation to communications with its insurers - defendant issued subpoena to Marsh Pty requiring production of documents - plaintiff objected to defendant inspecting some documents.

[Orica Australia](#)**Yan & Anor v Davinski Nominees Pty Ltd & Ors [2008] VSC 278**

Supreme Court of Victoria

Hollingworth J

Freezing orders - joinder - plaintiff had been granted leave to join Hong Kong companies - plaintiffs contending injunctions should be extended to include companies - injunctions extended to included Hong Kong companies.

[Yan & Anor](#)



Australian Securities & Investment Commission v Cycclone Magnetic Engines Inc & Ors [2008]

QSC 158

Supreme Court of Queensland

Daubney J

Australian Securities & Investment Commission Act 2001 (Cth) - where transcripts of examinations conducted under Australian Securities & Investment Commission Act 2001 (Cth) are annexed to affidavit filed in proceedings – whether transcripts of examination are admissible against persons other than examinee.

[Australian Securities & Investment Commission](#)

And on the off-chance you were contemplating Hibernation to escape the Chilly Sydney Winter, some information that may prove useful:

- to become a True Hibernator ie: to go into a sleep so deep you are almost impossible to awake, you need to mutate into a Golden-mantled Ground Squirrel [venue: burrow,] a European Hedgehog [bed of leaves or straw] or a Dormouse [venue: nest, or at a pinch, Mad Hatter's Tea Party – see Footnote 2 below.]
- Given the above ideas present difficulties for those in the Southern Hemisphere, may we suggest you morph into a Koala or Spiny Echidna. We caution, however, that the latter *is not a True Hibernator*: it wakes up occasionally to feed. (Perhaps unfortunately, the Skunk is in the same category: while it can sleep for days during bitterly cold weather, it becomes active again on warmer days, but we digress.)
- For those of an aquatic bent, become a Crayfish, bury yourself in mud at the bottom of a pond & doze. Or if you fancy yourself as a cold-blooded amphibian, why not do a fairytale reversal, & (temporarily) swap your Princely identity for that of a Toad?

These ideas are by no means exhaustive (snails, slugs, bumble bees, adders, lesser horseshoe bats..... etc.)

Footnote 1

To research the lifestyles of some of these creatures, please see stories by Beatrix Potter including 'The Tale of Squirrel Nutkin,' 'The Tale of Mrs. Tigglywinkle,' 'The Tale of Mr. Jeremy Fisher.'

(Note that Mrs. Tittlemouse of 'The Tale of Mrs. Tittlemouse' was a *wood* mouse, & wood mice do *not* hibernate.)

Beatrix Potter was born on **28 July**, 1866 & died in December 1943.

[Beatrix Potter - Wikipedia, the free encyclopedia](#)

Footnote 2

"You might just as well say," added the March Hare, "that 'I like what I get' is the same thing as 'I get what I like!'" "You might just as well say," added the Dormouse, who seemed to be talking in his sleep, "that 'I breathe when I sleep' is



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the same thing as 'I sleep when I breathe!' "
"It is the same thing with you," said the Hatter

From 'Alice in Wonderland,' Chapter VII - 'A Mad Tea-Party' – by Lewis Carroll (1832 – 1898)

[The Lewis Carroll Society Website - Homepage](#)