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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Prestige Lifting Services Pty Ltd v Williams (FCA) - corporations - contract - equity - fiduciary duties - statutory duties - duty of confidence - knowing assistance - company's claims established against former executive director, former employee and director of competitor (I B C)

Kelly v Australian Postal Corporation (FCA) - administrative law - respondent not obliged to pay compensation for applicant's previously accepted injury - no error in decision by Administrative Appeals Tribunal - appeal dismissed (I G)

Pavlovic v Universal Music Australia Pty Ltd (NSWCA) - contract - separate questions - no binding agreement formed between parties - appeal allowed (I B)

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd (NSWCA) - interlocutory appeal - corporations - principle of restraint - bank granted leave to appeal against refusal of access to respondent's professional indemnity insurance (I B C)

Neradovsky v Burnett (NSWSC) - professional negligence - solicitors' duties - conflict of interest - solicitor breached duty causing harm to client - solicitor liable - contributory negligence 15% (I B)

In the Estate of Dare (Deceased) (SASC) - Wills and estates - succession - citations issued in respect of 2002 Will and informal codicil (B)

Smith v Zhong (WASCA) - damages - motor vehicle collision - assessment of damages - appeal and cross-appeal dismissed (I)

Summaries With Link (Five Minute Read)

Prestige Lifting Services Pty Ltd v Williams [2015] FCA 1063

Federal Court of Australia

Beach J

Corporations - contract - equity - applicant (PLS) installed and maintained elevators - applicant claimed against former executive director (Williams), former employee (Hoffman), a competitor, TAG Cranes Pty Ltd (TAG) and director of TAG (Gardiner) - PLS claimed Williams and Hoffman breached fiduciary, contractual and statutory duties and duties of confidence - applicant claimed against Williams in respect of its funds used by Williams to meet unauthorised personal expenses and obligations - PLS claimed against TAG and Gardiner for knowing assistance in respect of Williams' and Hoffman's breaches of fiduciary duty and as persons involved in their breaches of statutory duty - TAG wound up and deregistered - PLS did not proceed with claim against TAG - Williams and Gardiner unrepresented - trial proceeded as unopposed matter concerning Williams and Gardiner - Hoffman defended proceedings and was represented - ss79, 181, 182, 183 & 1317H *Corporations Act 2001* (Cth) - s140(2)(c) *Evidence Act 1995* (Cth) - held: PLS established claims against Williams, Gardiner and Hoffman - parties to file and serve proposed minutes of orders and short submissions to give effect to reasons.

[Prestige](#) (I B C)

Kelly v Australian Postal Corporation [2015] FCA 1064

Federal Court of Australia

Griffiths J

Administrative law - applicant lodged claim for compensation for adjustment disorder with mixed anxiety and depressed mood - respondent accepted claim - respondent subsequently determined applicant no longer suffered "injury" or "disease" as defined in ss5A & 5B *Safety, Rehabilitation and Compensation Act 1988* (Cth) and denied obligation to pay compensation under Act for previously accepted injury - Administrative Appeals Tribunal affirmed respondent's decision - applicant sought to appeal - whether AAT complied with *Administrative Appeals Tribunal Act 1975* (Cth) (AAT Act) as to giving of reasons - illogicality - unreasonableness - held: AAT did not fail to discharge its statutory obligations - AAT's summary and discussion of competing medical opinions satisfied ss43(2) & (2B).(AAT Act) - AAT's preference for one doctor's opinion over another neither illogical nor unreasonable - appeal dismissed.

[Kelly](#) (I G)

Pavlovic v Universal Music Australia Pty Ltd [2015] NSWCA 313

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Meagher JA

Contract - separate questions - primary judge found appellants entered into binding agreement with first respondent on terms contained in deed of release despite fact that deed never executed by appellants, and that appellants did not lawfully terminate agreement - appellants appealed - subsequent conduct - authority of solicitor to bind client - actual or ostensible authority - previous dealings - held: first respondent's contention there was binding agreement by exchange of emails was contrary to terms of Proposed Deed which provided agreement was to take effect upon execution - no intention other than formality of execution and exchange - no contract formed between parties - appeal allowed.

[Pavlovic](#) (I B)

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd [2015] NSWCA 314

Court of Appeal of New South Wales

Basten JA; Emmett AJA

Interlocutory appeal - corporations - discovery - respondent was company subject to deed of company arrangement - respondent valued land proposed for residential development - applicant bank provided funding to developer - developer defaulted on loans - bank sued respondent for misleading and deceptive conduct - bank sought access to respondent's professional indemnity insurance - Ball J refused to make order for production of documents - bank sought leave to appeal - s444E *Corporations Act 2001* (Cth) - Pt 6, Div 1 *Civil Procedure Act 2005* (NSW) - principle of restraint - held: balance of considerations favoured grant of leave to appeal and grant of leave under s444E - appeal to be listed with expedition.

[Commonwealth](#) (I B C)

Neradovsky v Burnett [2015] NSWSC 1458

Supreme Court of New South Wales

Rothman J

Professional negligence - solicitors' duties - conflict of interest - plaintiff client sued solicitor and legal firm (first and second defendants) for breach of duty of care - defendants acted for plaintiff in relation to real estate transaction to support loan regarding investments - plaintiff alleged defendants had conflict of interest as result of acting for and relationship with principal of company in which plaintiff investing who was also plaintiff's financial adviser (Ms Percival) - s50 *Civil Liability Act 2002* (NSW) - held: solicitor was in conflict situation on basis of financial dealings with Ms Percival and fiduciary relationship with her and her companies - proper course would have been to refuse to advise on any part of plaintiff's arrangement with Ms Percival - solicitor breached duty - solicitor's conduct necessary condition of damage or harm - appropriate for scope of solicitor's liability to extend to harm caused - solicitor's conduct would not be seen by peers as competent professional practice - plaintiff did not take reasonable care for own safety - contributory negligence assessed at 15% - judgment for plaintiff.

[Neradovsky](#) (I B)

In the Estate of Dare (Deceased)[2015] SASC 153

Supreme Court of South Australia

Benchmark

Gray J

Wills and estates - succession - deceased's primary assets were parcels of land capital and assets of farming partnership - deceased left Will executed in 1997, a 2000 informal codicil and Will executed in 2002 - applicant son of deceased sought grant of probate in respect of 1997 Will and that Registrar of Probates issue citations in respect of informal codicil and 2002 will - whether Registrar empowered to issue citation to propound informal codicil - s3(1) *Wills Act 1936* (SA) - ss4 & 8 *Administration and Probate Act 1919* (SA) - held: term "will" included codicil under relevant legislation - no distinction to be drawn between will and codicil for purpose of issue of citations pursuant to r 55 *Supreme Court Probate Rules 2004* (SA) - Registrar had power to issue citations in respect of 2002 will and codicil - citations to be issued.

[Dare](#) (B)

Smith v Zhong [2015] WASCA 202

Court of Appeal of Western Australia

Buss, Newnes & Murphy JJA

Damages - motor vehicle collision - appellant injured in motor vehicle collision - other driver negligent - liability not in issue - appellant awarded damages of approximately \$362,000 - appellant contended award too low - respondent cross-appealed that award too high - principal issue concerned findings on loss of earning capacity, in the particular assessment of lost earning capacity having regard to appellant's 50% interest in family partnership in which she and husband were partners - s3C *Motor Vehicle (Third Party Insurance) Act 1943* (WA) - held: appellant's contention rejected that trial judge misunderstood or misapplied *Husher v Husher* [1999] HCA 47 and *Mastaglia v Burns* [2006] WASCA 190 - no error in reasoning on future gratuitous services - contention rejected that trial judge erred in failing to make finding or in applying the wrong test in assessing direct contribution by husband and appellant to 'profitability of the business' when assessing past and future lost earning capacity - no error in award for lost opportunity - trial judge's assessment for non-pecuniary loss not outside range open on proper exercise of discretion - appeal dismissed - cross-appeal dismissed.

[Smith](#) (I)

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