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

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Executive Summary (1 minute read)

Moshos v French (NSWCA) - contract - evidence - no binding agreement for transfer of shares in company - appeal dismissed

Bailey v RSL Lifecare Ltd (NSWSC) - contract - no binding agreement for licence of unit in retirement village - no estoppel - summons dismissed

John Holland Pty Ltd v Kellogg Brown & Root Pty Ltd (NSWSC) - commercial arbitration - disputes arising out of two arbitration agreements or their breach - referral of one dispute to arbitration - other proceeding stayed

Grocon Constructors (Qld) Pty Ltd v Juniper Developer No.2 Pty Ltd (QSC) - construction contract - preliminary issue - liquidated damages clause was not a penalty

Vision Eye Institute Ltd v Kitchen (No 2) (QSC) - damages - breach of services agreement by ophthalmologist causing closure of clinics - damages assessed at \$10,845,476

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Summaries With Link (Five Minute Read)

Moshos v French [2015] NSWCA 106

Court of Appeal of New South Wales

Macfarlan, Emmett & Leeming JJA

Contract - evidence - appellant claimed he entered legally binding agreement with respondent pursuant to which respondent would incorporate company and parties would cause company to apply for and obtain facility - appellant asserted parties agreed that once facility granted respondent would transfer 50 % of his shareholding of company to appellant - company formed - facility granted - respondent declined to transfer shares - primary judge found parties did not enter alleged agreement and dismissed proceedings - r28.2 *Uniform Civil Procedure Rules 2005* - inferences - held: no grounds relied on in notice of appeal made out - no material relied on in oral argument supported conclusion that primary judge erred in rejecting appellant's case - appeal dismissed.

[Moshos](#)

Bailey v RSL Lifecare Ltd [2015] NSWSC 448

Supreme Court of New South Wales

Darke J

Contract - equitable estoppel - plaintiff alleged it made binding contract with defendant whereby plaintiff would licence residential unit in retirement village operated by defendant - plaintiff sought decree of specific performance or that defendant was estopped from denying it was bound to enter into alleged agreement - defendant denied agreement reached - defendant contended that even if binding agreement made, specific performance should be refused it would require defendant to breach *Retirement Villages Act 1999* - defendant denied any estoppel arose - held: no binding contract entered between parties for licence of unit - parties' conduct did not lead to conclusion contract was made - estoppel argument failed - summon dismissed.

[Bailey](#)

John Holland Pty Ltd v Kellogg Brown & Root Pty Ltd [2015] NSWSC 451

Supreme Court of New South Wales

Hammerschlag J

Commercial arbitration - plaintiff builder engaged defendants by agreements for performance of services concerning stormwater detention facilities - builder sued defendants including for breach of contract, negligence, under *Trade Practices Act 1974* - agreements contained arbitration agreements - first defendant sought referral to arbitration pursuant to s8(1) *Commercial Arbitration Act 2010* - second defendant sought order that proceedings against it be stayed permanently - held: dispute between builder and first defendant arose out of or in connection with arbitration agreement or breach - alleged oral agreement not established - no waiver or estoppel - dispute between builder and second defendant also arose out of or in connection with arbitration agreement or breach - no waiver - agreement not void for uncertainty

- precondition of negotiation not fulfilled - arbitration agreement inoperative - builder and first defendant referred to arbitration - second defendant granted stay of action against it.

[JohnHolland](#)

Grocon Constructors Pty Ltd v Juniper Developer No.2 Pty Ltd [2015] QSC 102

Supreme Court of Queensland

P Lyons J

Construction contract - preliminary question - plaintiff sought declaration liquidated damages clause of contract with first defendant was void because it imposed penalty - construction of contract - held: liquidated damages clause operated when there had been breach of obligation to achieve Practical Completion by relevant date - it applied only to breach of that obligation, not to any breach of many obligations under contract - any delay in Practical Completion would have been expected by parties to have prevented defendant from settling contracts of sale - liquidated damages clause was not affected by penalty doctrine - liquidated damages clause should be regarded as genuine pre-estimate by parties to that contract of damages likely to be suffered should there be delay in Practical Completion.

[Grocon](#)

Vision Eye Institute Ltd v Kitchen [2015] QSC 66

Supreme Court of Queensland

Applegarth J

Damages - contract - Court gave judgment for second plaintiff company against defendant ophthalmologist for damages for breach of service agreement - assessment of damages - closure of clinics caused by wrongful termination of agreement - whether macular degeneration income should be included in assessment of lost earnings - whether shares in company owned by defendants and held in escrow should be released - held: macular degeneration income included - defendant ceased to be employee under agreement in circumstances where he was a "Bad Leaver" under escrow deed - defendants not entitled to release of escrow shares - damages awarded in sum of \$10,845,476 - restricted securities to be released from escrow on condition plaintiffs entitled to sell shares on behalf of defendants and apply Agreed Proportion of proceeds of sale in reduction of defendant's liability.

[Vision](#)

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